

**Nineteenth sitting**

Wednesday, 14 June 2006, 10.45 a.m.

*Presidents: Mr. Sajda and Mr. Adyanthaya***REPORT OF THE FINANCE COMMITTEE OF
GOVERNMENT REPRESENTATIVES:
SUBMISSION, DISCUSSION AND APPROVAL**

The PRESIDENT

I declare the nineteenth sitting of the 95th Session of the International Labour Conference open.

We shall now proceed to the presentation and approval of the reports that have resulted from the Conference and the voting on the instruments.

The second item on the agenda of the Conference concerns the report of the Finance Committee of Government Representatives, which is published in *Provisional Record* No. 18.

The Officers of the Committee were as follows: the Chairperson and Reporter was Ambassador Yimer, and the Vice-Chairperson was Mr. Kristinsson.

I invite Ambassador Yimer to submit the report.

Mr. YIMER (*Government, Ethiopia; Chairperson of the Finance Committee of Government Representatives*)

I have the honour to submit to the Conference the report of the Finance Committee of Government Representatives. This report is published in *Provisional Record* No. 18 and contains the recommendations of the Committee on the matters it considered. The four resolutions proposed by the Committee for adoption by the Conference appear at the end of the report immediately before the appendices.

The first item in the report concerns a request for the right to vote received from the Government of Azerbaijan. Considering that the non-payment of past contributions was due to circumstances beyond the control of this member State and that acceptable proposals had been put forward for the settlement of arrears, the Committee recommends that Azerbaijan be granted the right to vote.

The main item of business for the Finance Committee was the Financial Report and Audited Financial Statements for 2004-05. The Committee was pleased to see that the External Auditor had given an unqualified audit opinion; it joined with him in congratulating the ILO's Finance Department on this achievement. The External Auditor's report contained a number of valuable recommendations concerning the IRIS project and its roll-out to the field, the governance of the ILO, external collaboration and short-term contracts and financial matters, all of which had been noted by the Office.

The Office is already acting on many of these recommendations and, in accordance with normal practice, will be submitting a comprehensive report

to the 298th Session of the Governing Body in March 2007 on the follow-up action taken.

The Committee had no hesitation in proposing that the Financial Report and Audited Financial Statements for 2004-2005 be adopted in accordance with article 29 of the Financial Regulations.

The Committee then looked at the proposal concerning the scale for assessment of contributions to the ILO regular budget for 2007 and recommends that this be adopted by the Conference.

Finally, the Committee considered a paper concerning the composition of the ILO Administrative Tribunal. The Committee unanimously accepted a recommendation from the Governing Body that the Conference express its appreciation to Mr. James K. Hugessen for his services to the Tribunal over the last nine years and adopt a proposal from the Governing Body concerning two new appointments and the renewal of another appointment to the ILO Administrative Tribunal.

In concluding, I would like to express my thanks to our Vice-Chairperson, Mr. Kristinsson of Iceland, to the members of the Committee and also to the members of the Office, all of whom helped me greatly in my task as Chairperson. I commend our report to you for adoption.

The PRESIDENT

The general discussion of the report of the Finance Committee of Government Representatives is now open. As I do not see any requests for the floor, we shall proceed with the approval of the report of the Committee that is the summary of the debate, which is contained in paragraphs 1-36 and Appendices I-III. If there are no objections, may I take it that the report is approved?

(The report – paragraphs 1-3 and Appendices I-III – is approved.)

**RESOLUTION CONCERNING THE FINANCIAL REPORT
AND AUDITED FINANCIAL STATEMENTS FOR 2004-05:
ADOPTION**

The PRESIDENT

We shall now proceed with the adoption of the resolutions submitted by the Finance Committee of Government Representatives, starting with the resolution concerning the Financial Report and Audited Financial Statements for 2004-05. If there are no objections, may I take it that the resolution is adopted?

(The resolution is adopted.)

RESOLUTION CONCERNING THE ARREARS OF CONTRIBUTIONS OF AZERBAIJAN: ADOPTION

The PRESIDENT

We shall now proceed to the adoption of the resolution concerning the arrears of contributions of Azerbaijan. A record vote will be held on this resolution in accordance with article 17, paragraph 4, of the ILO Constitution. This vote is scheduled for the morning sitting tomorrow. If there are no objections, may I take it that the resolution is adopted?

(The resolution is adopted.)

RESOLUTION CONCERNING THE SCALE OF ASSESSMENTS OF CONTRIBUTIONS TO THE BUDGET FOR 2007: ADOPTION

The PRESIDENT

We shall now proceed to the resolution concerning the scale of assessments of contributions to the budget for 2007. If there are no objections, may I take it that the resolution is adopted?

(The resolution is adopted.)

RESOLUTION CONCERNING THE COMPOSITION OF THE ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL LABOUR ORGANIZATION: ADOPTION

The PRESIDENT

We shall now proceed to the resolution concerning the composition of the Administrative Tribunal of the International Labour Organization. If there are no objections, may I take it that the resolution is adopted?

(The resolution is adopted.)

I should like to thank Ambassador Yimer and Mr. Kristinsson and all the members of the Finance Committee for their excellent work.

RESOLUTION CONCERNING AN AMENDMENT TO THE STANDING ORDERS OF THE INTERNATIONAL LABOUR CONFERENCE: ADOPTION

The PRESIDENT

The next task before us is the adoption of a draft resolution of the Selection Committee concerning an amendment to the Standing Orders of the International Labour Conference, contained in the Committee's first report, published in *Provisional Record* No. 3-1. If there are no objections, may I take it that the resolution is adopted?

(The resolution is adopted.)

COMPOSITION OF THE DRAFTING COMMITTEE OF THE CONFERENCE

The PRESIDENT

The Conference may recall that it set up two committees for standard setting, each of which elected a drafting committee. In each drafting committee, one of the members has already left Geneva and needs to be replaced. The committees have already completed their work, so this matter was referred for consultation to the respective groups and to the Officers, who submit the following proposals. I submit this proposal to the Conference for approval. It concerns the composition of the drafting committee of the Conference, which includes the

members of the drafting committee of the Committees: The Employer member of the drafting committee for the Occupational Safety and Health Committee, Mr. Côté, Canada, is replaced by Mr. Lötter, South Africa. The Government member of the drafting committee for the Committee on the Employment Relationship, Mr. Crandal, France, is replaced by Ms. Koripamo-Agary, Nigeria. If there are no objections, may I take it that the proposal is adopted?

(The proposal is adopted.)

REPORT OF THE COMMITTEE ON SAFETY AND HEALTH: SUBMISSION, DISCUSSION AND APPROVAL

The PRESIDENT

Taking into account the provisions of article 40, paragraph 4, of the Standing Orders, the Selection Committee has set the next task of the morning, the presentation and approval of the draft report and adoption of the Convention, Recommendation and resolution submitted by the Committee on Safety and Health. These documents are published in *Provisional Record* No. 20.

The Officers of the Committee were as follows: the Chairperson was Mr. Békés; the Employer Vice-Chairperson was Mr. Lötter; the Worker Vice-Chairperson was Ms. Seminario, and the Reporter was Mr. Kang'ethe.

I should like to call on Mr. Kang'ethe to present the report.

Mr. KANG'ETHE (*Government, Kenya; Reporter of the Committee on Safety and Health*)

Allow me to begin by saying that it is my great honour and privilege to address this important gathering at this 95th Session of the International Labour Conference.

I am delighted to present to you, the report of the Committee on Safety and Health. The report contains the deliberations of the meetings which resulted in the formulation of a Convention supplemented by a Recommendation, which is being proposed for your adoption.

It is important to note that, in 2003, the Conference adopted a Global Strategy on Occupational Safety and Health that confirmed the role of ILO instruments as a central pillar for the promotion of occupational safety and health. It further identified the need for tripartite national commitment and action to foster a preventative approach and a safety culture.

The promotion of a national preventative safety and health culture and a systems approach to occupational safety and health were identified as key to this strategy.

The 2003 conclusions formed the foundation for discussion at the 93rd Session of the Conference in 2005, in which it was decided that the form the proposed instrument should take was a Convention supplemented by a Recommendation.

The objective of the Committee was to develop an instrument that was promotional rather than prescriptive in nature. The meeting aimed at incorporating basic principles into the instrument that would cover national policies, systems and programmes on occupational safety and health to be established at national and enterprise level.

Most importantly, the purpose of the instrument was to enable occupational safety and health to re-

ceive high priority in national agendas as well as foster political commitment for the development of national strategies. The general view of the delegates was that the Convention should be flexible enough to encourage ratification, noting that several safety and health Conventions are still not ratified by many governments.

After the general discussion, a motion for the closure was proposed by the Employer members, requesting the Committee to consider adoption of the text without amendments. However, before proceeding to vote, the motion was withdrawn and the discussion in the meeting proceeded amicably.

The delegates demonstrated strong determination, team spirit, active participation and much discussion that resulted in consensus. Many amendments for the improvement of the proposed Convention and Recommendation were made. However, the aim of the Convention was maintained in that it highlighted the promotional aspects, a creation of awareness and advocacy in the tripartite spirit at national and enterprise level.

The Convention and Recommendation place emphasis on the development and implementation of a national policy, a national system and a national programme on safety and health at all levels in consultation and participation with the social partners, which may be extended to other interested parties.

Furthermore, the International Labour Organization is requested to facilitate technical cooperation to help reinforce countries' capacities to establish and maintain a national preventive safety and health culture to promote a management system approach and to promote ratification and implementation of instruments of the ILO relevant to the promotional framework.

The meeting further resolved that there was a need for the elimination of future use of all forms of asbestos and the identification and proper management procedures for already existing asbestos. A proposed resolution concerning asbestos was adopted. The Committee held 11 sittings in ten days and examined 118 amendments to the proposed conclusions.

Finally, I wish to express my sincere thanks to the Chairperson, Dr. A. Békés, for his sense of humour and skill that enabled the Committee to reach consensus with ease. My thanks also go to the two Vice-Chairpersons, Mr. C. Lötter for the Employers' group and Ms. Peg Seminario for the Workers' group who offered useful contributions to improve the Convention. I cannot forget to thank the Government delegates for their technical expertise, dedication and active participation and sense of focus, bearing in mind that they will be called on to implement the elements in the Convention. Let me also express my heartfelt thanks to the staff of the secretariat for their excellent performance and assistance given.

In particular, my thanks go to the representative of the Secretary-General, Dr. Takala and his team of experts, legal advisers, drafting committee secretaries, translators, interpreters, clerks and typists.

Finally, I am pleased to present the report of the Committee on Safety and Health and the text of the Convention and Recommendation on the promotional framework for occupational safety and health to the 95th Session of the International Labour Conference for unanimous adoption.

Mr. LÖTTER (*Employer, South Africa; Employer Vice-Chairperson of the Committee on Safety and Health*)

On behalf of the Employers' group of the Committee on Occupational Safety and Health, I am pleased to speak in support of the adoption of the Committee's report in so far as it deals with the proposed Convention and Recommendation. In doing so, I would like to extend my appreciation to all participants who ensured an outcome that is deserving of everyone's support.

The Committee had Mr. András Békés, Government representative from Hungary, as its Chairperson and he was called upon to preside over a debate that was at times vigorous and, I guess, tested all his skill and experience to ensure that our deliberations were conducted in the allotted time, and we appreciate his efforts.

I would like to extend my appreciation to our Reporter for presenting to this plenary the key points arising from our discussions. My thanks also go to the Workers' group and the Government representatives for working hard with the Employers' group in a positive spirit to ensure that we have a Convention that is imminently ratifiable and a Recommendation that can be accepted.

My appreciation also goes to SafeWork for working very hard to ensure that its functions were undertaken accurately and professionally. Special mention must be made of Mr. Takala, who will be leaving the ILO very soon. He has been involved in this debate from the beginning, in 2003, and has seen it through to its conclusion this year, and the Employers' group appreciates his efforts in this matter.

We have before us today, in addition to a Convention and a Recommendation, a resolution concerning a ban on the use of asbestos. This resolution was made available to members of the Committee on Thursday, 8 June 2006, one day before it was to be discussed in the Committee on Friday, 9 June 2006. It called for "the prohibition and elimination of the use of all forms of asbestos and asbestos-containing materials." Now, whereas the discussion on the Convention and Recommendation was conducted against the backdrop of the general discussion and consensus of 2003, two subsequent reports from the Office and input from member States and the most representative organizations of employers and workers, the resolution clearly did not. The resolution was, and remains, separate from these discussions, both in content and in process.

I want to make it clear that the Employers' group does not want to pronounce on the merits of the resolution or of the asbestos debate. I wish to raise a point, one that relates entirely to procedure, but a point that is so important that it affects the credibility of the ILO itself.

The introduction of the resolution on asbestos raised a very technical and specialized debate, one which our Committee was simply not ready, at 24 hours' notice, to engage in. It did not have the mandate, nor was it composed of sufficient technical specialists.

What are these questions that were raised by the resolution when it was introduced? Well, it raised questions of a technical nature, for example, what is the comparable risk posed by other carcinogenic materials, such as benzene, chrome and nickel? It raised questions of a scientific or medical nature, for example, the shape, size and chemical composi-

tion of fibres of different asbestos and the concomitant risk posed by these. It raised questions of a socio-economic nature, for example, what to do with workers employed in the asbestos industry? Colombia alone has 70,000 workers employed in the asbestos industry. It raised questions about the jurisdiction of the ILO, for example, does the ILO have the jurisdiction to call for an outright ban on the future use of materials? And raised questions about the instruments of the ILO itself, for example, what is the effect of the resolution on the Asbestos Convention, 1986 (No. 162)? It arguably amounts to a denunciation of the Convention.

These questions, made it very difficult for a number of Government representatives and the Employer members to consider a resolution properly and in a meaningful way. Neither the general discussion in 2003, nor the discussions on the Convention and Recommendation on a promotional framework for occupational safety and health, in 2005 and 2006, ever envisaged a discussion on the ban of a specific material. There was also no mention of this in the questionnaire or any of the reports drafted by the Office. There has simply been no consultation or any form of technical preparation on the question. The composition of the Employers' group did not include the technical experts necessary to discuss this matter. As a consequence, the Employers and a number of Governments did not participate in the resolution or the vote in the Committee.

The irony is that both the Constitution of the ILO and the Standing Orders of the International Labour Conference seek to avoid such a situation. Article 14 of the Constitution enjoins the Governing Body to ensure that there is "thorough technical preparation and adequate consultation". This agenda must reach Members four months before the Conference convenes. Reports prepared by the Office must be distributed "in time to permit adequate consideration before the meeting of the Conference" (article 15(2)).

What do the Standing Orders say about this? Article 15(4) of the Standing Orders allows for resolutions, "relating to an item on the agenda", to be considered by the Conference. Despite the fact that the resolution before us today is separate in content and process, as I have already outlined, the Office of the Legal Adviser, admittedly under pressure to pronounce on the issue at short notice, was of the opinion that the fact that there was mention of Convention No. 162 in an annex to the Recommendation constituted a sufficient link. The Legal Adviser later added that call in the proposed Convention and Recommendation for the prevention of injuries, diseases and death gave added weight to the view that the resolution related to an item on the agenda.

This cannot be the test.

We would suggest that a more appropriate test to determine whether an aspect relates to an item on the agenda would be to determine whether or not the substance of the resolution is sufficiently linked to the preparatory consultations, the technical preparations and the mandating process of the original item on the agenda, to allow for a proper discussion on the matter.

The test used by the Office of the Legal Adviser to allow this resolution to be placed before the Conference, places the very institution of tripartite discussion at risk. This test will in future allow matters on which there has been no preparation, no consul-

tation and no technical input, as required by the Constitution, to be put before this Conference in a rushed and ill-considered manner leading to hasty decisions which could undermine the very credibility of the ILO. This matter must be referred back to the Office of the Legal Adviser for further reflection.

Mr. President, a letter outlining our position was sent yesterday by Mr. Daniel Funes de Rioja, Chairperson of the Employers' group, to you in your capacity as President of this Conference. The Employers' position is as follows: we do not want to pronounce on the merits of the asbestos debate. The resolution is not properly before this Conference. We continue to dissociate ourselves from the resolution and will not participate in its adoption.

I now wish to turn to the matter that we are here to discuss in the first place and which was properly before the Conference: the proposed Convention and Recommendation on a promotional framework for occupational safety and health. In stark contrast to the resolution, this matter on the agenda has its origin in a discussion by the Governing Body in 2002, when it called for a new approach to be followed in standard-setting activities, namely the integrated approach. The matter was placed on the agenda of the 91st International Labour Conference and the conclusions from that general discussion in 2003 called, amongst other things, for the development of a new promotional framework on occupational safety and health. There was general consensus that the main purpose of the instrument was to ensure that priority be given to occupational safety and health on national agendas and to foster political commitments to develop, in a tripartite context, national strategies for the improvement of occupational safety and health. There was also consensus that this had to be done based on a national preventative safety and health culture and the management systems approach.

We have before us today a proposed Convention and a proposed Recommendation that satisfy all the abovementioned criteria, but that also: build on the consensus of the general Conference discussion from 2003; brace the aspirations of the Governing Body, expressed in 2002, for a new integrated approach; recognize occupational safety and health as a core element of the ILO's Decent Work Agenda; promote a national preventative safety and health culture; are designed to foster political commitment to improving occupational safety and health; seek to place occupational safety and health on national agendas; and could see more ratifications than any other instrument on occupational safety and health. SafeWork – Dr. Takala – has expressed the hope that we could have more than 100 ratifications in five years. I know this is achievable. I hope it will be exceeded.

Most importantly, and this point I must emphasize, the proposed Convention and Recommendation require clear and well-defined action to be taken. Countries must develop a national policy, develop national systems and, most importantly, implement national programmes on occupational safety and health.

To conclude, the proposed Convention and Recommendation are deserving of the support of this Conference. The proposed Convention is deserving of speedy ratification and implementation and, if this is done, we will save lives.

I am here on behalf of the Worker Vice-Chairperson, Ms. Peg Seminario, of AFL-CIO of the United States, since she is no longer here. She had to leave; I am Mr. Bjorn Erikson from the Norwegian Confederation of Trade Unions and I have the pleasure and honour to present the Workers' view on the work of this Committee.

The Workers appreciate that the work that the Committee has been doing for the past several weeks addresses a most important issue – the protection of the lives, safety and health of workers around the globe.

The problem of work-related injuries and diseases and deaths is enormous. Despite the acknowledgement that decent work must be safe work, the ILO estimates that each year 2.2 million workers die due to work-related injuries and illnesses. This means that each day 5,000 workers die because of job hazards. On top of this, hundreds of millions of workers suffer from non-fatal occupational injuries and diseases and, unfortunately, the problem is getting worse and not better as the number of workplace deaths increases. The cost of these deaths, injuries and diseases is enormous, to workers, employers and countries as a whole.

For the past two years, our Committee has been considering draft instruments to establish a promotional framework for occupational safety and health. The purpose of those instruments, which take the form of a proposed Convention and Recommendation, is to give higher priority to safety and health and to provide a framework for improving safety and health. These instruments have proposed a systems approach to establish a national policy, a national system and a national programme.

Throughout the two years of discussions on this subject, the Workers have expressed the view that this new safety and health instrument needed to have a clear relationship to other safety and health instruments of the ILO, particularly the Occupational Safety and Health Convention, 1981 (No. 155). This Convention is, in our view, the core safety and health Convention. A key purpose of this new promotional instrument should be to help member States ratify and implement the other ILO instruments.

Moreover, we have made it clear that this new instrument needs to be based on a system of rights, duties and responsibilities of workers, employers and governments, providing for the full participation of workers and their representatives in occupational safety and health, and including actions to be taken at the workplace level. It is there that injuries, diseases and deaths occur and there that action must be taken to prevent them.

After facing a motion of closure to end the discussion on the draft instruments before considering any amendments to the Office text, I am happy to report to the ILO Conference that the Committee proceeded to have a full and constructive discussion on the instrument and proposed amendment. Through this discussion among the Workers, Employers and Governments, we were able to reach greater understanding of what the views of the different parties are and reach compromises and agreements on key issues.

The key issues and agreements include, among others: stating clearly that an objective of the Convention is to prevent occupational injuries, diseases and deaths; adding the objective that member States should consult periodically with employers and workers to consider what measures could be taken to ratify relevant ILO occupational safety and health Conventions; directing member States to promote basic principles, such as assessing occupational risks or hazards when formulating their national policy.

In the Recommendation, amongst others, we reached an agreement on: adding a section on national policy recommending that Convention No. 155 be taken into account, both with respect to formulating policy and to the relevant rights, duties and responsibilities of workers, employers and governments; adding a new Paragraph recommending that in the national system, Convention No. 155, the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129) and other relevant ILO instruments should be taken into account.

In the national programme section, we added a new Paragraph focusing on workplace activities, including the assessment of hazards and risks and the promotion of workplace prevention measures that include the participation of employers, workers and their representatives.

Finally, I wish to mention that we added provisions calling upon the ILO to help facilitate technical cooperation, particularly to developing countries, and to promote the ratification and implementation of the relevant ILO Conventions.

The result of this discussion and the agreements reached is a much improved instrument. While not as detailed in some areas as the Workers would have liked, the agreements reached have addressed the major issues and concerns we raised. We would like to thank all the Committee members who participated and who offered constructive proposals to reach a consensus, particularly many of the Government members.

The promotional framework for occupational safety and health is now linked to the other relevant ILO OSH instruments. We see this new Convention and Recommendation as providing a way in which member States can take the first steps to establishing safety and health policies, systems and programmes using Convention No. 155 and other relevant Conventions as a compass and move forward along the path to improving safety and health, and to ratifying and implementing the relevant instruments.

With these important improvements, the Workers' group strongly supports the proposed Convention and Recommendation and their adoption by the Conference.

We wish to stress that the true test of these new instruments and whether it will be effective in bringing about improvements in safety and health and enhanced ratification will be in their implementation. We welcome the announcement in our Committee by the Head of SafeWork that the Office plans to actively promote the ratification of the new Convention and of Conventions Nos. 155, 81 and 129. Members of the Workers' group stand ready to work with Governments, Employers and the ILO in this effort.

Employer representatives have spoken about the relevance of the Asbestos Convention, 1986

(No. 162). I will address that later. For the Workers, it is the most important matter that our Committee addressed and it adopted the resolution concerning asbestos. Asbestos, including chrysotile asbestos, is a known human carcinogen and has so been classified by the World Health Organization (WHO) and the International Agency for Research on Cancer (IARC). Many decades of asbestos use and exposure have resulted in a massive occupational disease crisis, with 100,000 workers dying every year of asbestos-related diseases. These diseases, which include cancer, occur not only among workers, but among the wives and children of workers due to asbestos brought home on clothes, and among the members of the communities who labour around asbestos mines and facilities.

Because of these significant and widespread health problems, 40 countries have prohibited the future use of asbestos. But, even in industrialized countries which banned and strictly regulated asbestos years ago, the deaths continue because of the long time it takes these diseases to develop. Moreover, workers continue to be exposed during maintenance, removal and demolition activities.

The asbestos industry has now moved to export asbestos and all of its hazards and risks to developing countries, exposing millions of workers to asbestos with little or no protection at all.

Today's export and use of asbestos in developing countries will continue the vicious cycle and epidemic of asbestos-related diseases and deaths.

The purpose of the resolution is to help prevent unnecessary asbestos-related diseases and deaths in the future.

I wish to point out that the resolution does not make any new policy. It only clarifies and restates existing ILO policy on asbestos. The resolution restates the policy in the Occupational Cancer Convention, 1974 (No. 139), that exposure to asbestos should be eliminated since it is a known human carcinogen. It further states that Convention No. 162 should not be used to justify or endorse the continued use of asbestos.

We also point out that the resolution concerning asbestos adopted by the Committee was the result of discussion and compromise, and we wish to thank the Governments for their constructive work on this issue.

In conclusion, this resolution is an important statement by the ILO, reaffirming its long-standing policy on the protection of workers from cancer-causing substances. It is a critical matter for millions of workers around the globe and will directly help prevent future diseases and deaths. It will also reduce future costs of compensation and of removal and remediation for companies and society as a whole.

The Workers' group would like to point out that, in the Committee, the Employers raised the formal question of whether the draft resolution should be discussed or not. The Legal Adviser twice visited the Committee and gave advice on this issue and clearly stated, as was also accepted by the majority of the Governments, that there was a clear linkage between the resolution and the Recommendation and Convention. So, the Legal Adviser was very clear and I presume that is why the majority of the Governments proceeded to discuss the draft resolution and contributed to its adoption.

It is not against any legal rules, it is not irrelevant to a crucial issue of occupational safety and health.

As stated, very clearly, at the opening of the Committee on Safety and Health by Dr. Takala – asbestos is the major cause of fatal occupational diseases. More than 100,000 workers still die every year because of asbestos and we know that, even in developed countries like the western European countries, in spite of no more use of new asbestos, the European Agency has estimated that a quarter of a million workers will die over the coming 30 years because of asbestos.

So, we see it as extremely important that the International Labour Conference should take note of its own policy on this issue, that is, the Asbestos Convention, 1986 (No. 162) as well as the Occupational Cancer Convention, 1974 (No. 139). It is not outside the mandate of the Committee and it is not outside the mandate of the Plenary to adopt this resolution. On the contrary, it goes to the core of the issue of health and safety.

Mr. BÉKÉS (*Government, Hungary; Chairperson of the Committee on Safety and Health*)

It is a privilege for my country and for myself to address this gathering as Chairperson of the Committee on Safety and Health. The excellent presentation by our Reporter and the interesting contributions of the two Vice-Chairpersons make my task much easier.

In 2003, I had the honour to present to the Conference the conclusions resulting from a general discussion on occupational safety and health which, for the first time, was based on an integrated approach. Last year, in 2005, I had the honour of being elected Chairperson of the Committee on Safety and Health for the first discussion of a proposed instrument and I presented to you the conclusions resulting from that debate. This year, I am pleased to present to you the texts of a Convention and Recommendation which, after a detailed and intense debate, have received the approval of our Committee. We hope very much that you will vote in favour of them in your session tomorrow.

These instruments reflect the shared consensus of all parties of the importance of placing safety and health higher on national agendas and mobilizing the political will needed to do this. They also recognize the need to reduce occupational and work-related deaths, accidents and diseases and the need to promote a preventative safety and health culture at the global level. The promotional framework is intended to be an overarching instrument, which has been crafted in such a way as to ensure that member States will be able to ratify it easily. It has been designed to avoid duplication of provisions in existing instruments and, as already mentioned, to be promotional rather than prescriptive. All three groups showed great consideration and understanding of each other's positions and of differing national conditions. The debate was extremely interesting, at times lively, not always easy, but conducted in a spirit of consensus and a desire to reach sensible, practical agreements.

The Committee also adopted a resolution concerning asbestos. Asbestos is one of the most hazardous risk factors causing tremendous suffering to workers worldwide. This resolution will greatly contribute to enhancing the protection of workers worldwide from asbestos hazards.

My own work, as Chairperson, was facilitated by the assistance of the two Vice-Chairpersons, Mr. C. Lötter for the Employers and Ms. Seminario for the

Workers, who managed to ensure that a cordial atmosphere was maintained throughout the discussions. I also thank the Government members for their active and constructive input and, believe me, it was a pleasure and a privilege to work with this Committee.

I would like to thank the Office under the leadership of Dr. Takala for the professional and dedicated support given to the whole Committee.

The PRESIDENT

I shall now open the general debate on the report.

Original Spanish: Ms. MELE (Worker, Argentina)

It is important above all to point out that, when it comes to the promotional framework for occupational safety and health, trade unions are willing to cooperate with government bodies and employers' associations. Given the leading role of trade unions in identifying situations which represent hazards and risks for workers in the workplace through their trade union representatives, they can establish norms for safe work in a healthy environment.

Taking into account also that any preventive measures should be adapted to the workplace, a detailed analysis is needed to eliminate the causes of injury, disease and death of workers in all sectors.

We all know about repetitive stress injuries, diseases caused by chemical and mineral substances, injuries from getting caught in machinery, and I could go on about injuries in different areas of work. However, we wish to highlight the importance of this framework Convention in establishing national policies, systems and programmes which can remedy these tragic situations. It brings together interested parties such as Government representatives, Employer representatives and Worker representatives, encouraging them to participate and engage in dialogue, with a view to decreasing and eliminating risks and hazards in the workplace through the establishment of tripartite advisory bodies and the implementation of safety and health policies in the workplace, where safety and health stewards will share their experience with those who have the technical capacity to remedy the sort of situations that create risks and dangers.

Also, it will promote a national culture of prevention with the right of access to information as its main pillar. Therefore, this culture must include components relating to information, training, skill-ing and updating in areas of safety and health.

This is why, in the light of all we have said, we appeal to governments, and in particular to Latin American governments, to support this proposed Convention on a promotional framework for occupational safety and health.

We should like to thank the ILO Office for the work it has done to ensure safe work in a healthy environment for all workers in the world.

Original French: Mr. DIOP (Worker, Senegal)

I have the honour to take the floor on behalf of delegations of the African workers of the Committee on Safety and Health to make a few comments.

We have just drawn up pertinent instruments which relate to the promotional framework for occupational safety and health.

In this field, a new text is never superfluous and completes the tools which guarantee the physical and moral integrity of workers in the workplace.

In this context, the Convention and Recommendation on the promotional framework for occupational safety and health were drawn up.

What our governments now have to do, in view of the importance of this issue, is to take these instruments on board in view of their ratification and implementation in the shortest possible time span. During this process, our organizations will assist governments to raise awareness of the instruments' content among all stakeholders.

Without any doubt, these activities will raise awareness and develop a prevention culture among our populations in general, and employers and workers in particular.

It is true that occupational safety and health issues are not sufficiently included in the work of our respective organizations.

The instruments proposed by the ILO must once again push us to get more involved in this issue in order to reduce, or even eliminate, the consequences of occupational hazards at the workplace.

Therefore, as part of this process, we cannot neglect any sector of activity, especially the informal sector which, moreover, is becoming increasingly important in the economic and social development of our respective countries.

Therefore, we would like to use this opportunity to launch a solemn appeal to the governments of developed countries to give greater support to the ILO for the harmonious development of technical cooperation between this Organization and African governments to assist the ratification and implementation of pertinent ILO instruments, such as the Occupational Safety and Health Convention, 1981 (No. 155), the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and their accompanying Recommendations.

To better protect workers and safeguard them from the hazards which threaten them in the workplace, an important question was equally dealt with by our Committee, namely that of asbestos. This substance, because of its devastating effects on human beings, the lack of reliable statistics on the damage it causes and the ignorance of populations and lack of a culture of prevention, is an extremely serious threat to the health of African populations in general and workers in particular.

Therefore, we are pleased with the resolution that has been drawn up, adopted and proposed by our Committee.

We therefore invite governments in general, and African governments in particular, as well as the employers of this continent, to support us unconditionally in the adoption of the instruments during this session of the Conference, which would contribute to solving the public health problems in our countries.

I do not want to conclude without thanking all of our colleagues in the Workers' group who have spared no effort to ensure the success of our work.

Mr. MAHADEVAN (*Worker, India*)

Mr. Kofi Annan, Secretary-General of the United Nations, has said: "All too often lives are shattered unnecessarily because of poor working conditions and inadequate safety systems ... Let me encourage everyone to join the International Labour Organization in promoting safety and health at work. It is not only sound economic policy, it is a basic human right ...".

The promotional Convention and accompanying Recommendation and resolution we have concluded here is a beginning in the right direction to influence all governments to ratify the OSH Conventions, to enact laws or strengthen existing laws on OSH, to implement them in letter and spirit so as to avoid the loss of GDP, and to create a political will and climate to ensure better working conditions.

The Occupational Safety and Health Convention, 1981 (No. 155) is aimed at a coherent policy on OSH and the working environment and to ensure communication and cooperation at all levels in all branches of economic activities, to all workers. The basic Convention also gives a direction to the social partners to formulate, implement and periodically review a national OSH policy. Under the new instruments, a national policy, national system and national programme are envisaged, as well as a national profile. Ethical criteria and legal obligations are well within their framework.

Reinforcing a tripartite consultative mechanism at the unit, company, provincial and national levels is an objective under these promotional instruments. Information sharing, consultation, decision-making to formulate an action plan on OSH-related matters, including ratification, could inevitably be the follow-up to these instruments. The traditional saying, that “the business of business is business, no one can interfere in my business, so mind your own business”, cannot any longer be applicable to the OSH-related matters in business. It is in the interest of business itself to run them efficiently; and effectively. OSH is everybody’s business.

Relocation and offshoring are being used in efforts to overcome the declining rate of profit by transferring business to low-cost areas and the informal sector. This increases the vulnerability of workers with regard to OSH, increases the number of injuries and the incidence of diseases and fatalities. This Convention and Recommendation seek to cover these vulnerable areas in the small and medium-scale enterprises, besides the informal economy. In the developing countries, in the emerging IT sector, practically no laws are allowed to be implemented. It shall therefore be the sincere and serious endeavour of all of us to prevent these sectors from being converted into a neo-bonded labour sector, causing the growth of biological hazards, psychological hazards and musculoskeletal diseases. We believe that these instruments will provide the much-needed tools to prevent this from happening.

There has been a tendency in several countries, particularly in the developing countries, to criticize, discourage, avoid, shun or do away with labour inspections, despite the existence of two important ILO Conventions in this area, including one on agriculture. Unfortunately this ominous practice is encouraged by the authorities, even by the highest in some countries in the name of “facing global competition”, “cost cutting”, “quicker output”, and so on. These short-sighted practices must be discouraged. The instruments we have concluded in this session have the objective of improving the system of inspection.

Manufacturing of prohibited materials and substances is being transferred to the developing countries and accepted by them because of economic necessities. This particularly includes asbestos – the single biggest killer of working people worldwide, despite the ban in several countries. A misinformation campaign on the so-called “safe use of asbes-

tos” is being carried on by vested interests. For example, the ship-breaking industry allows the entry of several thousand tons of green asbestos sent in non-decontaminated ships. The resolution on asbestos adopted in our Committee reveals the truth about asbestos and urges all concerned to save the lives of those millions dying every year on account of asbestos-related diseases. The resolution needs the active support and an unstinted future action plan by all member States of the ILO.

Safety and health is not just a subject for specialists and professionals. It should become the concern of all at the workplace. We have to collectively develop the conscience of ordinary people. In short, the worker should return home in the same condition as he or she came to work. This is the ultimate motive of the instruments we place today before this august international body.

More than 100 years ago someone said “we have nothing to lose but our chains”. Now the chains are not on the hands, but on the brains. Let us break the chains and guarantee a safe and healthy life to the working masses, as well as their bosses.

With these words I commend the unanimous adoption of the proposed Convention, Recommendation and resolution.

Original French: Mr. JOUBIER (Worker, France)

The Convention and Recommendation on which you are being asked to vote provide for a new promotional framework for occupational safety and health. Their basic aims are to promote the continuing improvement of occupational safety and health. These two instruments rightly set forth the need to provide for a periodic tripartite examination of any measures that might be taken at national level to ratify the relevant ILO Conventions on occupational safety and health.

The adoption of this Convention will constitute a helpful first stage, but which must rapidly be followed by its formal ratification by governments and its implementation in order to secure a safer and healthier world of work.

Developed countries, especially those of the European Union, have a special responsibility in this area. They already have advanced legislation which certainly could and should be further improved, but which is in a different league from that of other countries. They must therefore start the ratification process without delay and consider, on a tripartite basis, the ratification of other instruments which many have not yet ratified, in particular the Occupational Safety and Health Convention, 1981 (No. 155).

My country, France, has publicly announced from the rostrum of this assembly its commitment to do so. I hope that those countries which have not yet done so, make a similar commitment. Developed countries also have a responsibility actually to help developing countries to ratify and implement this new Convention, as well as the other instruments related to occupational safety and health, through direct cooperation with the ILO.

Allow me now to say a few words on the asbestos resolution. I regret that the three groups were unable to reach a consensus within the Committee on such a serious topic. However, this instrument represents a first step, even though, as a Worker representative, I also advocate an ultimate total ban on this substance, which causes 100,000 deaths a year,

along the lines of the decision taken by France and the European Union.

We all bear responsibility not only *vis-à-vis* today's workers and peoples, but also *vis-à-vis* future generations. The findings of all modern scientific research concur that asbestos is extremely hazardous in all its forms and at all stages of its use.

Respect for universal human rights demands a ban on the transfer of risks and hazards from rich countries to poor countries.

Further to the adoption of this resolution, we must appeal to countries which have not yet done so to ratify the Asbestos Convention, 1986 (No. 162) and we must pursue this discussion within the ILO and in all the relevant international bodies, in order that we may tomorrow all agree on a total ban of asbestos and its use.

Ms. DEMBSHER (*Government, Austria*)

I have the honour to speak on behalf of the following Member States of the European Union: Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Malta, Poland, Portugal, Spain, Slovakia, Slovenia, Sweden and the United Kingdom, as well as Bulgaria, Romania, Iceland and Norway.

In the Committee on Safety and Health, we have approved a Convention and a Recommendation on the promotional framework for occupational safety and health.

Over these two very intensive weeks, in which we have been dealing with the promotional framework, there have been differing opinions, starting with the question of whether we should adopt the existing documents without further discussion or not, as a number of delegates felt that the consensus of 2005 was already sufficient. Having decided that basic issue, we tackled questions of substance like the basic principles of a national policy or of the relation of the proportional framework to other instruments.

However – and it must be emphasized – the work of the Committee proceeded in a very constructive spirit of collaboration. We should not forget that we have come a long way from the first ideas of a new integrated approach to the standard-setting activities of the International Labour Organization, where many people felt that the existing instruments lacked coherence.

In 2003, at the 91st Session of the International Labour Conference, the Committee on Occupational Safety and Health held a general discussion. The conclusions gave a clear indication of which direction the so-called integrated approach should take. As one necessary measure, the establishment of a promotional framework was named.

At the Conference of 2005, the main features of the promotional framework were developed: the form of the documents, the structure of national policies, systems and programmes and very detailed specification regarding the content of a national occupational safety and health profile. Although these results were already very sophisticated, the discussion of the last two weeks showed that there was still room for improvement and clarification.

We feel that the two documents we have elaborated are the result of hard work based on the first concepts of the integrated approach. At the same time, they are a signal of what can be achieved

when we strive to find solutions that are acceptable for all parties involved.

Furthermore, the Committee having defined the basic concepts and principles of a national policy, a national system and a national programme, the members of the European Union are convinced that the resolution regarding asbestos is a first and very important step to implementing the ideas of promoting occupational safety and health.

The protection of workers against asbestos is an important part of the European Union provisions regarding occupational safety and health. It is reflected by the existing prohibition of asbestos within the EU and by a thoroughly up-to-date European directive on the protection of workers from the risks related to exposure to asbestos. In this context, it is the ultimate goal of the European Union to have the future use of asbestos banned and the problems of asbestos already in place dealt with by proper management.

On this basis the EU recognizes, as expressed in the resolution, that the elimination of the future use of asbestos and the identification of asbestos currently in place are the most effective means to protect workers from asbestos exposure and to prevent future asbestos-related diseases and deaths.

On these grounds, the EU will welcome initiatives from the ILO, as proposed in the resolution concerning asbestos, and in particular, the promotion of the elimination of future use of all forms of asbestos and the promotion of the proper management of all forms of asbestos currently in place.

We also want to thank our Chairperson, Mr. Békés, along with Employers, Workers and other Governments for their cooperation which once again show that dialogue is essential to the ILO and all its activities.

(*Mr. Adyanthaya takes the Chair.*)

Mr. ERIKSSON (*Government, Sweden*)

Speaking also on behalf of the Governments of Finland and Norway, I would like to make the following comments.

The proposed Convention on the promotional framework for occupational safety and health implies a new approach and provides new possibilities for the improvement and promotion of occupational safety and health. During the work of the Committee, it has been confirmed once again that occupational safety and health is an area of common interest to Governments, Employers and Workers. The proposed promotional framework Convention has two fundamental objectives. To begin with it should raise awareness of occupational safety and health as a common interest to all. Secondly, it aims to contribute to the impact and implementation of other ILO safety and health Conventions, as well as those Conventions supporting the establishment of national policies, systems and programmes. We are in full agreement with the relevance of these two objectives.

Sweden, with the initial support of the other Scandinavian countries, and later on of the majority of EU Member States, introduced a resolution to promote the ratification of the proposed promotional safety and health Convention as well as other ILO Conventions on occupational safety and health, in particular the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129). Regrettably, as is

evident from the report, the resolution could not be adopted and had to be withdrawn. However, this does not change the fact that the promotion of labour inspection activities is still crucial to the ILO and its member States, especially given that Conventions Nos. 81 and 129 have been selected as priority Conventions by the Governing Body. Hopefully, the discussions conducted in the Committee on the resolution on safety and health were an incentive for the ILO to focus on the importance of labour inspection as an essential instrument to improve and guarantee safety for workers at workplaces.

To conclude, we have appreciated the constructive dialogue in the Committee. Let us take the opportunity to thank the Chairperson of the Committee, Mr. Békés, as well as all the other members, Governments, Workers and Employers included, and the ILO staff who have all most successfully contributed to the adoption of the proposed Convention and Recommendation on the promotion framework for occupational safety and health.

Original French: Ms. AMELINE (Government, France)

France fully supports the statement just made by the representative of Austria on behalf of the European Union, and that of Sweden on behalf of the Nordic countries.

On behalf of the French delegation, allow me to underscore the added value of an integrated approach within a promotional framework, which is a lever for health and safety and an innovative and promising method for the Organization. France pledges to ratify this text at the earliest possible opportunity. France would suggest that the 2007 World Day of Safety and Health at Work should echo this approach.

Turning now to asbestos, I would like to talk about the two areas of work we consider essential. The first has to do with the complete and swift worldwide elimination of the use of asbestos. The second area has to do with strengthening the protection of workers faced with this problem. In this regard, we support the updating of the Asbestos Convention, 1986 (No. 162), and further in-depth debate on this issue within the ILO.

As regards labour inspection, we believe that the establishment and development of inspection schemes are key to improving situations concerning – depending on national practices – either labour relations in general or safety and health issues in particular. France calls on the Office to take measures to strengthen this progressive and responsible approach.

Mr. CHIPAZIWA (Government, Zimbabwe)

We are pleased and, indeed, very grateful that finally the technical Committee on Safety and Health of the ILO has positively concluded its work, as assigned to it through the appropriate agendas of the International Labour Conference over the last couple of years. We sincerely hope that, if and when adopted, the Convention and Recommendation on the promotional framework on occupational safety and health will go a long way towards achieving the very best protection for all workers anywhere in the world.

Indeed this has always been the goal when the Governing Body of the ILO set out on this agenda, and now here we are at the threshold of accomplishing our objectives with this proposed adoption. I

want to note that at the Conference last year in 2005, we adopted the report of the Committee on Safety and Health by which we agreed that the Committee would come up with a Convention and Recommendation on a promotional framework on health and safety. We did not agree for it, that is the Committee on Safety and Health, to also come up with the resolution on asbestos as part of this Convention and Recommendation in any way whatsoever.

Asbestos is and has always been a controversial issue over the years. World opinion cannot be said to be honestly united behind any position on this issue. But there is no such doubt about this, the promotional framework on safety and health at work. It is with these issues in mind that we think that the annexation of the resolution on asbestos to this Convention and Recommendation on the promotional framework on health and safety may make such a very clean and clear issue a bit more controversial. It would be better if we go ahead to adopt the Convention and Recommendation in the form that we set ourselves to achieve at last year's International Labour Conference, and, even before then, leave out this otherwise surprise inclusion of a resolution on asbestos.

If we want to deal with asbestos, please let us deal with it in the context of the Asbestos Convention, 1986 (No. 162), which we may choose to rescind or amend procedurally as and when necessary. We believe that Zimbabwe's chrysotile asbestos can and has been used safely in accordance with Convention No. 162. We believe that there is a difference between chrysotile, amosite and crocidolite in their carcinogenicity to the extent that chrysotile is safer.

So, there is so much controversy surrounding the issue of asbestos. Otherwise a very well-intended Convention and Recommendation, such as this one, may run the risk of not being immediately ratifiable by many key countries of the world, the cost of this unnecessary annexation.

It is our hope that delegates will look at this issue of annexation objectively and come up with their own conclusions and that we will eventually succeed in the task of adopting this very important Convention and Recommendation as we set out to do initially. We must agree that no good can come out of creating controversy on asbestos at this forum.

Finally, we wish to inform the esteemed delegates here that we align ourselves with those who wish to have the legality of this resolution re-examined. We should not be party to precedents which can harm the health and welfare of workers, advertently or otherwise.

Mr. CHAVALITNITIKUL (Government, Thailand)

On behalf of the delegates of the Government of Thailand, I would like to express my appreciation and strong support of the proposed Convention and Recommendation on the promotional framework for occupational safety and health, including the resolution. The proposed instruments are truly an overarching framework for a programme of action at the international, national and enterprise levels aiming to promote occupational safety and health and place it high on national agendas; strengthen national occupational safety and health systems; and promote a national preventative occupational safety and health culture. In addition, the inclusion of international technical cooperation on occupational safety and

health in a Recommendation, to assist developing countries to strengthen their capacity and promotion of a management system approach to occupational safety and health, is vital for their development.

The Government of Thailand believes that the proposed new ILO instruments we have before us would be important tools for achieving sustainable development in occupational safety and health in the coming years and would guarantee safer, healthier and more productive workplaces. Therefore, we fully support the proposed Convention and Recommendation on the promotional framework for occupational safety and health, and, of course, the resolution.

Finally, we wish to thank a number of individuals from the Committee on Safety and Health, especially Dr. Békés, Chairperson of our Committee, the two Vice-Chairpersons, all members of the Committee and the secretariat team working under the leadership of Dr. Takala of the ILO InFocus Programme on Safety and Health at Work and the Environment (SafeWork), in accomplishing this important task.

Ms. CHENGALUR (*Employer, United States*)

Last year, the Employers worked towards the goal set in 2003 of developing a new approach that would result in a step change in the effort to decrease the global impact of occupational injuries and diseases. This approach was to be based on the pillars of building and maintaining a preventative safety and health culture, and on a management systems approach to occupational safety and health.

United States Employers strongly support efforts to decrease the rate and severity of occupational injuries and diseases. United States employers face the same challenges that are faced by responsible employers across the globe as we work to provide safe and healthful working conditions: the need for a standard approach that will allow us to work constructively with other stakeholders, including employees, government agencies and local communities, toward common safety health objectives. The promotional instrument would, we believe, develop a culture and a process that would greatly strengthen our ability to address this challenge. It was, and is, important that the instrument developed be flexible, not prescriptive, to allow implementation to take into account the variety of environments in which US business operates.

We ended the 2005 session of the Conference optimistic that we were close to achieving these goals and, in addition, had developed an instrument that could be ratified by most countries.

The opening statements of the Governments at this year's session of the Conference confirmed our optimism, since a majority of them expressed satisfaction with the draft instruments. I believe that the Employers' delegation engaged enthusiastically and, during the 2006 session of the Conference, maintained the direction set last year and was able to focus on refining and clarifying the specific Articles of the Convention and its accompanying Recommendation.

We believe that we have developed a simple, flexible, overarching structure that will meet the needs of workers, governments and employers in countries with varying levels of occupational safety and health. In addition, the instrument addresses the special needs of micro, small and medium-sized enterprises, as well as the informal economy.

The United States Employers' delegation was disappointed that a resolution related to asbestos was attached to this process. Although we believe that asbestos is a critical issue that needs to be addressed, we do not believe that the forum used was technically competent to discuss and decide on the issue.

Mr. YASUI (*Government, Japan*)

On behalf of the 37 members of the Asia and Pacific group, we would like to express our view on these issues.

First of all, we would like to express our gratitude to the distinguished delegations for the constructive discussion during the meeting.

The ILO Global Strategy on Occupational Safety and Health, adopted by the International Labour Conference in 2003, stated that the instrument should emphasize the development and adoption of methods and tools, rather than setting out detailed and binding provisions. From this point of view, we would like to express our satisfaction with and support for the conclusion of this report of the Committee on Safety and Health.

We especially appreciate the inclusion of international technical cooperation in Paragraph 15 of the Recommendation, which had been proposed by several countries of the Asia-Pacific region. We believe that technical cooperation to strengthen capacity and promote a systematic approach to occupational safety and health management is essential to give developing countries a chance to ratify the Convention and implement the Recommendation.

We would like to encourage the Office and member States to contribute their assistance to developing countries, including technical cooperation, and give their support for an occupational safety and health management systems approach, as referred to in the Recommendation.

(*Mr. Sajda takes the Chair.*)

Mr. BREMPONG YEBOAH (*Deputy Minister for Manpower Development and Employment, Ghana*)

Right from the beginning, the ILO has had as one of its ideals the issue of addressing the problems of poor working conditions at the workplace. Eighty years on, the ILO has been working strenuously to eliminate these poor working conditions all over the world. However, despite its best efforts, we all have come to accept that the ILO has, when it comes to the subject of occupational health and safety, not been able to bring the problem down to acceptable levels.

Many workers throughout the world continue to sustain injuries, some fatal, through accidents and work-related diseases. The many Conventions that the ILO has put in place on the subject have remained largely unnoticed, unratified and unimplemented.

It is in the light of the above situation that I commend the efforts of the Committee on Safety and Health in coming up with a draft Convention and Recommendation on the promotional framework for occupational safety and health. These instruments, I believe, will assist member countries to establish the necessary infrastructure to reduce injuries, diseases and deaths arising from unsafe working conditions and environments. They will also assist in the promotion and development of safety and health as a preventive culture at the workplace. As we all

know, prevention is the safest and cheapest means of meeting the costs of accidents and enhancing productivity at enterprise level.

Speaking from the African perspective, several aspects of the problem immediately confront us. We in Ghana, and I believe in other African countries, have quite a number of large enterprises, although the majority are informal, small and medium-sized.

These enterprises are underserved in terms of inspection services on safety and health, and many workers in these environments and workplaces continue to suffer avoidable accidents and injuries.

We are told that up to 2 million persons die annually due to work-related activities worldwide, not to mention the 160 million who suffer from occupation-related diseases. This, I believe, is enough reason to support the proposed instruments.

The proposed Conventions require, at the national and enterprise level, the establishment of policy management systems and programmes on occupational health and safety. We believe that these instruments, when implemented, will significantly reduce the above statistics on deaths, injuries and diseases at the workplace and improve the lives of our people.

In the light of the foregoing, I wish to urge my colleagues, Governments, Workers and Employers alike, to support the adoption of the Report on the promotional framework for occupational safety and health.

Ms. KORIPAMO-AGARY (*Government, Nigeria*)

The adoption of the Convention and Recommendation on the promotional framework for occupational safety and health by the 95th Session of the International Labour Conference is a very welcome development for Nigeria. An estimated 70 per cent of Nigerians in the 16-69 age bracket are workers. The health issue must therefore be addressed from an holistic point of view to ensure that a healthy worker does not, as a result of workplace hazards, end up with injuries and diseases which are more debilitating and incapacitating than even the well-known diseases of tuberculosis, HIV/AIDS, malaria, cancer, and so forth.

Such work-related injuries and ill health cause personal suffering, family hardships and costs to individuals and employers as well as society at large. Maintaining acceptable safety and health standards at work through the promotion of a safety and health culture is seen in Nigeria as an integral and key component of our development and poverty alleviation and as the centre of promotion.

For the past three years, the Government and social partners in Nigeria, with the support of the ILO, have used safety and health initiatives to promote the development of a safety and health culture at work. This has resulted in a high level of occupational safety and health awareness in the country, including among the decision-making organs of Government, thereby leading to increased funding for the Ministry.

As regards the resolution concerning asbestos, Nigeria supports the position of the Employers and some Governments who are opposed to an outright ban on the use of asbestos and asbestos-containing materials. However, we must not lose sight of the seriousness of the hazards associated with this substance. Nigeria would, therefore, urge the Conference to adopt this resolution in order to stimulate and enhance action by all ILO member States to

eliminate the future use of asbestos and control all present activities involved in asbestos and asbestos-containing materials.

Mr. OLDHAM (*Government, Canada*)

May I address specifically the resolution concerning asbestos. Canada does not agree with or support this resolution. However, we do not call for a vote. Similarly to the Employers, we consider that the complex issue of asbestos should have been discussed in a properly prepared forum of involved experts, and not by the technically unprepared Committee on Safety and Health.

Ms. NEIRA (*representative, World Health Organization*)

On behalf of the World Health Organization which is, as you know, the United Nations specialized agency for health, we thank you for the opportunity to address this 95th Session of the International Labour Conference. Let me first of all introduce myself. I am Dr. Maria Neira, and I am the Director of the Department of Public Health and Environment at the World Health Organization. The Department deals with primary prevention and we have the incredible responsibility of contributing to the management of occupational health risks but, above all, we would like to promote a healthy working environment.

For WHO, this is an important milestone. The global agenda for improving people's health, workers' health, is such that we welcome the development of an ILO promotional framework for occupational safety and health as an important milestone that, we are sure, will contribute to the global agenda to improve the health of the workers. We commend the emphasis on strengthening national governance and an institutional framework for occupational safety and health. Certainly, different components of the health systems relate closely to national occupational safety and health systems. Such relations need to be further strengthened and well coordinated in order to prevent duplication of activities and gaps in responsibilities. WHO further commends the emphasis in the promotional framework for occupational safety and health on primary prevention and the prioritization in eliminating hazards in the workplace.

WHO, as probably many of you will know by now, is preparing a Global Plan of Action on Workers' Health, to be presented to the next World Health Assembly. This Plan of Action will mobilize the health sector for actions to promote workers' health. In this way, WHO action on workers' health will encourage countries to ratify the promotional framework for occupational safety and health. It will provide a solid basis for continuous collaboration between the health and the labour sectors for improving workers' health.

Our collaboration, that is to say collaboration between the World Health Organization and ILO, is a very long one; it started in 1948 and we are all convinced that we are determined to work further with ILO colleagues to streamline the international assistance provided to countries in the area of occupational safety and health and to link those efforts to the larger health and development agenda. Some ongoing initiatives, such as the WHO/ILO joint efforts in Africa and Asia, show that this is possible.

Furthermore, we appreciate the resolution of the Committee on Safety and Health of this Conference on stopping the future use of asbestos. There are

serious health arguments to support this call. We are also very concerned by the growing epidemic of asbestos-related diseases and we will further collaborate with the ILO on this issue.

The PRESIDENT

As the list of speakers is finished, we shall now proceed to the approval of the report of the Committee, that is the summary of the debate, contained in paragraphs 1-375. If there are no objections, may I take it that the report is approved?

(The report – paragraphs 1-375 – is approved.)

**PROPOSED CONVENTION ON THE PROMOTIONAL
FRAMEWORK FOR OCCUPATIONAL SAFETY AND
HEALTH: ADOPTION**

The PRESIDENT

We shall now proceed to the adoption of the proposed Convention on the promotional framework for occupational safety and health, which is appended to the report. We shall proceed Article by Article, beginning with the Preamble.

(The Preamble and Articles 1 to 6 of the proposed Convention are adopted seriatim.)

If there are no objections, may I take it that the proposed Convention, as a whole, is adopted?

(The proposed Convention, as a whole, is adopted.)

**PROPOSED RECOMMENDATION ON THE PROMOTIONAL
FRAMEWORK FOR OCCUPATIONAL SAFETY AND
HEALTH: ADOPTION**

The PRESIDENT

We shall now proceed to the adoption of the proposed Recommendation on the promotional framework for occupational safety and health. We shall proceed Paragraph by Paragraph, beginning with the Preamble.

(The Preamble and Paragraphs 1 to 16 of the proposed Recommendation are adopted seriatim.)

We shall now proceed to the adoption of the annex to the proposed Recommendation, containing a list of ILO instruments relevant to the promotional framework for occupational safety and health.

(The annex to the proposed Recommendation is adopted.)

If there are no objections, may I take it that the proposed Recommendation on the promotional framework for occupational safety and health, as a whole, with its annex, is adopted?

(The proposed Recommendation, as a whole, with its annex, is adopted.)

In accordance with article 40, paragraph 7, of the Standing Orders of the Conference, the provision of the two instruments will be referred to the Conference Drafting Committee for the preparation of a final text.

Please note that the proposed Convention and Recommendation on the promotional framework for occupational safety and health will be put to a record vote tomorrow morning.

RESOLUTION CONCERNING ASBESTOS: ADOPTION

The PRESIDENT

The annex to the report of the Committee on Safety and Health contains a resolution concerning asbestos, I have received a letter from the Employers' group regarding this resolution. I now give the floor to the Clerk of the Conference for an announcement in this connection.

The CLERK OF THE CONFERENCE

In summary, it is the opinion of the Employers' group that the matter of the prohibition and elimination of the use of asbestos materials is a specific issue which does not fall within the discussion scheduled for the Committee on Safety and Health, on a promotional framework for occupational safety and health.

The Employers' group believes that the Committee was not properly prepared to address such a technical issue and that the appropriate technical experts were not necessarily included in delegations. They maintain that this issue had not been part of the preparations of the Committee's work and the process of consultations that preceded that work.

Accordingly, the group stated in the Committee that it did not wish to pronounce on the merits of the debate on asbestos. None of the preparatory work that had taken place over the past three years had touched upon the possibility of a ban on a specific material.

Given that the group does not see the issue of asbestos as part of the process that led to the Committee's work at this Conference, it believes that the text does not relate to an item on the Conference agenda.

Accordingly, in their view, for the resolution to have been receivable, it would have had to have been submitted to the Conference in accordance with the procedures laid down in article 17 of the Conference Standing Orders, which was not the case.

In conclusion, the Employers reject any interpretation that the draft resolution was receivable for examination within the mandate of the Committee on Safety and Health, and strongly hold the view that this should in no way be considered a precedent for future Conferences.

The PRESIDENT

I note, however, that notwithstanding this view, the Committee accepted the resolution as receivable and, after discussion, adopted the draft for submission to the Conference. Given that the Record of proceedings will reflect these points of view clearly, if there are no objections, may I take it that the resolution concerning asbestos is adopted?

(The resolution is adopted.)

I now give the floor to the Legal Adviser who will give us some comments.

The LEGAL ADVISER OF THE CONFERENCE

For the information of the Conference, I would like to provide a clarification in relation to the report of the Committee on Safety and Health, specifically its paragraph 327. This paragraph summarizes statements that were made by the Legal Adviser of the Conference and it makes reference, in general, to the Standing Orders.

As pointed out in the Committee, the resolution in question was moved under article 63 of the Standing Orders of the Conference, which applies to committees.

The PRESIDENT

We have now completed the examination and approval of the report and the adoption of the proposed Convention and Recommendation on the promotional framework for occupational safety and health. I should like to extend warm thanks to the Officers and members of the Committee and the

staff of the secretariat for the excellent work they have done.

As you know, this item was first discussed at the 93rd Session of the Conference and these documents represent the outcome of more than two years' intense work. Many congratulations to all concerned. Thank you.

(The Conference adjourned at 12.45 p.m.)

Twentieth sitting

Wednesday, 14 June 2006, 3.15 p.m.

President: Mr. SAJDA

FIRST AND SECOND REPORTS OF THE CREDENTIALS COMMITTEE: SUBMISSION AND NOTING.

The PRESIDENT

I declare the twentieth sitting of the 95th Session of the International Labour Conference open.

We shall now proceed to the examination of the first and second reports of the Credentials Committee which are published in *Provisional Records* Nos. 5B and 5C, respectively.

I invite the Officers of the Credentials Committee to come to the rostrum: Mr. Oni, Chairperson and Reporter of the Committee; and Ms. Horvatić, Employer member, Croatia. I understand that the Worker member, Mr. Edström, Sweden, is not present.

I invite Mr. Oni to submit the reports.

Original French: Mr. ONI (Government, Benin: Chairperson and Reporter of the Credentials Committee)

Once again, I have the honour to present to the Conference a brief summary of the activities of the Credentials Committee this year. This summary is to be found in its first and second reports in *Provisional Records* 5B and 5C.

During this session of the Conference, 11 objections to the nomination of delegations and five complaints regarding the non-payment, or partial payment, of the expenses of the social partners' delegations were referred to the Committee. We also received two communications.

Most of the objections considered by the Committee were related to issues in connection with the consultation procedure for nominating Employers' or Workers' delegates.

The Committee notes that certain situations arise year after year and, in this connection, it underscores the importance of governments' compliance with their obligation to ensure that employers and workers may freely choose the members of their respective delegations. We note with concern the cases concerning employers from Swaziland and the Bolivarian Republic of Venezuela who are once again on our agenda and we invite the Governments concerned to heed our comments and to fully honour their constitutional obligations.

This year, we are particularly concerned about the situation in one Member – Djibouti. Objections to the delegation of this member State have been on the Committee's agenda for several years. The Committee has already had occasion to express its concern about the manner in which the Workers'

delegation has been nominated by the Government, but this year we have been disturbed to note the fact that an International Labour Office official on an official mission has been arrested and expelled from Djibouti. That is why we have decided once again to avail ourselves of the new mandate given to us by the Conference and which is laid down in article 26bis of the *Interim Provisions of the Conference Standing Orders concerning the verification of credentials*. We unanimously recommend that, by way of monitoring as a follow-up to our deliberations, the Conference request the Government of Djibouti to submit a detailed report substantiated with relevant documentation on the procedure utilized to nominate the Workers' delegates and its technical advisers, at the same time as it submits its credentials for its delegation next year. I therefore draw the Conference's attention to paragraph 20 of our second report and I invite you to adopt our proposal contained in that paragraph.

On the other hand, we note with satisfaction that our first use of the new mandate in 2005 has already borne fruit and we do not recommend any monitoring for Burundi next year.

We also note that problems with the payment of delegates' travel and subsistence expenses persist. We remind the Governments concerned, notably Afghanistan, Georgia and the Democratic Republic of the Congo of their obligation at least to finance a complete delegation to the Conference for the duration of its deliberations.

The Committee has again found that too many alterations have been made to credentials during the session, even after the publication of the *Revised Provisional List of delegations*. On behalf of the Committee, I would request Governments, whenever possible, to present complete, clear and final credentials within the deadline laid down for that purpose so as to facilitate the verification of credentials.

The Committee once again notes the usefulness of the database for the verification of credentials which has been created by the International Labour Office and invites all those concerned to take full advantage of it in future.

In our first report, we noted with concern that women are not always adequately represented in national delegations. The target of 30 per cent participation still seems a long way off, despite the fact that there were only 14 women delegates in 1982 and that there are 105 today. I would like to emphasize that it not only up to Government to improve

these figures, it is also the job of employers and workers.

Lastly, I would like to thank the Conference for renewing its trust in me by reappointing me as a member of the Committee.

I would also like to express my warm thanks to my two colleagues, Ms. Lidija Horvatić, the Employer member from Croatia, and Mr. Edström, the Worker member from Sweden, for the spirit of co-operation and consensus which characterized our discussions this year.

Please allow me to express my sincere thanks to the members of the Committee secretariat for the dedication and efficiency they have shown.

The PRESIDENT

The Credentials Committee has adopted its reports unanimously. The Conference is simply called on to note the reports and to adopt the proposal contained in paragraph 20 of the second report, which concerns the delegation of Djibouti.

(The reports are noted and the proposal adopted.)

I have to inform you that I have received a communication from the representative of the Islamic Republic of Iran, whose remarks are included in paragraphs 32 and 33 of the second report. Given that the report reflects the summary of oral explanations provided to the Committee by Mr. Shahmir, it has been submitted that the following are factual errors: the person present during the meeting with the Committee was not Mr. Sajadpour but Mr. Bayat Mokhtari. In paragraph 32, the reference to “the Ministry of Interior” (line 12 in the English version) should in fact be to “the Ministry of Labour”, and the reference to “the Islamic Labour Council” (line 15 in the English version) should be to “the provincial federations of the Islamic Labour Council”. In paragraph 33, the reference to the Confederation of Islamic Labour Councils’ in line 2, should be to the Tehran Federation of Islamic Labour Councils, and the figure 440 in the same line should read 570. Given that this information does not open the discussion on the Committee’s findings, my reading of them will be reflected in the *Provisional Record*.

I would like to express my sincere thanks to the Officers of the Credentials Committee for the excellent work they have done. Special thanks and gratitude go to Mr. Oni, who has been the Chairperson of the Committee for the past eight years. Thanks are also due to the secretariat, which assisted them in their work.

REPORT OF THE COMMITTEE ON THE EMPLOYMENT RELATIONSHIP:

SUBMISSION, DISCUSSION AND APPROVAL

The PRESIDENT

The next item before us, as established by the Officers of the Selection Committee, is the submission and approval of the report of the Committee on the Employment Relationship, which is the fifth item on the agenda of the Conference and is published in *Provisional Record* No. 21.

The Officers of the Committee were as follows: Chairperson: Ms. van Leur, Netherlands; Employer Vice-Chairperson: Mr. Finlay; Worker Vice-Chairperson: Mr. Patel; and Reporter: Ms. Van Zyl.

I invite Ms. Van Zyl to submit the report.

Ms. VAN ZYL (*Government, South Africa; Reporter of the Committee on the Employment Relationship*)

I have the honour to present to the Conference in plenary sitting the Report on the employment relationship and the proposed Recommendation and a resolution on the employment relationship.

It is the fruit of a tremendous amount of hard work and interest in the fifth item on this Conference agenda, which is at the heart of labour law across the globe. It concludes almost a decade of discussions and debates, in technical committees and Conference sessions, on this complex issue that continues to affect the lives of workers, their communities and society at large.

We all knew that the work before the Committee was not going to be easy. At the start of the Committee’s work, the Chairperson pointed out that the key to constructive discussions would be a fair exchange of views. Even if the Committee could not reach agreement on exact wording, its work would be considered successful if a positive effort had been made by all its members to reach agreement and members had sought to find a common goal. It would, however, be a failure if divergent opinions were dismissed outright and members were unwilling to work with each other. I can report to you that over the past two weeks the work was a success, despite the expressions of strongly divergent views. While consensus could not be found for every single Paragraph in the proposed Recommendation, the atmosphere that directed our discussions was one of respect, honesty and frankness.

This report is the result of 16 formal sittings and several informal meetings, including a tripartite working group, bilateral discussions and regular meetings of the tripartite Drafting Committee.

As you have read, the report comprises an introduction containing opening statements where the Employer and Worker members, 23 Governments, as well as some non-governmental organizations, gave the overall positions regarding the proposed instrument. This is followed by consideration of the proposed instrument, which records the discussions on 134 amendments submitted by a large cross section of delegates, as well as a large number of subamendments.

The report ends with the resolution inviting the Governing Body of the ILO to instruct the Director-General to assist member States in the area of the employment relationship and the proposed Recommendation.

The Recommendation itself consists of four Parts covering: (1) national policy of protection for workers in an employment relationship; (2) determination of the existence of an employment relationship; (3) monitoring and implementation; and (4) the final paragraph.

It recognizes that protection should be accessible to all, particularly vulnerable workers, and should be based on legislation that is efficient, effective and comprehensive with expeditious outcomes, and encourages voluntary compliance.

I hope that this summary gives you a clear picture of the substance of the proposed Recommendation before you.

I would like to note that behind this report we had a secretariat comprising a team of more than 25 persons, as well as a large number of interpreters, ably led by the representative of the Secretary-General,

Ms. Jo Walgrave, without whom our Committee could not have functioned. I thank them all.

The tripartite Drafting Committee was tasked to finalize the adopted changes in accordance with the established ILO drafting practices. I thank the members of that committee for their excellent work.

Finally, let me take this opportunity to thank the Officers of the Committee, which was faced with such a formidable task, for facilitating an outcome of which we can all be proud.

My thanks go first to the Chairperson, Ms. van Leur, without whose firm and fair chairing we, quite frankly, could never have made it in time.

I also thank the Employer and Worker Vice-Chairpersons, Mr. Finlay and Mr. Patel, and their groups, who were under great pressure to arrive at consensus over a text that would be as useful as possible for the working women and men in today's world.

The Government members were also major players in arriving at a successful conclusion of our work. I thank them for their patience and constructive inputs.

I therefore now commend the report with the proposed Recommendation and resolution to the Conference for adoption.

Mr. FINLAY (*Employer, Canada; Employer Vice-Chairperson of the Committee on the Employment Relationship*)

Just once in this process, I would like the last word, but I never seem to get that opportunity.

I stand here today, disappointed. I am disappointed that we did not conclude a Recommendation that all of us could support. I am disappointed that we could not find common ground to say yes, after over ten years of work on these very difficult issues. And while I am disappointed, I am not surprised.

In 1997 and 1998, we went through a process that highlighted the unsuitability of the topic for standard setting. Through a meeting of experts in 2000 and a Conference discussion in 2003, we witnessed the difficulties in establishing common criteria and a common approach that did not reflect national differences and differences in sectoral, social, economic and cultural systems. But we did come to one common view in 2003 – that there might be room for an instrument dealing with disguised employment. Governments, Workers and Employers all agreed in good faith. We agreed at that time to the following language: “The ILO should envisage the adoption of an international response on this topic. A Recommendation is considered by the Committee as an appropriate response. This Recommendation should focus on disguised employment relationships and on the need for mechanisms to ensure that persons with an employment relationship have access to the protection they are due at the national level. Such a Recommendation should provide guidance to member States without defining universally the substance of the employment relationship. The Recommendation should be flexible enough to take account of different economic, social, legal and industrial relations traditions and address the gender dimension. Such a Recommendation should not interfere with genuine commercial and independent contracting arrangements.”

This paragraph goes on. All of us understand what this agreement entailed. Workers, Governments, Employers and the Office. This agreement was the

result of a very, very difficult process. It was hard fought and difficult to achieve.

We were therefore surprised, to say the least, to see the ILO questionnaire circulated by the Office that went out seeking views outside the scope of that agreement. By asking questions beyond the scope of the 2003 agreement, it was inevitable that the response would be used to justify a draft instrument going beyond that agreement.

We, the Employers knew and we warned the Office that the result of this Conference debate was going to be difficult and contentious and most likely unsuccessful. The questionnaire led to the drafting of a Recommendation that would include the very problematic issues of triangular relationships, interference in commercial relations, universal criteria and indicators and presumption of employment; the issues we expressly sought to avoid in the 2003 consensus and we still do not understand why that happened.

While not the focus on my remarks today, I feel we will be far more cautious in future in reaching agreements between the tripartite partners. What confidence does this give us that agreements will be honoured? While this is an important question, it is not one for today.

Even though the questionnaire and resulting draft Recommendation flew in the face of the agreement reached, the Employers' group worked to make a success of the process. We worked with the Office in advance of the Conference and with the Workers. We promoted a process during the Conference of interest-based dispute resolution, with constructive and meaningful support from the Workers. In doing this, we were able to address the concerns of Workers and Employers with respect to an extremely difficult area. I would like to note that, were it not for the Workers being supportive, open and forthright, even this small success could not have been achieved. For that I would like formally to thank the Workers' group and their spokesperson. They took a risk and it paid off, at least on that one contentious issue.

Despite this success, the Governments took the position almost uniformly that they would support the Workers' position, largely reflected in the Office text, unless there was an agreement with the Employers otherwise. With such a position, it cannot be surprising that the Workers were unable to move far enough to accommodate the concerns of the Employers. At that point the process broke down and became a bipartite process, in which the interests of the Employers would not be accommodated.

I realize that many people in this room will not like this message, but the fact remains that this is a bipartite instrument, concluded between Governments and Workers. I might have been pleased that Employers were able to contribute constructively, except that our success in addressing triangular relationships serves merely to highlight the overall failure. The failure yet again to find common ground that produces an instrument that can be supported by the tripartite constituents. This is not a good example of social dialogue in a world looking for good examples.

You hear speakers say that we should be pleased that there was so much agreement, but you should not be consoled by that. It is not a real agreement if one of the three parties cannot support it. It is not an agreement if, at the end of the day, the outcome is

concluded by Workers and Governments merely supporting an Office text on issues of the utmost concern to Employers. To describe this as a success is akin to revisionism because the record will show that the Employers did not support this instrument.

Another reason for disappointment is that we had a chance of success. The Employers' group was seeking an opportunity to say yes to this instrument. Instead, we have one more instrument released from this tripartite institution that is not a tripartite instrument.

It will come as no surprise to hear me say that Employers will not support this instrument. We would like to call on Governments also to oppose this instrument and we have two very basic and important reasons to do so.

The first reason why Governments should oppose this instrument is that it is bad for business and employment. As policy-makers, courts and tribunals look to the ILO for guidance on this matter, they will find this Recommendation. They will find overly simplistic criteria and indicators and, worse, a suggestion that there should be a presumption of employment. It suggests there is logic in treating independent workers as employees. It flies in the face of reality and logic and opposes an economic relationship on parties contrary to their intention.

Businesses will have to be extremely cautious in using independent entrepreneurs, because, in doing so, the user enterprises will risk being treated as employers. This limits the capacity of business to structure its work and limits the opportunities available to budding entrepreneurs and self-employed workers. It works to deny workers the right to be their own boss. This Recommendation creates uncertainty in a market that requires careful balance. This is not good for employment, economic development or social improvement.

We can point to the counter-balancing language on respect for commercial relationships, but such a view ignores the reality. Policy-makers, courts and tribunals will not spend time analysing the policy context in which this Recommendation was developed. They will not say that the Employers had fundamental concerns about the content of this Recommendation. They will look at the intrusive and simplistic language. They will apply it indiscriminately and in a manner that will impede the flexibility in the labour market needed for economic growth.

The second reason for seeking Government support in opposing this Recommendation is to send a clear message that tripartism is about all the partners being engaged. It is about all our interests being respected and it is about finding common ground among all three of us.

On this point, I want the record to reflect that the Employers' group made a great effort. We overcame significant obstacles, we were clear, honest and forthright. We moved forward when our 2003 agreement was so blatantly disregarded. Despite compromise and flexibility, some may claim that this failure was the fault of the Employers' group. Such a claim would be untrue and unfair. Our offers were rejected, our good faith search for common ground was unsupported by most Governments.

Near the end we realized that we had no choice but to disengage from the process. We did this regretfully and respectfully, when it was clear that there was no hope that our concerns would be accommodated. This decision came as no surprise to

anyone in the Committee. Once the Workers and Governments announced that there was no accommodation to be made, there was no reason for the Employers to remain engaged.

As I have already said, this is a bipartite Recommendation. Not the first I realize, but in today's world there is no need to produce instruments that disregard the fundamental concerns of one of the constituents. Certainly not coming from a tripartite organization. In a world looking for successful examples of social dialogue, it is unfortunate that we were unable to reach an acceptable outcome.

We are disappointed and I hope you share this disappointment.

Mr. PATEL (*Worker, South Africa; Worker Vice-Chairperson of the Committee on the Employment Relationship*)

I would like to place on the record our sincere appreciation for the work of the Committee which, over 16 sittings, has produced a text on the employment relationship that is meaningful, that is clear, that is effective, and that is flexible.

The product of the Committee's work is expressed in a Preamble and 23 operative Articles. The Committee had the weight of history on it, namely the inability of the Conference Committee in 1998 to reach agreement on a similar topic and the wide gulf that had existed between the parties to the discussion since then. This was to be a discussion in which many feared the parties were incapable of developing a common vocabulary, let alone agreement. Well, against that yardstick the discussion and the outcome were a pleasant surprise.

The draft text that the Committee considered was built around the 2003 Conference conclusions and the response to the questionnaire sent to governments, employers and workers. Most of the text of the proposed Recommendation before the plenary today was developed by consensus in the Committee. Only three articles finally proved to be beyond the possibility of consensus within the available time the Committee had at its disposal, so on the scorecard of success the Committee reached agreement on well over 80 per cent of the operative text and 100 per cent of the Preamble. This is a fine achievement.

The proposed Recommendation addresses arguably the most important issue in the world of work, namely the employment relationship. Despite a range of different legal systems throughout the world, the employment relationship emerges as a universal concept. In every legal system the employment relationship is the essential basis for a distinct form of law (labour law or employment law) which, unlike commercial law, recognizes and takes into account the differences in power among parties to a contract.

The employment relationship is affirmed and "freshened up" for the twenty-first century, its relevance highlighted by the recognition of the Committee that the protection of workers is at the heart of the mandate of the International Labour Organization, and that much of the protection offered by laws, regulations and collective agreements is linked to the existence of the employment relationship. In a number of cases access to social security is also tied to the employment relationship. Hence, many of the socio-economic rights that were gained in the twentieth century are linked to this legal construct.

In this way, the employment relationship is really the foundation or platform on which most standards are built and on which a very substantial body of ILO work rests. Some international labour standards are applicable only in an employment relationship. Others, while they apply to all workers including those outside an employment relationship, are in practice mainly exercised within an employment relationship. Indeed, the employment relationship has been described as “a remarkable social and economic institution as important as the invention of the limited liability for companies”. The employment relationship is thus a foundation of rights and protection and hence an instrument on it must have a very special status in the ILO – one akin to a fundamental or core standard – because its very existence triggers so many other rights.

The proposed Recommendation before you goes beyond simply stating the relevance of the employment relationship in new times and with new challenges. It recognizes that there are threats to the employment relationship, threats that arise from very different sources: first, from attempts to disguise the employment relationship to hide the worker’s true legal status as an employee; second, from the complexity of modern work that reshapes all our certainties and injects new qualities into the performance of work, such as greater autonomy, and which can thus lead to ambiguity regarding the existence of an employment relationship; and third, from the proliferation of multiple contractual arrangements – from our experience, this has largely been in the form of subcontracting, franchising and outsourcing, which at times may have the effect of depriving workers of the protection they are due.

The instrument then develops helpful responses to these threats and, in so doing, responds to changing reality with innovation and positions the employment relationship for a vital role in the twenty-first century.

The proposed Recommendation calls for members to review, clarify and adapt at appropriate intervals the scope of laws and regulations to guarantee effective protection for workers who perform work in the context of an employment relationship. This is a powerful and consensual call from the social partners and governments for the constant updating of law and practice to one goal, one profoundly important goal: to guarantee effective protection for workers in an employment relationship.

The proposed Recommendation recognizes the sphere of the genuinely commercial yet anchors commercial activities in a bedrock of human values: protection for those who are due such protection. In this way, it strikes the right balance between the fundamental rights of workers and the legitimate concerns of employers.

The proposed Recommendation asserts that law – specifically labour law – exists to address the inequality in the bargaining position of a worker in relation to her/his employer, and in this way draws on the inspiration of a tradition that has seen the State not as a neutral mediator of interests but as an instrument by which society fosters equity, and law not as a neutral system of rules but a way in which society advances its values in a transparent and open manner. There are profound implications that a consensus was built on this in the Committee and that an instrument was fashioned to give expression to this.

There are articles in the text, developed in full consensus by Workers, Employers and Governments, that call on national policy to combat disguised employment relationships. The text points to various forms of contractual arrangements that are often used to hide the employment relationship. In 2003 the Committee identified such arrangements as including the use of false self-employment, false subcontracting, the establishment of pseudo-cooperatives, false provision of services and false company restructuring.

The Committee considered what have been described as triangular employment relationships and, following the use of interest-based negotiation in the Committee, the Employers, the Workers, and Governments found common language – common language that called for national policy measures to ensure standards, standards applicable to all forms of contractual work, to all forms of contractual arrangements, including those involving multiple parties, so that employed workers have the protection they are due and so that such standards establish who is responsible for the protection contained therein.

What this does is to open the way for cooperation between governments, employers and trade unions to address the situation of contract workers who are deprived of the protections they are due. This is one of the finest achievements of the Committee, and I pay tribute to my Employer and Government colleagues for their contribution to developing this provision.

The instrument is strong in addressing the gender dimension of employment relationships, with a number of articles containing explicit reference to the challenges faced by women. It points to the predominance of women in many sectors and occupations with a high proportion of disguised or ambiguous employment relationships. It calls on governments to take special account of this in national policy and to have clear policies on gender equality and better enforcement of laws and agreements to resolve this inequity.

The text agreed by the Committee takes the concept of decent work one step further: it acknowledges that laws and regulations and their interpretation should be compatible with the objectives of decent work. This is important and useful and provides grounds for a review of how well our regulatory frameworks are achieving decent work outcomes.

Building on this strong framework, the proposed Recommendation adds the additional dimension of fair competition, a recognition that many scrupulous and fair-minded employers themselves are the losers when less scrupulous employers misuse contractual and other arrangements to avoid the obligations that flow from an employment relationship. So, this instrument may be bad for bad business practices, but it is good for good businesses – good for companies that respect the law and fair labour standards.

The proposed Recommendation is forward-looking in recognizing the importance of addressing the transnational movement of workers and the provision of services. It calls on member States to consider bilateral agreements to prevent abuses and fraudulent practices, provide protection to migrant workers, and identify employment relationships. In this very practical way, the proposed Recommendation starts to give a social dimension to globalization.

One of the great difficulties that workers face is establishing the existence of an employment relationship. The Committee faced the challenge of providing guidance to member States while recognizing the diversity of national experience. The proposed Recommendation comprises a number of coherent proposals framed in flexible language. They include recognizing the primacy of facts in establishing the existence of an employment relationship. They include providing criteria that could be considered at national level, such as subordination or economic dependency, and developing a complementary list of possible indicators of an employment relationship. They also include identifying possible mechanisms to determine the existence of an employment relationship.

The proposed Recommendation contains examples of 15 possible indicators, ranging from how work is controlled and structured, to how remuneration is affected, including the economic dependency of a worker on an employer. It is not a closed list and the proposed Recommendation gives member States the opportunity and the flexibility to include any number of additional indicators. The mechanisms that member States may wish to consider include the legal presumption that an employment relationship exists, a legal development that an increasing number of countries have started to embrace.

The Reporter has provided some setting out of the terms of the instrument, but I would like to draw particular attention to the six clauses that address compliance and enforcement. They range from a reference to industrial tribunals, to labour inspection services used in combination with tax enforcement, to the very important role of collective bargaining and social dialogue at national level. Collective bargaining, that endlessly flexible, helpful and important mechanism for addressing an array of issues in the world of work, is again shown to have value and significance for the topic of the proposed Recommendation.

The proposed Recommendation recognizes the importance of economic growth, job creation and decent work. A range of studies have shown positive correlations between respect for basic rights and strong and sustainable economic growth. The positive impact of stable and secure employment relationships on promoting investment in training is simply one well-known example.

It should be acknowledged that instability and insecurity have a significant economic cost, as the representative of the Government of Nigeria was able to show so eloquently and concretely in sharing its experiences in the oil industry with the Committee. In addition, they also undermine other social objectives of governments. People displaced from an employment relationship through the inadequacies considered by the Committee very often have to fall back on basic social security, transferring an obligation that an employer has to an obligation that the State, and hence society, has to carry. And in societies without social security, it is the very poor, the most marginal, who have to carry that cost.

I wish to express my thanks to the Government representatives and to the Employer and Worker members of the Committee who, through sharing of experiences, of interests and of outlooks, enriched the knowledge base of all of us. A special thank you goes to our Chairperson, Ms. Alette van Leur, for her ability to steer the Committee to constructive

outcomes, to Mr. Andrew Finlay, for his good humour and a positive personal relationship, and to the Office staff, ably led by Ms. Jo Walgrave, for the excellent support to the Committee. Thank you to the many Government spokespersons, from Africa, the European Union, IMEC, Latin America, the Arabic-speaking countries and Asia-Pacific for their valuable contributions and for their support for the proposed Recommendation. All three groups, Governments, Workers and Employers, have their thumbprints on the final text.

The proposed Recommendation has laid a solid basis for future work by the ILO. The proposed Recommendation and the related draft resolution send a clear mandate to the International Labour Office. The proposed Recommendation will not, simply through its existence and adoption by the Conference, resolve the problems of millions of workers in need of protection. It does, however, give member States of the ILO much greater guidance on how to respond to that challenge. For that reason, we look forward to working together at national and international level, with employers and governments, to realize the goals and be guided by the means set out in the proposed Recommendation. It also lays a basis for further work by the Office on the employment relationship and potential further consideration by the ILO constituents of additional aspects of this challenge. I wish to extend a hand of cooperation to our Employer colleagues on the programme of future work. I truly believe the proposed Recommendation should be supported by Employers, by Governments and by Workers at this session of the Conference.

In conclusion, in our discussions over the last two weeks, I introduced the Committee to a woman from my country, a clothing worker, Ms. Zodwa Zibula. We told her story, a story of denial of rights to an employment relationship and the protection that flows from it, a story of human hardship that arose in consequence, yet a story that ended in success when business, labour and Government sat down and, through social dialogue, revised the laws to ensure that she and thousands of others like her were able to access the protection of the law and of an employment relationship. In that way, it became a story of hope, a story of what we can do to resolve the problems of workers.

The story illustrated that the employment relationship is a legal and social construct that speaks to deeper social values. Throughout all the great traditions of all civilizations there is a recurrent theme of society, of social solidarity, of caring for others, of ensuring the greatest good to the greatest number becomes the goal of social discourse, of a liberty founded in equality and fraternity. It occurs in the traditions of China, of India, of the Islamic world, of Europe, of indigenous cultures across the world. It motivates the people of Latin America and informs much of the political discourse in North America.

In my continent, in my country, it is called *ubuntu* in the Nguni languages, an African humanism that places solidarity of people to each other above all else. The employment relationship, and the rights, protection and standards that flow from it, is that *ubuntu*, that social solidarity made real in the world of work.

I have the honour, in my capacity as Chairperson of the Committee on the Employment Relationship, to present to you some observations on the proceedings of the Committee.

Two weeks ago we started out discussions in the Committee on the Employment Relationship. We have worked very hard. It was not easy, but we knew that from the outset.

We had a difficult but open and truly fair discussion, and that actually was our major aim. Points of view have been expressed freely, and we have been straightforward with one another. The level of our debate was high, and it is good to note that the high level of our debate came from all three groups.

Governments played a major role in the Committee. They were united, they were strong. They knew what they wanted. Governments called for guidance, guidance on the determination on what is and what is not an employment relationship. They wanted clarity to enable them to do their work properly, and that is the promotion of decent work worldwide. Governments wanted an instrument, but not just any instrument. An empty shell was simply just not good enough.

The Employers' group made it very clear from the outset that they have serious concerns with the subject of the employment relationship. Their concern is to prevent an undue shift of responsibilities on employers. They did not want any interference with true civil and commercial relationships but, and I would like to emphasize this over and over again, also at the same time the Employers acknowledged that persons, who are in an employment relationship, should have the protection they are due. The Employers have been clear and straightforward and have participated actively almost throughout our discussions in the Committee.

The Workers' group on the Committee has also been clear all along. Their major aims and concerns are to protect workers in an employment relationship, to ensure that workers in an employment relationship have the rights that they are due, and to prevent serious problems that arise for workers in an employment relationship when their situation is unclear, and I would like for the last time now to call on the Workers' group to please continue to protect the workers of the world.

Those of us that were in the Committee will clearly remember Zodwa Zibula who was with us as a landmark throughout our discussions.

I would like to describe the entire exercise in our Committee as tripartism in action, and this tripartism resulted in a more than acceptable result. We have adopted a Recommendation on the employment relationship which came about for over 80 per cent through tripartite consensus. We can and we should be proud of the result.

We should be positive indeed. It is better than expected. We even have managed to come to a tripartite agreement on some of the crucial obstacles for consensus, such as multiple party structures. We did well, and we all should be congratulated for that. Of course, it would have been even better if we also had tripartite consensus on the only, and I repeat the only, three paragraphs on which we were unable to reach tripartite consensus. All in all, I think we have achieved a more than acceptable result. The resolu-

tion is a bonus, which will help the Office to continue work on the employment relationship.

I thank all members of the Committee on the Employment Relationship, including the secretariat, for their valuable contributions and their hard work. I have witnessed relentless efforts to achieve a good outcome of our work – and they have succeeded. A special thanks goes to the Government, Employers' and Workers' members of the working party.

My sincere appreciation goes to both Vice-Chairpersons of the Committee, Mr. Patel, on behalf of the Workers' group, and Mr. Finlay, on behalf of the Employers. They had a more than difficult job. You are true professionals, excellent debaters and both truly committed to your cause.

Through the representative of the Director-General, Ms. Johanna Walgrave, I would like to extend my sincere appreciation to the secretariat and the interpreters of the Committee. You all have done a great job, and working with you has been an honour for me. Jo, thanks, and keep up the good work, and I am sure she is going to get very mad with me now, and Happy Birthday, Jo!

(Applause.)

Please allow me to single out one very special person, and that is Mr. Enrique Marín. I think it is more than true to say that Enrique Marín is one of the founding fathers – of course together with others such as Giuseppe Casale and Mr. Slava Egorov – he is one of the founding fathers of the discussion on the employment relationship in the ILO. Enrique, I would like to congratulate you now on all your efforts of all these years, and I wish you all the very best.

The Recommendation on the employment relationship, which I truly, truly hope will be adopted by this Conference, is an important one. We need this instrument, we need it for guidance; the world of work needs this instrument, which I believe is crucial to promote decent work for all. We are not at the end of a lengthy and cumbersome process as some might argue; this is only the beginning of it, and I hope that we are about to set a very important first step. I, therefore, now wholeheartedly commend the report with the proposed Recommendation and the resolution to this Conference for adoption.

The PRESIDENT

The floor is now open for the general discussion of the report.

Mr. SANDARASEKERA (*Worker, Sri Lanka*)

I am honoured to be given this opportunity to make a submission on this new ILO Recommendation on behalf of the workers from Sri Lanka and other developing countries in Asia and the Pacific.

This Recommendation before us represents an important milestone in reaffirming the relevance of the ILO in the context of globalization and its impact on the ordinary wage earner. This Recommendation will provide valuable guidance for governments and the social partners to address situations in the labour market where millions of employees are deprived of labour rights, social protection, health care and income support, because they are unduly not recognized as employees.

As the Sri Lankan Government representative said during our discussions in our Committee: "In Sri Lanka, existing employment relationships have

been transformed into triangular or disguised forms of employment relationships. Those developments had led to unrest and had negatively impacted on the implementation of the decent work country programme. It was necessary to avoid the erosion of the employment relationship and workers' rights."

In the construction industry after privatization, many workers who were previously employed have had their employment contracts terminated and have been rehired as casual or temporary workers. It was not their voluntary decision but their economic dependence that de facto forced them to give up their employee status and to become so-called self-employed.

Subcontracting and other forms of contractual arrangements, including those involving multiple parties, are widespread in this industry. Many of these contractual arrangements deprive employed workers of the protection they are due.

We appreciate in this context the contribution of the Indian Government in the Committee that showed how it addressed part of the issues raised in this Recommendation through the Contract Labour (Regulation and Abolition) Act.

There cannot be decent work without legal protection for workers. If some employers exploit the economic dependency of workers to circumvent existing protective laws, governments, trade unions and responsible employers must undertake joint efforts to ensure that the scope of the employment relationship is extended to all employees, independent of the contractual arrangements.

As our new Recommendation says, I quote, "the determination of the existence of such an employment relationship should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties".

The Recommendation concerning the employment relationship provides the necessary guidance to address these complicated issues of triangular or multiple contractual arrangements. This is an urgent issue for many workers. Therefore, I feel honoured that I had the opportunity to be part of this global deliberation process that resulted in a constructive and forward-looking Recommendation. It is my fervent appeal to all distinguished delegates to support this Recommendation.

Mr. MAGNUSSEN (*Employer, Norway*)

You have already heard from Employer spokespersons that this process and discussion stumbled at the start, as the starting point for the Employers in going into this debate was the concluding paragraph of the resolution concerning the employment relationship of 2003. In the concluding paragraph (paragraph 25), a Recommendation was seen as an appropriate response but on a more limited theme, that of disguised employment relationships. This plenary should note that this was in fact the only important consensus to emerge from the 2003 discussion. Instead of offering a text based on this, the Office prepared for this Conference a text which has opened up the whole area of issues connected with the employment relationship and, as a result, all the controversies of 2003 came back on to the table. This is, by the way, also evident from the very title of the proposed Recommendation before us, which is "Recommendation concerning the employment

relationship", not "Recommendation concerning the disguised employment relationship".

As our spokesperson has already noted, the Employers warned right at the beginning of this session of the Conference against this procedure, as we could not support the majority of the conclusions reached in 2003. It was almost a foregone conclusion that we would not arrive at a consensus.

I would also like to stress that the subject area for the proposed Recommendation is particularly complex because it has to strike a proper balance between the considerations governing commercial relations, especially the very important entrepreneurial process, on the one hand, and the concerns attached to the employment relationship, on the other. These areas are very complex in themselves. Of course, as Employers we are particularly concerned with the employment creation process, but in that respect, the proper balance has not been found. In this respect, in fact, the proposed Recommendation is definitely a step backwards.

This is not to say that the Employers are immune to the concerns voiced many times by Workers and Governments on the relations between workers and employers. We agree that the scope for abuse is considerable and that so-called ambiguous and triangular relationships merit close attention. But we have always held the opinion that an international instrument is particularly ineffective in coping with these issues and that these are best dealt with in a national context, although of course there would still be an important role for the ILO, if the Employers' opinions were adopted, in providing information and cross-country experience, which is very important for developing an effective and appropriate national response to the employment relationship.

In short, we see two basic deficiencies with the proposed Recommendation. Firstly, if used as guidance on how to handle the employment relationship nationally, it might severely hamper and constrain enterprise in the creation of employment, especially among smaller businesses. Secondly, as our spokesperson has already stressed, the ILO is supposed to be a tripartite organization. Supporting the proposed Recommendation is tantamount to supporting a bipartite one. To have the Employers' support, the instrument must, of course, be tripartite.

Finally, let me add that there is very much evidence that the national labour markets in many countries whose governments seem to favour the proposed Recommendation do not function properly. Excessive unemployment is the result. It is my firm conviction that this instrument, if adopted, will do nothing to alleviate this situation; quite to the contrary. On this consideration alone, the proposed Recommendation should not be supported.

Ms. KORIPAMO-AGARY (*Government, Nigeria*)

I wish, once again, to salute the commitment, and acknowledge the constructive contributions, of all the members – Employers, Workers and Government – of the Committee on Employment Relationship.

We are satisfied that members of the Committee appreciate the problems that ambiguities in employment relationships pose for enterprises, workers and governments, especially regarding the responsibilities of governments in the area of managing industrial conflicts.

For enterprises involved in multi-party employment relationships, this instrument is the starting point for bringing clarity and helping to deal with a perennial source of conflicts, which very often consume precious time, dissipate executive energy, squander scarce resources and generally undermine competitiveness.

As governments, we find an attraction in the potentials of this instrument to ease the administration of trade disputes.

In endorsing this instrument, my Government had been motivated by our concern about striking a balance between enterprise prosperity, economic growth and workers' rights. We believe that there can be no workers' rights without work.

To that extent, we do not intend to disturb "true" commercial contracts (I am borrowing the words of the Employers). However, like the Employers also suggested, and I am sure we all agree, commercial contracts should not have the effect of denying the rights of workers in an employment relationship.

The Recommendation we are here to adopt aims to ensure that that does not happen and that there are some guidelines to enable the detection of what may not be a true commercial relationship, or the determination of who exactly would be expected to be responsible for an employee's rights.

This is very important for us all, as employers, workers and governments. With uncertainty out of the way, employers can carry on with their business with a high level of predictability; the employee who is sure of the protection of his rights can be motivated for high productivity and exhibit a high sense of loyalty to his organization. For governments, that is the recipe for industrial peace and harmony and, by extension, a conducive investment climate and economic growth.

Our experience in Nigeria illustrates the negative impact of non-clarity in the employment relationship or the abuse of outsourcing, especially in the oil and gas sector, which is the dominant sector of our economy. Any tension in that sector of our economy unfortunately has negative global effects, as many of us in this house might have observed. When oil workers are reportedly kidnapped, or there is industrial action in the sector, there is a threat to oil production, and the global market reacts feverishly.

A number of industrial actions have occurred in our country, especially in the oil and gas sector, usually on the issue of workers' rights. In many cases, it has to do with the rights of workers who are in multi-party employment relationships, with each party pushing the responsibility for the workers' rights to the other. I will give you some examples. A worker who was provided to a user organization got injured and lost an eye while working for the user, and on the user's premises. The provider claimed that the terms of his contract with the user did not financially empower him to compensate the worker. The user company declined responsibility claiming that the injured man was not his employee. The cost of litigation and the time it takes in a developing country like Nigeria does not make recourse to the courts a viable option.

Another group of workers were provided to a user company and attempted to exercise their right to freedom of association by joining a trade union. The user company subtly prevented that by making the provider terminate the employment of the workers. When these workers sought severance benefits, the

provider company pushed the responsibility to the user, while the user company refused liability, claiming they were not its employees.

Yet another group of workers had their employment terminated under the guise of redundancy, only to be re-engaged as contractors (in their various trades) by the same company, working the same hours, doing the same job, but this time in a "commercial relationship" as "contractors" to the company. There are many instances that I could cite.

What usually follows when workers are denied their rights, under the circumstances enumerated above, is industrial action and, more worryingly, some form of sabotage or the other. Some of the restiveness in the oil-producing areas of our country is caused by the disgruntlement of young people who have been recruited from those communities under employment relationships that have resulted in a denial of rights. Such workers become easy recruits against the companies and the peace and security of the country.

What we are being called upon to adopt today is a Recommendation which will bring clarity to the employment relationship and prevent our industrial relations climate from being heated up unnecessarily. This instrument can be applied well across all industrial relations systems, across different jurisdictions and levels of development. That was evidenced during the proceedings in the Committee by the unanimity of governments across regions to have adopted this Recommendation.

Maybe we need to remind ourselves at this point about the nature of an instrument like a Recommendation. By its very nature, a Recommendation does not impose detailed and precise obligations on member States. It is a promotional instrument which has a common objective, but is designed to take account of national circumstances. Moreover, the Recommendation we are here to adopt contains exceedingly flexible language in order to make room for adaptability to national circumstances. Most importantly, by adopting this Recommendation, we would not be doing something that is completely new, as many common law countries already have decisions on the employment relationship based on the primacy of facts, while countries such as the United Kingdom, France, the Netherlands, Ireland, Portugal, Bolivarian Republic of Venezuela, Spain, Chile, El Salvador, Mexico and Panama, to name but a few, have listed in their national law or practice some indicators of an employment relationship.

All we seek to do now, therefore, is to have a globally accepted instrument which would serve as a guide to those of us who are yet to provide clarity on the all-important issue of the employment relationship.

Whenever operations are disrupted, the organizations concerned (mostly multinationals in the oil and gas sector, going by the experience of Nigeria) suffer huge losses. The situation usually results in serious security concerns in society at large. Every party, all constituents, workers, employers, government, suffer losses in one way or the other. We are all losing by it, and we can reverse the situation by bringing clarity to the employment relationship. I would like to ask: are we going to exercise this joint responsibility by adopting this Recommendation? I hope we will, for we all stand to benefit immensely in the long run if we do.

Beginning with the Washington Consensus and the 1990s, millions of workers in Latin America lost their jobs as a consequence of globalization-centred international economic policy. The poverty, exploitation and even social inclusion affecting these workers led to employment relationships which are fraudulent, ambiguous and triangular. This situation has deprived workers of their rights and it is therefore essential to clarify the scope of the employment relationship with indicators, thereby ensuring appropriate protection and workers' rights, in accordance with the legislation and case law of each country. There is also a world trend towards regional economic integration which has led to greater mobility of workers. Today, in Latin America, this has rendered migrant workers even more vulnerable. They are victims of fraudulent relationships and most of them lack basic labour rights and appropriate protection.

Recent examples of disguised and triangular relationships have come up in Argentina and they have been publicized by the mass media. In the clothing sector, migrant and Argentine workers, exploited by unscrupulous employers, paid with their lives for the right to have a job. They died due to a fire in the factory. They were trapped by the flames behind closed doors. All of them working in a situation of disguised employment relationships and triangular relationships for a well-known global brand. Millions of workers suffer from different types of disguised employment relationships.

This is why indicators, along with other effective forms of action, will help to break with this culture. The Argentine Government decided that social protection and workers' rights required special, priority treatment as part of the human rights strategy now in place in our country.

The inclusion of the indicators in the Recommendation is vital in that it serves as a guide helping governments to define the nature of the employment relationship, allowing them to avoid uncertain or undefined relationships, both in the current context and in the future. It also permits the workers to know their rights and the identity of their employers.

The indicators will also put an end to the use of contracts that do not correspond to the tasks carried out, stamping out disguised employment relationships.

We are aware that this Recommendation is only the first step along the path that we must travel, deepening social dialogue. Trade unions and governments must fight to ensure the inclusion of this Recommendation in national legislation, alongside that of the indicators in the legislation of all those countries where they do not yet exist.

We should like to thank the International Labour Office for its work on ensuring decent work for all the workers of the world.

Ms. Arwa Mugo (Employer, Kenya)

The last two weeks have been an intense and rich period of discussion on the subject of the employment relationship. The discussions on the employment relationship have been going on for the last ten years, and all are agreed that the discussions have been difficult. Today, we have come to the end of this long and arduous journey. We have discussed concepts that the Employers, in principle

from the beginning, have held are not suitable for an international labour standard. Employers recognize that there is a problem and that the possibilities of abuse may exist, but have held the view that these concepts can best be addressed within the national context. However, the process leading to the drafting of the present instrument that is now before us was agreed in 2003 in the spirit of consensus and major concessions. My understanding is that the 2003 International Labour Conference agreed, in the spirit of consensus, to confine this discussion to the issue of disguised employment relationships. The scope of the discussion during the last two weeks, however, went beyond this agreement.

I do commend all parties for their valiant efforts and the open and honest nature of the debates that we have had. But, sadly, we were unable to reach an agreement on key clauses in the proposed Recommendation, and in the end the Employers' participation in the discussion became moot, as clauses were included in the instrument that would make it difficult for business to operate. Among the Employers' key concerns is the negative impact of the Recommendation on the informal sector, particularly in developing economies such as the one I represent in Kenya. The small businesses in the informal sector are currently unable to meet most of the requirements of existing legislation. They will therefore be further alienated by the requirements in this Recommendation. Our fear as Employers is that the provisions in the Recommendation will hamper business growth and employment creation.

Governments have a responsibility to ensure that employers, and for that matter workers, in the country operate within the national laws. In this case, the onus is on the government to ensure that employment relationships are governed by the laws of the country. It is no secret that in most developing countries there is the issue of weak enforcement machinery that governments are grappling with, but that does not allow governments to offload their responsibilities on to the international community and virtually sacrifice the growth of such fragile economies such as ours in Africa.

Those of us who have consistently believed in the principle of tripartism in the ILO are saddened that an instrument of such importance and far-reaching consequences can be arrived at without the endorsement of the Employer's group. The proposed Recommendation is essentially a bipartite instrument, which flies in the face of the tripartite nature of the ILO. This instrument takes away with one hand what it purports to give with the other. For instance, in clause 8, the Recommendation seeks to respect true civil and commercial relationships, while at the same time ensuring that individuals in an employment relationship have the protection they are due. This balance between protecting the employee while not interfering with commercial relationships is eroded by clause 11. Clause 11 provides governments with the power to make presumptions on the existence of an employment relationship based on the existence of some indeterminate indicators. These clauses are bound to cause operational difficulties. The proposed instrument, therefore, has failed to take us forward. Employers, therefore, do not support this instrument, and that is a cause for great disappointment today.

Mr. IILONGA (*Deputy Minister of Labour and Social Welfare, Namibia*)

Namibia welcomes the Committee for the job well done. Here I mean the Committee as in the three pillars, on which it is based. Namibia welcomes the move by the ILO and its member States to come up with an ILO instrument on the employment relationship in the form of a Recommendation. This instrument could not have come at a better time for Namibia, as we are currently faced with the problem related to the employment relationship. These are, for instance, the issue of self-employment or subcontractors in the charcoal industry.

We have a situation, whereby farm owners pick up unemployed people, take them to their farms to clear their land and they burn the charcoal for the farm owners. These people have no say in the determination of prices whatsoever, and they cannot sell this charcoal to anyone else but to the farm owner of any given farm. Meanwhile, these people are regarded by the farm owner as self-employed or as subcontractors. As a result, they are not registered with the Social Security Commission, receive no medical assistance and, in most cases, no proper accommodation is provided by the farm owner who is the sole buyer of the products of the so-called self-employed people. Those self-employed people have no right to determine the price of their own product.

The Namibian Government has commissioned a study in this industry to be able to come up with a workable policy to regulate this industry. I am a happy man to go back home with the guidance instrument, to enrich our study I have mentioned above.

As I mentioned yesterday, Namibia is faced with the problems of employment service agencies, labour hire, that is how they are known in Namibia. We have a number of these companies. They own people as commodities, they sell them wherever they have a client, and these workers are not protected.

In most cases, the employer pays the labour hire company which, in turn, pays the employees and, sometimes, these employees are paid as little as one-third, or 33 per cent, of what the employment services agency (labour hire) received from the employer for each worker.

So, therefore, disguised and ambiguous relationships as well as triangular relationships are a big problem that we, as a Government, are faced with and we are in the process of coming up with regulations on the abovementioned matter.

In conclusion, I am sure that you can now agree with me when I mentioned at the beginning that this process, no, that this proposed Recommendation could not have come at a better time for Namibia and, therefore, call upon all those who are going to have the right to vote to support the adoption of this very important Recommendation and I hope tomorrow, all of them, Governments, Workers and Employers, vote in favour of this instrument and, when we go back to our national governments or homes, we have got to deal with the guidance.

Ms. AHOKAS (*Worker, Finland*)

In the modern world of a global market economy, workers are confronted with rapid changes in the labour markets. Some of these changes are induced

by new technologies, others by new forms of global competition and others by deliberate attempts to avoid the legal obligations related to an employment relationship.

As the extensive reach of the ILO showed, there is a growing number of cases worldwide where the economic dependency of workers is exploited. Workers are, for example, forced into disguised employment or forced to accept contractual arrangements that deprive them of their legal rights.

Adapting labour legislation and the scope of the employment relationship to these changes is a constant challenge. The best global forum to find adequate responses and solutions to these problems is the ILO. It is the place to bring together the expertise of the world on labour issues and provide guidance to member States.

The issue of the employment relationship is no longer a question confined entirely to the national conditions of member States. Workers who are hired to work in a foreign country are facing higher risks of abuse and denial of legitimate workers' rights.

Thanks, therefore, go to the European Union, which provided the Committee with very useful comments and amendments to include this important dimension in the Recommendation. Thanks also go to Government representatives from Africa and Latin America who explained that the cross-border movement of workers is a global phenomenon relevant in many countries in the world.

In the context of the transnational movement of workers, the Recommendation calls on member States to provide effective protection to, and prevent abuses of, migrant workers in its territory who may be affected by uncertainty as to the existence of an employment relationship.

Where workers are recruited in one country for work in another, the Members concerned may consider concluding bilateral agreements to prevent abuses and fraudulent practices.

I am particularly proud that the two Paragraphs in the preamble and Paragraphs 7 and 22 of the operational part of the Recommendation dealing with the transnational dimension of the employment relationship were adopted by consensus in our Committee. This shows that there are not only common concerns among workers, employers and governments, but also a common willingness to address these issues.

These issues are also addressed in the resolution of our Committee which invites the Governing Body of the International Labour Office to instruct the Director-General to promote good practices at the national and international levels concerning the determination and use of employment relationships.

The employment relationship is at the heart of the ILO, and the transnational dimension is being awarded greater importance in the open world. So, we will probably need to come to the ILO again to continue our discussions and work to keep up to date the guidance to governments and social partners, as workers expect us to ensure the fundamental principle that employed workers in all countries, and particularly those working abroad have the protection they are due.

Mr. MACKAY (*Employer, New Zealand*)

I speak today on behalf of the Asia-Pacific group of employers who participated in the Committee on the Employment Relationship.

Before I say my main points, I want to pay brief tributes on behalf of our group to several people. First, Mr. Finlay. Mr. Finlay guided the Employers' group through some stormy seas indeed. It is due in no small measure to his calm and unhurried approach that we came as far as we did on a journey that started many years ago.

To our colleagues on the Worker and Government benches. Irrespective of the outcome, you raised the quality of the debate and it was a privilege to work with you.

To the always excellent members of the secretariat and support staff and interpreters – you are the people who make this Conference work. Without you, we could not discuss anything.

To Alette van Leur, our Chairperson, our sincere thanks for keeping us on the task at hand. It takes a sure hand to manage such a dynamic and intelligent group as this Committee was and Alette had that sure hand.

The Asia-Pacific nations I speak for today knew this would not be an easy task. Indeed, on the first day, Mr. Finlay reminded the Committee that many of the matters we were to discuss were, and would continue to be, the subject of controversy. As most now know, the outcome of our Committee was a mixture of consensus and disagreement, resulting in a Recommendation that the Employers' group cannot and will not support.

While we regret that full consensus was not possible, we note that tripartism does not require consensus but seeks it as a preferred outcome. To require consensus would be to impose outcomes and to stifle debate on the very important issues we come here to discuss each year. However, a lack of consensus carries its own very real dangers which leads me to the heart of my remarks.

The discussion within the Committee on the Employment Relationship highlighted a fundamental difference between developing and developed nations. Developing nations have a great and real need for guidelines and information to assist them in developing a strong foundation for managing labour relations in their countries.

However, many developed nations are at the point of refining already strong labour relations foundations. Their needs are for broad principles to guide these refinements, rather than criteria that prescribe the actions to be taken and the behaviours that would result from the application of such criteria. These are fundamentally opposing needs which can only be reconciled at the level of principle.

On this occasion, regrettably, we were not able to reconcile the needs of developing and developed nations through the adoption of strong principles. Instead, we have an instrument focused more on the needs of a few than on a balanced framework for all.

Recognizing this, it is important, indeed vital, that the ILO exercises strong leadership in promoting the adoption of international instruments that contain strong and clear principles that leave main Members in no doubt as to the standards they are expected to meet, while leaving prescription and details to Members in accordance with their domestic approach.

It would be unfortunate indeed if, over time, Members became frustrated over the creation of instruments that had beneficial effects for only some Members, while constraining or inhibiting others.

Such an effect would work against the objects of the ILO to promote tripartite consensus on labour relations. Such an effect would eat away at the very fabric of the ILO itself.

So, in conclusion, when you vote tomorrow, may I urge you to make that decision, recognizing the needs of all here, even if the Recommendation is acceptable to you at home. Only when we focus on the needs of all in our decision-making will be truly be a league of nations as the founding fathers of the United Nations and the ILO envisaged.

Ms. FEHRINGER (*Government, Austria*)

The Austrian presidency is speaking on behalf of the European Union Member States, except for the United Kingdom, but with Bulgaria and Romania.

From the commencement of this session of the Conference and the establishment of the Committee on the Employment Relationship, the governments sought to be flexible in their approach and supportive of efforts by the employers and employees in a common effort to ensure a successful outcome and a broadly supported ILO Recommendation on the employment relationship.

The discussions in the Committee and in the working group, were very open and fruitful. There was a good and very positive atmosphere and we proceeded very well in solving controversial issues.

Unfortunately, we could not achieve consensus on three paragraphs of the text of the Recommendation. In these paragraphs, however, the governments have responsibilities towards both employers and workers within the ILO framework of which they may not divest themselves.

Accordingly, the governments assumed the responsibility for ensuring that at least some minimal guidance and assistance would be available to those needing it in addressing the employment relationship.

In this very difficult situation, it was extremely helpful that governments of all regions of the world worked together very closely and in a good spirit in order to guarantee a balanced outcome.

We think we now have in front of us a very flexible and balanced Recommendation. It provides guidance, but is not restrictive. With the assistance of the ILO, we trust it will be of practical benefit to all who need guidance.

Last, but not least, we want to thank a person who was crucial for the positive atmosphere in this Committee and who made it a pleasure to attend the Committee's meetings. It was the Chairperson, Ms. Alette van Leur. Thank you, Alette, for all the hard work you have done and thank you for always being fair and never losing your good humour and your patience, thank you.

Original French: Mr. VERBOVEN (Government, Belgium)

Allow me first of all to take this opportunity to congratulate the Committee on the work which they have done. As regards standards, the ILO's role is to propose standards on all the main strategic issues related to employment, labour, social dialogue and social protection. This role is evermore important, given the fact that the world of work changes rapidly and that globalization is increasing.

As to the discussion on the employment relationship, this discussion is extremely important. In the absence of a clear definition, all the national, social and international work coming out of the ILO runs the risk of being watered down as a result of the

pressures of the changing labour market, with these pressures destabilizing the normal employment relationship. It is for these reasons that we are in favour of a draft Recommendation, the one which is before us here, because this draft text, Mr. President, allows us to go forward in the fight against disguised employment relationships.

Original Portuguese: Ms. SAISSE LOPES (Employer, Brazil)

Globalization and the growing pressures of competition have been a source of challenges and opportunities for all States. The labour market, perhaps more than others, has reflected these changes. With technological advances, new ways of organizing production and managing business have emerged, and traditional employment relationships and workplaces have given way to more dynamic and less conventional forms, which are more appropriate for the business environment.

The challenge for those legislating on employment relationships is therefore to find a balance between protecting the rights of workers and providing a business environment which makes it possible for businesses to prosper and jobs to be created.

When this balance is not present, the results are counter-productive. The countries of Latin America and Africa are eloquent examples of this. Comparative studies show that the majority of these countries have, for a long time, had labour legislation which is broader in scope and more rigid than that of the majority of developed countries.

It is not just by chance that, in these same countries of Latin America and Africa, we find the highest percentage of workers in the informal sector, with low productivity, low wages and bad working conditions. Rigid legislation does not stop these workers from being unprotected; quite the reverse. Such legislation encourages a lack of protection and is an obstacle to the creation of decent jobs.

Representatives of Latin American employers here present are joining forces with colleagues from all over the world in a relentless fight against attempts to develop disguised employment relationships and non-compliance with legislation.

However, they fear that the proposed Recommendation being presented to the Conference, by not restricting itself to disguised relationships and being excessive in its standard setting, may introduce new imbalances, where there are already many, frustrating not only employers, but also workers, who will continue in the informal sector, still underrepresented in discussion forums, and who in Brazil represent more than 50 per cent of workers. For these workers, laws have no meaning.

As Mr. Patel, the Worker Vice-Chairperson of the Committee, said "the road to hell is paved with good intentions". What we want is a Recommendation which leaves no doubt about its good intentions, but also leaves no doubt about its good results.

The text which is now submitted to you, unfortunately, does not live up to these expectations and it is just one more good intention with negative results for the workers which it seeks to protect.

Original Spanish: Ms. CORRADETTI (Government, Argentina)

My country would very briefly like to express its appreciation for the efforts made by all members of the Committee on the Employment Relationship to reach an agreement. I think we can say, without any fear of being mistaken, that in this Committee the

process was just as valuable, if not more valuable, than the results themselves.

The Latin American group which worked together in this Committee opted for a consensus, rather than insisting on its own particular position on a number of points.

The extraordinary skills of the Chairperson of the Committee, Ms. van Leur, led to great progress which will be tremendously useful for our country when, as we hope, this Recommendation is adopted.

We have clearly demonstrated, once again, that dialogue is the only way to solve the delicate issues which governments, workers and employers have to face in the world of work, even though sometimes there is not 100 per cent agreement. We have also shown that this house is the best forum to continue this dialogue at the international level.

Mr. BARKLAMB (Employer, Australia)

Thank you for the opportunity to present some ideas this afternoon on the proposed Recommendation. In the closing stages of the last century, the ILO had many critics. They said the ILO was no longer relevant, but the ILO is relevant and it must be relevant.

We must understand today the extent to which this discussion on the employment relationship is central to the relevance of the ILO in our new century. We face a difficult situation with regard to this proposed Recommendation. We must be careful that we do not make errors in policy in our haste to finalize this issue.

At this Conference we risk a serious error of judgement if we do not take proper care. The issue and the difficulty are simple. If you look at the proposed Recommendation, Paragraph 8 is the key. This positive Paragraph reads, and I quote: "National policy for protection of workers in an employment relationship should not interfere with true civil and commercial relationships, while at the same time ensuring that individuals in an employment relationship have the protection they are due." This Paragraph effectively strikes just the right balance between the rights of employees and the rights of independent workers. It reflects the correct balance between the necessary protection of all workers and the need to ensure that commercial relationships can flourish and can contribute to economic growth and innovation. This is the balance the ILO has been seeking on this issue for a decade. Based on Paragraph 8, we are close to an agreement. We are close to renewed and continued ILO relevance. We do not want Paragraph 8 to fail.

However, there is a grave technical error in the proposed Recommendation before you, principally in Paragraphs 11 and 18. These Paragraphs allow for a legal presumption of employment to be created and for "deeming". "Deeming" means that an individual who is self-employed can be declared to be an employee. "Deeming" also means that an individual who is an employee can be declared a non-employee. This is potentially an absurd situation. It means turning people into things they are not. This defies logic and this is not common sense. It takes away rights and undoes the excellent settlement and balance achieved and reflected in Paragraph 8.

Paragraph 11 goes further. It contains the language of seduction. It says that member States acting in accordance with the Recommendation should only, and again I quote: "consider the possibility" of

presumption and “deeming”. This makes Paragraph 11 look inoffensive and soft.

We should not be seduced. We should recognize the truth of this matter. For this Conference to agree to Paragraph 11 and 18 is to send a strong signal to the world community that it is all right to undo the types of balances that are included and reflected in Paragraph 8. It is all right to destroy the careful balance we have achieved between the employment relationship and the commercial relationship, as set out in Paragraph 8. Paragraphs 11 and 18 really say that Paragraph 8 has no meaning.

That is the instrument we are being asked to approve in this Conference and here lies our difficulty. The language of seduction masks the true, destructive impact on the very integrity of the entire proposed Recommendation created around Paragraph 8. This is a great shame. This is the problem. It is a technical problem created by Paragraphs 11 and 18 that, unfortunately, Employers and the businesses of this world cannot support.

At issue in this proposed Recommendation is the creation not just of jobs, but of good jobs. This issue is about the ability of commercial activity to play its essential role in the creation of decent work.

Also at issue is the relevance of the ILO in the twenty-first century and the respect that the world community gives to ILO standards. The ILO needs businesses to support its standards. Standards need both commercial and community credibility. But, most importantly, the issue is about human rights.

We must think of the independent contractors of the world. They must be represented in this Conference along with all other workers. They have rights. They have the right to be self-employed, to be their own boss. Self-employment is a human right that no worker should be denied. If we, as the International Labour Conference, make an error of judgement and allow the careful balance reflected in Paragraph 8 of the proposed instrument to be destroyed, as I have set out, the ILO risks becoming an instrument of the removal of human rights, rather than a protector of human rights. This is not what we want and I do not believe that this is what we as an ILO community want.

We ask that you allow yourself a moment of deep thought to study the true implications of the draft and to study the true implications of Paragraphs 11 and 18 in particular. Make sure that we as a group do not undo the outstanding balance and tripartite agreement achieved in Paragraph 8.

Mr. MKOSANA (*Government, South Africa*)

Let me start by forwarding an excuse from Mr. Mdladlana, as he is currently attending to an urgent matter. He was supposed to have been here now. May I take this opportunity on his behalf to say a few words regarding the Recommendation presented.

The Committee on the Employment Relationship was given the difficult, challenging but necessary task of obtaining a consensus on an instrument which addresses the vexed question of the nature and the existence of an employment relationship. It was a necessary task because events since 1997 have demonstrated the importance of the subject and of the need to address it in a meaningful way. Failure was simply not an option given the long and difficult history of this matter.

The draft Recommendation before us substantially represents a consensus of governments and

their social partners. I say substantially because most of its contents are the product of consensus and only three operative paragraphs lack consensus. The scope and extent of the consensus reached reflects the maturity of the parties involved and their realization of the critical role that the Recommendation will play in guidance to member States on this issue.

The draft Recommendation is a flexible instrument that will allow governments and their social partners at a national level, and through social dialogue, to craft policies and legislation suitable for their particular circumstances, using the guides provided by this instrument. The experience in our own country, that is South Africa, where labour legislation reflects in broad terms the content of this draft Recommendation and which is a product of consensus among the tripartite social partners, is testimony to the fact that issues around the nature and existence of the employment relationship can be addressed without causing economic destruction or social dislocation.

We therefore commend this Committee for having tackled such a complex issue and, in the process, achieving substantial consensus as a result of negotiation and compromise.

Let me take this opportunity to congratulate all those who are behind this task. Your selfless contribution made it possible for us to be sat here now to adopt this Recommendation. May I also take this opportunity to recognize each and everyone, with special emphasis on the representative of the Employers' group who led his team in an outstanding way, standing for the opposition which unfortunately could not be the popular position. However, we commend the manner in which it was handled. May I take this opportunity to congratulate the head of the delegation of the Workers' group who handled the opposition in an undoubtedly appropriate manner.

I take this opportunity to congratulate all the sister governments for their selfless effort in making this Recommendation a reality, and to congratulate the Chairperson of this Committee, Ms. van Leur, who unleashed here a skill that is not common.

May I implore each and every one of us here today to take their time tomorrow and take a very clear position as to what to vote for. We implore each and every one to vote for this Recommendation, for we believe it is a step forward. I thank you.

Original Spanish: Mr. FLORES (Government, Bolivarian Republic of Venezuela)

The Bolivarian Republic of Venezuela welcomes the content of the Recommendation on the employment relationship of 2006 and its resolution, which is the result of broad and in-depth discussions held in the very active Committee entrusted with the issue.

We appreciate that the basis for our discussions was a draft prepared by the Office that took account of different approaches in the law and practice of ILO member States in different regions and with distinct legal systems and traditions.

Within the framework of the discussions on this valuable instrument that was submitted to us today for adoption and subsequent voting, we would like to highlight the spirit of mutual respect that permeated the tripartite consensus of the Workers', Employers' and Government groups from the outset.

We regret that, despite the efforts made by the Workers' group and the Government group, and in spite of the constant concern and effort of the Chairperson of the Committee to maintain the tripartite consensus, the Employers' group broke this consensus that had prevailed from the outset, because at the very end of the discussions they found themselves unable to agree to three paragraphs.

Nevertheless, in our view, there is no doubt that the Recommendation produced manifests a balance that will be of great use when it comes to formulating, among others, state policy on the protection of workers who exercise their activity within the framework of an employment relationship.

We are glad to see that the approach of the Recommendation is not unlike that reflected in the Constitution of the Bolivarian Republic of Venezuela and the provisions of our Organic Labour Act. The Act was strengthened recently by a new revolutionary order issued by the President of the Republic that entered into force on 28 April 2006, which reaffirms the rights of workers without any discrimination and consolidates the guarantees against neoliberal policies that give priority to the interest of capital at the expense of workers' protection.

Within our national legal framework governing employment relationships, the labour inspection service attached to the Ministry of Labour and courts competent to adjudicate labour disputes play an important role. Legitimate civil and trade relationships are respected at all times and are clearly defined, except in the case of fraudulent employment relationships.

The Bolivarian Republic of Venezuela therefore supports the adoption of this important 2006 Recommendation on the employment relationship.

Original French: Mr. TRICOCHÉ (Worker, France)

I thank the President for giving me the floor on behalf of the workers of France.

The issue of the employment relationship touches the very foundations of what the ILO is all about.

When, as long ago as 1919, the Constitution of the ILO proclaimed that "the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries" the Constitution was telling us we have to be endlessly vigilant about the fundamental rights of workers and employers, and therefore to respect loyal and fair competition in national and international trade.

The Recommendation which we have before us today is very much a part of this. It takes into account the changes which have taken place in the last 20 years on the jobs market. These changes affect productive organizations, conditions for professional insertion, the nature of jobs and the ways to get work, qualifications and skills and the logistics of work mobilization.

By giving greater autonomy in matters of remuneration, these changes could lead to a decline in people's expected earnings. Less obvious subordination may encourage false self-employment practices and disguise the employment relationship. We therefore have to face a relationship between employer and worker that shows a great lack of clarity over whether a person who is employed is actually a salaried worker, or self-employed or whether there is a third person in this relationship. The draft Recommendation is inviting ILO Members to define, within their national legislation, the specific indica-

tors which will determine whether an employment relationship exists at all. Whether, for instance, this is subordination or dependence.

To make the task of determining whether an employment relationship exists easier, Paragraph 11 of the proposed instrument which is before you proposes that national legislation should make it possible to have a presumption that there is such a relationship, to fight legitimately against disguised employment which has an adverse effect on workers' rights and employers' interests.

This presumption that there is an employment relationship is particularly useful because the simple dichotomy that you are either a salaried employee or self-employed is no longer enough to describe some of the kinds of jobs. It is particularly true, for instance, when it is a job based on IT and communications, but it is true in other areas as well. Let me give you a French example – catwalk models, whose contractual relationship is presumed to be a contract of employment, which means that they enjoy the status of being a salaried employee and the associated social rights. I could also give you the example of salaried employers on short-term contracts who are supposed to be bound to their employer if said employer continues to give them work when their assignment ends.

The Recommendation invites ILO Members, with the support of the social partners, to determine the characteristics which differentiate between waged employment and self-employment, in order to prevent the fraudulent use of self-employed workers to avoid having to provide social protection which leads to unfair competition between employers.

The work of the Committee has brought closer together points of view that were sometimes diametrically opposed. Of course, we cannot achieve the impossible, but I think we have all – governments, employers, workers – done the impossible to reconcile the interests of each group, in full respect of different points of view and in a spirit of mutual flexibility.

The proposed Recommendation fully reflects the provisions of Paragraph 25 of the 2003 conclusions which had the support of all the three parties. This Recommendation particularly addresses the concerns expressed by governments and employers in their replies to the questionnaire sent out by the Office.

In concluding, I would therefore like to thank the Chairperson of our Committee, Ms. van Leur, from the Government of the Netherlands, the Employer Vice-Chairperson, Mr. Finlay, whose task was not an easy one, and all the governments which, throughout the work of the Committee, showed a great will to reach an agreement and build a consensus.

Of course, I would also like to thank Mr. Patel, the Worker Vice-Chairperson, who contributed, with his convictions, his open-mindedness and sense of dialogue, to the quality and balance of the instrument tabled here for your consideration.

I would like to finish, if I may, by calling on all members of this Conference to adopt this Recommendation concerning the employment relationship. It is the fruit of a long process of tripartite cooperation initiated in 1997. Above all, it is in full harmony with the ILO's Decent Work Agenda and with creating fairer globalization.

As a member of the New Zealand Government delegation, I would like to make a number of comments on the work of the Committee on the Employment Relationship.

I would like, first, to thank the Chairperson of our Committee, Ms. Alette van Leur, for the excellent leadership she showed in guiding the discussions of our Committee. Her knowledge of the issues we faced and her ability to summarize the views expressed by all parties were particularly valuable and positive in advancing the discussions.

The contribution of the tripartite partners was also fundamental to achieving a solid outcome from this Committee. First, to the other Governments who spoke so clearly of the importance of this proposed Recommendation for their domestic situations, thank you for sharing your stories and experiences with us. To the Employers' and Workers' groups, we would like to recognize the contributions of all the members of your groups, and particularly your spokespersons, Mr. Finlay and Mr. Patel, who credibly and clearly represented your views.

To the Office, we would like to congratulate you on the end of a very long journey and to commend you for your perseverance and the balanced way in which you presented both the summary of the tripartite responses to the most recent questionnaire on this issue, and the proposed Recommendation.

This is also an opportunity for us to reflect on the successes of the Committee. In terms of the Committee's work, it is significant that this Committee has concluded a balanced and meaningful proposed Recommendation that will provide useful and enduring guidance to member States. However, this is also the time to reflect on where improvements could be made in the future.

First, there were a number of situations where there was a lack of consistency in approaches to issues, either in different parts of this Committee's discussions, or compared to the approaches of different Committees. In particular, I would like to recall the discussion of the phrase "decent and productive work", as compared to "decent work". While this Committee spent some time discussing what phrase was most appropriate, it would appear that this was a discussion which merited its consideration in some other ILO forum.

A particularly positive feature of this Committee was the use of a working group. I would like to suggest that the principles – or interest-based approach taken by this working group merits broader application. This approach was successful in tackling difficult issues and our broader discussions were assisted when there was a clear elucidation by speakers of their concerns when proposing amendments.

One further lesson is that the approach taken in the Committee often resulted in text that differed significantly from the Office draft text or from amendments proposed by one group alone. The consensus that developed around the text of the working group reinforced the need to focus first on issues and concerns, rather than on language.

Finally, on behalf of the New Zealand Government, I would like to respond to some comments made about the degree of prescription in this proposed Recommendation. Ongoing discussion on the balance between guidance, prescription, and usability

of international instruments is important, but this needs to be approached objectively.

As far as the New Zealand Government is concerned, we have delivered a meaningful and useful proposed Recommendation, which is a flexible instrument with many options for member States to consider, through a process of national-level social dialogue and addressing issues about the definition of the employment relationship. This is not a prescriptive proposed Recommendation.

In particular, I would like to point to Paragraphs 11, 12 and 13 of the proposed Recommendation, on which tripartite consensus was not possible. Paragraph 11 talks of the need for member States to consider a number of approaches to determining the existence of an employment relationship; Paragraph 12 suggests that member States may consider clearly defining the conditions applied for determining the existence of an employment relationship; and Paragraph 13 suggests that member States should consider the possibility of defining specific indicators of the existence of an employment relationship.

None of these Paragraphs prescribes the approach to be taken. These Paragraphs also, in the New Zealand Government's view, respect the conclusions of the 2003 discussions, that the proposed Recommendation should not seek to universally define the substance of the employment relationship.

It was essential that this Committee reach a successful conclusion. The New Zealand Government would like to thank the Director-General for reminding us, at our last session, of the importance of this issue, the need for the ILO to address it, and the need for broader consensus in future dialogue, both at national level and in future ILO discussions.

While we respect the Employers' group's right to hold and firmly advocate their view, we do not agree with their assessment that the contribution of the Government representatives was not sufficient or constructive, and that the development of this instrument did not take into account the Employers' views.

Similarly, we do not agree with the comments that the Office did not respect the conclusions of the 2003 discussion on this matter in preparing the proposed Recommendation that this Committee considered. The New Zealand Government would like to record that we believe the Office did respect the 2003 conclusions, as well as replies to the subsequent questionnaire.

On behalf of the New Zealand Government, I commend this proposed Recommendation to the Conference.

Original Arabic: Mr. TAY (*Government, Lebanon*)

May I start by saying how very grateful we are for the work that Ms. van Leur did as Chairperson of the Committee and for what Mr. Finlay, Mr. Patel and all the secretariat staff supporting them did. Thanks to their efforts, we have been able to achieve the results before us.

The effort made by all parties to achieve a joint position was enormous. For two weeks we met morning and afternoon, and everybody participated. The Employers also offered proposals and counter-proposals and, as our Chair said, there were only three Paragraphs where we did not achieve full consensus. We believe that if we had continued our discussions we would have been able to achieve the excellent result of a Recommendation that would

have given us the kind of guidelines that could solve so many of the problems that face all of us, especially as there are so many challenges for ministries of labour and for workers and employers all over the world.

In Lebanon, as in other countries, we both import and export labour. We import labour from about a dozen countries, and there are many countries in the world where Lebanese are working. Employment contracts are a big problem for us in this respect and, because they are a big problem, we find every day that we are faced with a situation where specialists are able to conclude contracts where you have disguised employment. We find news of this from all over the world. We are not against a true, genuine commercial relationship – on the contrary, we encourage it – but there are those who are not entirely honest and open and who are harming the interests of the employees and harming the country as well. This is the very opposite of that decent work to which we all aspire.

This Recommendation concerns the future of so many workers and their hopes and aspirations. We hope that we will not have to go back home and tell our countries that we have failed.

Original Arabic: Mr. ALZWAM (Government, Libyan Arab Jamahiriya)

I would like first of all to express my thanks to the Chairperson of the Committee and all the members for the excellent report which has been submitted to us. The efforts of the Committee aimed at ensuring the promotion of the rights of workers in order to secure for them the conditions necessary to improve the employment relationship was a constructive way in which to achieve the noble aims of the ILO in relation to decent work and social protection. This also confirms the importance of the social dimension in the context of globalization.

My country endorses the text of this Recommendation and calls upon all member countries to give their support to this document, which is an important step towards the implementation of the basic rights of workers. The Recommendation also contributes to determining the employment relationship where there is sometimes considerable and ongoing conflict leading to the loss of job opportunities. The Recommendation aims at increasing the level of employment and deals with triangular contracts, disguised labour relationships and multi-party employment relationships, particularly in small and medium-sized enterprises.

The Recommendation refers to both salaried and independent workers. That is why we are happy to give our support to the Recommendation, which we hope will be adopted. At the national level, we shall implement it, thanks to social dialogue between the employers and the workers in our country.

It might be appropriate to take into consideration the comments made by the Employers when one has to prepare legislation in different countries with a view to achieving the goals of the ILO.

Original French: Ms. KIES (Government, Algeria)

The Algerian delegation has not asked in advance to take the floor but the importance of the matter which we have before us and the relevance of the statements made by the previous delegations prompts us to crave your indulgence to allow the Algerian delegation to say a few words on this matter.

I would like to congratulate the Chairperson and the Vice-Chairpersons of the Committee, along with all the members of the Committee on the Employment Relationship for their consensual, consistent and constructive efforts made during the work on this extremely topical matter.

Traditional employment relationships have given way to very complex relationships which are very difficult to define.

Therefore, a Recommendation concerning the employment relationship, although not binding, is useful and will serve as a basis for setting a framework for employment relationships, which can frequently be ambiguous and have never yet been clearly defined. Furthermore, this proposed Recommendation will contribute to ensuring that the workers concerned will enjoy the social protection that they are due.

In addition, in relation to the concerns which have been expressed by the Employers, we feel that this proposed Recommendation will go a long way to serving the interests of employers too, because it is important to note that this proposed Recommendation will also ensure protection for employers who comply with national legislation and who face unfair competition from unscrupulous employers.

The Algerian Government supports all measures aimed at protecting all partners in employment relationships, provided that those measures aid the development of economic and social relations and lead to the establishment of real, effective and open social dialogue.

Therefore, we welcome this proposed Recommendation which will, without doubt, contribute to promoting decent work.

The PRESIDENT

We shall now proceed directly to the approval of the report by the Conference, paragraphs 1 to 580.

If there are no objections, may I take it that the Conference adopts the report?

(The report – paragraphs 1-580 – is approved.)

**PROPOSED RECOMMENDATION CONCERNING THE
EMPLOYMENT RELATIONSHIP: ADOPTION**

The PRESIDENT

We shall now proceed to the adoption of the proposed Recommendation concerning the employment relationship, which is appended to the report. We shall proceed Paragraph by Paragraph.

(The Preamble and Paragraphs 1-23 of the proposed Recommendation are adopted seriatim.)

If there are no objections, may I take it that the proposed Recommendation on the employment relationship, as a whole, is adopted.

(The proposed Recommendation, as a whole, is adopted.)

**RESOLUTION CONCERNING THE EMPLOYMENT
RELATIONSHIP: ADOPTION**

The PRESIDENT

The Committee has also submitted a resolution concerning the employment relationship, which is appended to the report published, *Provisional Record* No. 21. If there are no objections, may I take it that the resolution is adopted?

(The resolution is adopted.)

Given that this resolution refers directly to the Recommendation concerning the employment relationship, on which a record vote is to be held tomorrow morning, I should point out that the adoption today of the resolution is subject to the outcome of the record vote tomorrow.

That concludes our work for this afternoon. Before closing, I should like to offer my sincere thanks to the Officers of the Committee on the Employ-

ment Relationship for the work they have done over the last weeks.

My thanks also go to the members of the Committee, who worked long hours and engaged in negotiations that were often complex. I am sure, moreover, that they would wish me to express thanks to the secretariat for its support in bringing their work to a successful conclusion.

(The Conference adjourned at 5.45 p.m.)

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