



Third item on the agenda: Information and reports on the application of Conventions and Recommendations

Report of the Committee on the Application of Standards

PART ONE

GENERAL REPORT

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A. Introduction

1. In accordance with article 7 of the Standing Orders, the Conference set up a Committee to consider and report on item III on the agenda: “Information and reports on the application of Conventions and Recommendations”. The Committee was composed of 246 members (130 Government members, 23 Employer members and 93 Worker members). It also included 9 Government deputy members, 73 Employer deputy members, and 136 Worker deputy members. In addition, 24 international non-governmental organizations were represented by observers.¹
2. The Committee elected its Officers as follows:

<i>Chairperson:</i>	Mr Sérgio Paixão Pardo (Government member, Brazil)
<i>Vice-Chairpersons:</i>	Mr Edward E. Potter (Employer member, United States); and Mr Luc Cortebeeck (Worker member, Belgium)
<i>Reporter:</i>	Mr Christiaan Horn (Government member, Namibia)
3. The Committee held 20 sittings.
4. In accordance with its terms of reference, the Committee considered the following:
(i) information supplied under article 19 of the Constitution on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference;
(ii) reports supplied under articles 22 and 35 of the Constitution on the application of ratified Conventions; and (iii) reports requested by the Governing Body under article 19 of the Constitution on the Occupational Safety and Health Convention, 1981 (No. 155), the Occupational Safety and Health Recommendation, 1981 (No. 164), and the Protocol of 2002 to the Occupational Safety and Health Convention, 1981.² The Committee was also called on by the Governing Body to hold a special sitting concerning the application by Myanmar of the Forced Labour Convention, 1930 (No. 29), in application of the resolution adopted by the Conference in 2000.³

Work of the Committee

5. In accordance with its usual practice, the Committee began its work with a discussion on general aspects of the application of Conventions and Recommendations and the discharge by member States of standards-related obligations under the ILO Constitution. In this part of the general discussion, reference was made to Part One of the report of the Committee of Experts on the Application of Conventions and Recommendations and to the information document on ratifications and standards-related activities. During the first part of the general discussion, the Committee also considered its working methods with

¹ For changes in the composition of the Committee, refer to reports of the Composition of Committees, *Provisional Records* Nos 3 to 3J. For the list of international non-governmental organizations, see the first report of the Selection Committee, *Provisional Record* No. 2.

² Report III to the International Labour Conference – Part 1AI: Report of the Committee of Experts on the Application of Conventions and Recommendations; Part 1AII: Information document on ratifications and standards-related activities; Part 1B: Occupational Safety and Health.

³ ILC, 88th Session (2000), *Provisional Records* Nos 6-1 to 6-5.

reference being made to a document submitted to the Committee for this purpose.⁴ A summary of this part of the general discussion is found under relevant headings in sections A, B and C of Part One of this report.

6. The second part of the general discussion dealt with the General Survey concerning occupational safety and health carried out by the Committee of Experts. It is summarized in section D of Part One of this report.
7. Following the general discussion, the Committee considered various cases concerning compliance with obligations to submit Conventions and Recommendations to the competent national authorities and to supply reports on the application of ratified Conventions. Details on these cases are contained in section E of Part One of this report.
8. The Committee held a special sitting to consider the application of the Forced Labour Convention, 1930 (No. 29), by Myanmar. A summary of the information submitted by the Government, the discussion and conclusion is contained in Part Three of this report.
9. During its second week the Committee considered 25 individual cases relating to the application of various Conventions. The examination of the individual cases was based principally on the observations contained in the Committee of Experts' report and the oral and written explanations provided by the governments concerned. As usual, the Committee also referred to its discussions in previous years, comments received from employers' and workers' organizations and, where appropriate, reports of other supervisory bodies of the ILO and other international organizations. Time restrictions once again required the Committee to select a limited number of individual cases among the Committee of Experts' observations. With reference to its examination of these cases, the Committee reiterated the importance it placed on the role of the tripartite dialogue in its work and trusted that the governments of all those countries selected would make every effort to take the measures necessary to fulfil the obligations they had undertaken by ratifying Conventions. A summary of the information submitted by governments, the discussions, and conclusions of the examination of individual cases were contained in Part Two of this report.
10. With regard to the adoption of the list of individual cases to be discussed by the Committee in the second week, the Chairperson of the Committee announced that a final version of the preliminary list of possible cases, which had been sent on 12 May 2009 to all member States, was now available.⁵ As in previous years, the Committee intended to examine the cases of 25 member States, in addition to the special sitting concerning Myanmar (Convention No. 29).
11. Following the adoption of the final list of individual cases by the Committee, the Worker members wished to make the following comments. They regretted only being able to select 17 cases this year, as a result of the particularly high number (eight) of double footnotes, corresponding to cases identified by the Committee of Experts. That should not be taken to imply, however, that double footnotes should not continue to be given priority in the future. The Worker members expressed particular regret that the case of Paraguay on the application of Convention No. 87 had not been included. Moreover, they had been unable to include cases in which progress had been made, in the sense of cases in which real

⁴ Work of the Committee on the Application of Standards, ILC, 98th Session, C. App./D.1.

⁵ ILC, 98th Session, Committee on the Application of Standards, C. App./D.4/Add.1.

advances had been duly noted, at the risk of adopting an approach based on imposing sanctions rather than on emulation.

12. The Worker members deeply regretted the fact that the application of the Forced Labour Convention, 1930 (No. 29), in Japan could not be included. In that regard, they did not understand the refusal by the Employer members, on the one hand, and the Government of Japan, on the other, to discuss the matter. It was all the more regrettable given that the Committee of Experts had been making observations on the subject since 1996 and that the opportunity to restore the dignity of those women who had been used as sexual slaves was disappearing with the passage of time. If the duty to rehabilitate victims of history were not fulfilled in good time, it would leave an indelible stain on the credibility of the ILO as a whole and on the Employer members in particular.
13. Lastly, the Worker members explained that, in making their preliminary selection of cases for inclusion on the list in conjunction with the Employer members, they had based themselves on the following criteria: categories of Conventions; geographical balance; the substance of comments by the Committee of Experts; the quality and clarity of the replies given by governments; the severity or persistence of violations; the urgency of the situations under consideration; and comments from workers' and employers' organizations.
14. The Employer members drew attention to the Committee's procedures with respect to the selection of cases for examination. The Employers had wished to discuss the case of Uzbekistan, particularly with regard to child labour in the cotton industry, which had persisted for more than a century and was contrary to Articles 1 and 2 of Convention No. 29 and Article 1(b) of the Abolition of Forced Labour Convention, 1957 (No. 105), the latter of which would have formed the basis for discussion by the Committee. The situation met the criterion of urgency but, unfortunately, could not be discussed because the Government of Uzbekistan was not accredited and present at the current session of the Conference. It was to be hoped that a consultative process between sessions of the Conference could find a solution to the problem of not being able to discuss particular cases if the relevant governments were not accredited and present at the time the list of cases was adopted.
15. With regard to the case of Japan, they underlined the fact that the selection of cases for discussion should be informed by the likelihood of arriving at an outcome that could be implemented within the sphere and scope of the ILO. Highlighting the reference made by the Committee of Experts in paragraph 1 of its observation to its earlier considerations concerning the limits of its mandate in respect of historical breaches of Convention No. 29 in Japan, the Employer members expressed the view that the issue did not fall within the purview of the Conference Committee.
16. The Government member of Italy expressed his strong objection to the fact that Italy figured among the individual cases to be discussed by this Committee. The reference in the Committee of Experts' observation to the "apparently increasing climate of intolerance, violence and discrimination against the immigrant population" was a baseless and gratuitous description of a political nature. Italy was among the countries with the highest rate of ratification of ILO Conventions. He drew the attention of the Committee members to the fact that the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), had only been ratified by 23 countries of which Italy was the only country with such high immigration flows. The findings of the Committee of Experts' observation were based on comments made by other United Nations bodies to which Italy had already responded satisfactorily.

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17. Following the adoption of the list of individual cases to be discussed by the Committee, the Employer and Worker spokespersons conducted an informal briefing for Government representatives.

Working methods of the Committee

18. The Chairperson announced, in accordance with Part V(E) of document D.1, the time limits for speeches made before the Committee. These time limits were established in consultation with the Vice-Chairpersons and it was the Chairperson's intention to strictly enforce them in the interest of the work of the Committee. The Chairperson also called on the members of the Committee to make every effort so that sessions started on time and the working schedule was respected. Finally, the Chairperson recalled that all delegates were under the obligation to abide by parliamentary language. Interventions should be relevant to the subject under discussion and be within the boundaries of respect and decorum.
19. In relation to the methods of work of the Conference Committee, the Employer members noted that there had been no changes since the previous year. The strategy of continuing appraisal and dialogue between the groups had resulted in greater transparency and understanding. Since 2006, governments had been provided with a preliminary list of cases two weeks prior to the Conference. Since 2007, the Vice-Chairpersons had held separate briefings for governments to explain the selection of the final list of cases. The governments concerned had to register their cases by Friday evening, after which the Office had been entrusted with authority to set the schedule for the discussion of the cases for which governments had not registered, on the understanding that the work of the Committee would be completed by the following Friday. In response to requests to improve time management, each member of the Committee was bound to respect the announced limits on speaking time. Since the previous year, the Committee was now able to discuss the substance of cases on the list where the governments concerned were registered and present at the Conference, but failed to appear before the Conference Committee. Moreover, there were now explicit rules respecting decorum in the work of the Conference Committee.
20. Nevertheless, the Employer members continued to believe that greater diversification was needed in the cases discussed. On the tenth anniversary of the Worst Forms of Child Labour Convention, 1999 (No. 182), they believed that there should be a substantial number of cases on child labour, as well as forced labour and discrimination, particularly in view of the exceptionally high number of comments by the Committee of Experts which called for urgent discussion. Without minimizing the importance of freedom of association, it should be recalled that very serious problems affected women and children which freedom of association was not equipped to resolve.
21. The Worker members regretted that the Committee of Experts had attributed eight double footnotes this year. In 2006, this figure had risen to 13, thereby limiting the selection of individual cases by the Conference Committee. In 2007, the Committee of Experts had appeared to have taken account of the comments of the Worker members by attributing five double footnotes. This year, however, they were once again too numerous. A few years ago, the Worker members had accepted, in view of the circumstances, the limitation of 25 individual cases, and this choice became more difficult each year in view of the trends in the violation of workers' rights throughout the world. This year, the Conference Committee had a margin in establishing only 17 cases. It was to be hoped that there would be more of a margin for the Conference Committee in establishing a more balanced list of individual cases in 2010.

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22. The Government member of Cuba recognized the efforts made by the Office to analyse the various measures that had been taken over the years to improve the methods of work of the supervisory mechanisms in general, and those of the Conference Committee, in particular. She was of the view that some progress had been made. However, her Government wished to see further progress in terms of transparency and consultations with governments for the formulation of rules, which were sometimes loosely expressed. She considered that such rules needed to be more precise and detailed so as to avoid inappropriate application. She also emphasized the need to continue improving the methods of work.
23. The Government member of Germany, speaking on behalf of the Government members of the Industrialized Market Economy Countries (IMEC), welcomed the fruitful discussions on the methods of work in the Tripartite Working Group of the Conference Committee and the adjustments introduced, in particular the early communication to governments of a preliminary list of cases that might be taken up in the discussion of individual cases. IMEC was encouraged that the process of selecting cases was becoming more efficient and transparent. However, the provision of this preliminary list must not give rise to any form of pressure to influence the final list. Moreover, while IMEC had welcomed the guidelines for improving time management of the Conference Committee, it was very dissatisfied with their implementation during last year's session. Meetings had rarely started on time, which had resulted in very late working hours, sometimes until midnight, which was completely unacceptable and unfair to both the members of the Committee and to the governments on the list of cases, as they all deserved a fully alert audience. She hoped that evening sittings would be avoided altogether. In this connection, she asked the Office to provide and update an agenda of work for every session of the Committee, which would ensure better preparation and high-level representation. Since there were further improvements to be made, IMEC fully supported the continuation of the Tripartite Working Group on the working methods of the Conference Committee to ensure ongoing open and transparent discussion.
24. The Worker member of Senegal indicated that the working methods of the Committee were appreciated because they were universal, transparent and selective. That needed to continue so as to anchor international labour standards in daily practices. The list of individual cases would necessarily be the subject of debate, but it was one of the specificities of the Conference Committee which guaranteed its good governance.
25. The Government member of Oman, also speaking on behalf of the Government members of the Council of Ministers of Labour and Social Affairs of the Gulf Cooperation Council, comprising Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates and Yemen, proposed a review of the methods of work of the Conference Committee, so as to ensure the balanced participation of the tripartite constituents. He called for a specific role to be given to governments in the identification of the criteria for the selection of individual cases, in collaboration with Employer and Worker members. He highlighted a previous proposal made by the Government group concerning the need for the presence of Government representatives, as observers, in the meetings in which individual cases were selected. Finally, he reaffirmed the importance in ensuring the participation of the regional standards specialists from the Gulf Cooperation Council and other countries during the deliberations of the Conference Committee so that they were fully aware of the issues raised.

B. General questions relating to international labour standards

General aspects of the supervisory procedure

26. First of all, the representative of the Secretary-General pointed out that this Committee had the overall responsibility for considering the extent to which international labour standards were being implemented and reporting thereon to the Conference. With this overall objective in mind, this Committee had adapted its methods of work over the years, as and when important issues arose, notably at the initiative of its members, on the basis of tripartite dialogue and consensus. The achievements of the Tripartite Working Group on the Working Methods of the Conference Committee were the result of this process. Since its establishment in June 2006, the Tripartite Working Group held a total of six meetings during the course of which it successfully dealt with all issues before it. The recommendations of the Tripartite Working Group, which were summarized in document D.1, should continue to enhance the functioning of the Committee on the Application of Standards.
27. Turning to the issue of the functioning of the supervisory system, the representative of the Secretary-General stressed that compliance with reporting obligations was of paramount importance for the efficient functioning of the supervisory system as the quality of the examination by the supervisory bodies depended to a large extent on the quality of the information received. She was pleased to inform the Committee that this year the decreasing trend had been reversed with 70.2 per cent of reports received by the end of the meeting of the Committee of Experts. This unprecedented increase in reports was to a large extent due to the measures taken by this Committee together with the Committee of Experts in order to provide support to compliance with reporting obligations. It remained to be seen whether this positive development would be confirmed in the coming years. The Office would continue to take the necessary measures to this effect in close collaboration with the ILO field offices.
28. The representative of the Secretary-General then pointed out that a landmark development which had taken place since the last session of this Committee was the adoption by the International Labour Conference of the ILO Declaration on Social Justice for a Fair Globalization, 2008. The Governing Body examined in November 2008 and March 2009 the implications of the Social Justice Declaration on the four components of the standards strategy, which comprised the standards policy, the supervisory system, standards-related technical cooperation, and communication and visibility. These implications were significant for the work of the Committee. Two immediate implications of the Social Justice Declaration were addressed by the Governing Body in November 2008: first, the Governing Body invited the Office to “launch a promotional campaign for the ratification and effective implementation of standards that are the most significant from the viewpoint of governance”, and in particular, the four instruments otherwise known as priority Conventions, which were explicitly mentioned in the Annex to the Social Justice Declaration. These were Convention No. 81 on Labour Inspection, Convention No. 129 on Labour Inspection in Agriculture, Convention No. 122 on Employment Policy and Convention No. 144 on Tripartite Consultation. Secondly, the Governing Body decided that certain linkages would be introduced on an experimental basis, between the General Surveys of the Committee of Experts and the recurrent reports to be discussed at the Conference in the framework of the Social Justice Declaration. In order to enable the Office to take into account the information contained in General Surveys, among other sources, in the context of preparing the recurrent reports, the Governing Body endorsed, on an experimental basis, an alignment of the subjects of General Surveys with those of the recurrent reports. It also endorsed on an experimental basis a new design of article 19

questionnaires so as to render them simpler and more user-friendly. Thus, in the light of the recurrent discussions of 2010 and 2011 on employment and social security respectively, two “new generation” article 19 questionnaires had been adopted by the Governing Body. The article 19 questionnaire on employment had already been sent to member States and responses were being awaited on the legal measures adopted as a response to the financial crisis with a special focus on employment policies. The article 19 questionnaire on social security which was adopted by the Governing Body in March 2009, had already been sent to all ILO member States. In this context, the speaker launched a special appeal to all member States for a special effort to be made towards preparing and sending the requested reports on the two General Surveys. This was an exceptional opportunity to furnish the information which would allow the ILO to draw a global picture and enable an assessment of the impact and the continuous relevance of the instruments under examination as well as the identification of any gaps, so as to effectively address member States’ needs, as required by the Social Justice Declaration.

29. The speaker indicated that at its November 2009 session, the Governing Body would continue to address the implications of the Social Justice Declaration by undertaking a re-evaluation of the grouping of standards by subject matter for reporting purposes. In this framework, the Governing Body might take into account the possibility of synchronizing to a certain extent, the article 22 reporting cycle with the cycle of General Surveys under article 19 of the Constitution and the recurrent reports under the Social Justice Declaration. The aim would be to rationalize reporting obligations, avoid duplication of requests for information and make full use of information available to the Office.
30. The Governing Body had finally highlighted the impetus that the Social Justice Declaration had provided to the upscaling of ILO technical assistance in order to ensure an even more effective follow-up to the comments of the supervisory bodies, and in particular the conclusions of this Committee. The strategy was aimed at mainstreaming standards into Decent Work Country Programmes which were the ILO’s main delivery mechanism at the country level, and more broadly into the United Nations system. In this framework, the Office had prepared a major technical cooperation project aimed at strengthening the implementation of international labour standards on the basis of the comments made by the ILO supervisory bodies and was in the process of seeking donors for this project. This project, as well as the efforts of the Office as a whole, was focused on the attainment of the ambitious targets and indicators set out in the Strategic Policy Framework for 2010–15 and the draft Programme and Budget for 2010–11 with regard to international labour standards and the fundamental principles and rights at work.
31. Turning to the issue of the financial and economic crisis, the speaker stressed that the ILO had an arsenal of instruments guaranteeing basic rights, providing policy guidance and ensuring appropriate technical advice with a view to helping constituents deal with the crisis. Although normative issues appeared to be a distant concern in these times of crisis, they were actually part of the solution. They served not only to provide adequate support to victims of the crisis, but could also favour a timely demand stimulus paving the way for recovery and a more sustainable economy. They could also provide member States with a baseline and a bulwark against pressures that may be encountered to adopt economic approaches which, while possibly providing short-term solutions, ultimately undermined any advances that had been made in social and labour conditions and were unsustainable in the longer term. She highlighted that the general discussion this tripartite Committee would hold the following day would be an excellent opportunity to make a crucial contribution to the work of the Committee of the Whole by delivering this Committee’s message on the role of the international labour standards in recovery efforts.

32. Finally, the representative of the Secretary-General noted that this year marked several anniversaries of ILO Conventions adopted over the 90 years of the ILO's existence. These instruments were :

- *Convention No. 98 on the right to organize and collective bargaining*: As this fundamental and widely ratified Convention completed 60 years of existence, it was right and proper to emphasize its relevance not only to the great majority of countries which had embraced its principles, but also to the recovery from the current crisis as it allowed the social partners who were directly concerned by the problems which arose in the world of work and who had moreover, a deep knowledge of the relevant context, to reach free and voluntary solutions.
- *Convention No. 182 on the worst forms of child labour*, a fundamental Convention which was the most rapidly ratified instrument in the history of the ILO, celebrated this year its tenth anniversary. Its unparalleled record of 169 ratifications in ten years no doubt reflected a major political will to eradicate child labour, especially its worst forms, as a major part of poverty alleviation and crisis recovery efforts; its multi-pronged approach provided a good example of the actions that should be taken to ensure that ratification was followed by constant and notable progress in implementation.
- *Convention No. 129 on labour inspection in agriculture*, which marked its 40th anniversary, contained important governance principles which were key to efforts to tackle the informal economy and poverty through the establishment and functioning of a labour inspection system for agricultural workers and their families.
- *Convention No. 1 on hours of work in industry*, was the inaugural act of the ILO's standard-setting activities, adopted 90 years ago. This Convention followed up on the constitutionally proclaimed objective of establishing a maximum working day and week as an urgent requirement for guaranteeing universal and lasting peace. This objective remained relevant today in the light of the pressures that the financial and economic crisis could exert on conditions of work.
- *Convention No. 94 on labour clauses in public contracts* celebrated this year its 60th anniversary and was closely linked to crisis recovery by encouraging public authorities to raise the bar and act as model employers. The Office recently published a practical guide explaining how this Convention could be implemented.
- *Convention No. 95 on the protection of wages*, another instrument that just turned 60 this year, afforded protection in an area that impinged closely on the rights set forth in the eight fundamental ILO Conventions and reflected an essential means to avoid wage deflation and open the way to recovery from the crisis.
- *Convention No. 97 on migration for employment* continued to provide, 60 years after its adoption, important guidance on what should constitute the basic components of a comprehensive migration policy in the context of the financial crisis and the persistence of poverty and inequalities worldwide.
- *Convention No. 169 on indigenous and tribal peoples*, the only binding up to date international instrument specifically dedicated to protecting the rights of indigenous peoples, was adopted 20 years ago. Being responsible for this Convention, the ILO had a lead role to play in the UN system with respect to indigenous and tribal peoples and the ILO Programme to Promote Convention No. 169 had been instrumental for the delivery of technical cooperation, following up on the findings of the supervisory bodies.

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33. This year's anniversaries, taking place in the particular context of the financial and economic crisis and the celebration of 90 years since the creation of the ILO, conveyed a strong message to the effect that despite the significant period of time over which these instruments were adopted, their provisions could not be more relevant to today's labour market conditions in every corner of the globe. This was the ILO's legacy. All previous major crises resulted in a surge in ILO standard-setting activity and the handing over to the next generations of Conventions and Recommendations whose policy guidance continued to apply in today's unprecedented conditions. As the ILO celebrated 90 years of social progress through standard setting and supervision, it had to be ensured that what had been painstakingly built over a century was not dismantled. Thus, the speaker called upon all member States to make the ratification and implementation of the above Conventions an integral part of efforts for crisis recovery.
34. In conclusion, the representative of the Secretary-General underlined that the financial and economic crisis had led to a reaffirmation of the role of the State and well-designed regulatory frameworks, as guarantors of fairness and stability which should be strengthened. In this context, ILO member States should ensure that focus was placed in strengthening not only financial regulatory frameworks but also social regulatory frameworks in line with the guidance provided by international labour standards. One of the major lessons learned from the current crisis was that social regulation based on international labour standards was an essential pillar of lasting solutions based on social justice and an essential part of building a sustainable global architecture.
35. The Committee welcomed Professor Janice Bellace, Chairperson of the Committee of Experts. She pointed out that 2008 marked the 60th anniversary of the Universal Declaration of Human Rights and the 50th anniversary of the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111). In its report the Committee of Experts emphasized that Convention No. 111 remained the most comprehensive, dedicated international instrument on non-discrimination and equality in employment, and that it was intrinsically linked to the ILO's mission of promoting social justice through securing decent work.
36. With reference to the cases of progress noted in the report of the Committee of Experts, the speaker underlined that the experts had noted with satisfaction or interest that in a number of member States, longstanding comments on the application of ratified Conventions had been addressed. An exhaustive list of such cases was to be found in paragraphs 54 and 57 of the General Report of the experts. By way of example, she referred to the launching in **Australia** of a substantive workplace reform aimed at a measured transition towards a new workplace relations system thereby addressing a number of comments under Conventions Nos 87 and 98; the setting aside of a law in **Spain** which prevented migrant workers from exercising their freedom of association rights; the adoption of a comprehensive prohibition in **Argentina** of child labour in all its forms irrespective of whether or not there was a contractual employment relationship or whether or not the work was remunerated, accompanied by an express provision that the labour inspection services must exercise their role to enforce this prohibition; the repeal by **Jordan** of all laws and regulations imposing work by prisoners for the army by authorization of the Minister of Defence; and the adoption of provisions in **Kenya** giving legislative expression to the principle of equal remuneration for work of equal value and including a broad definition of "remuneration" encompassing the total value of all payments in money or kind.
37. Turning to the role of international labour standards in the context of the current global financial and economic crisis, the speaker pointed out that the Committee of Experts had made a number of general observations in its report. The Committee of Experts noted that the Termination of Employment Convention, 1982 (No. 158), and Recommendation (No. 166) shed light on how terminations could take place in a balanced manner avoiding

discrimination on any of the grounds provided in the fundamental Conventions. In its latest report, the Committee of Experts emphasized the relevance of Convention No. 158 to the current crisis, in particular its provisions relating to termination of employment on grounds of operational requirements of the enterprises. The Committee of Experts noted in a general observation that the principles underlying this Convention constituted a carefully constructed balance between the interests of the employer and the interests of the worker and stressed that social dialogue was the core procedural response to collective dismissals.

- 38.** Moreover, the Committee of Experts also underscored the critical importance of social security systems, and the need especially in times of financial turbulence to maintain the viability of these systems so that they could continue to serve as a vital social safety net. The Committee of Experts drew the attention of governments to their general responsibility under the ILO Conventions on social security, to ensure the proper administration of the national social security institutions and the due provision of the benefits. It emphasized that the ILO social security Conventions established parameters, compliance with which was intended to ensure the stability and sound governance of the system. A good policy to exit the crisis would consist of bearing these parameters in mind so as to allow the progressive return of the system to its normal condition, even though emergency measures might temporarily introduce significant modifications into these parameters. The Committee of Experts formulated a general observation in this regard, requesting all ILO ratifying States to furnish detailed information on the impact of the crisis in national social security systems and the measures taken or planned with a view to maintaining their financial viability and reinforcing social protection for the most vulnerable groups of the population.
- 39.** The speaker also referred to general observations by the Committee on three other topics. As regards freedom of association, 2008 also marked the 60th anniversary of Convention No. 87 on freedom of association. The Committee of Experts included in its report this year, a general observation on this Convention to emphasize that it viewed Convention No. 87 not only as a fundamental human right inherent in human dignity, but also as an enabling right, essential to the meaningful attainment of all other rights at work. The Committee of Experts highlighted the significant lacunae and requested more information regarding EPZs and the informal economy. With respect to child labour, the Committee of Experts observed that governments had sought clarification regarding the treatment of light work in view of their obligations under the Minimum Age Convention, 1973 (No. 138). As concerned the Indigenous and Tribal Peoples Convention, 1989 (No. 169), the Committee addressed the issue of establishing appropriate mechanisms for consultation and participation.
- 40.** Finally, the speaker referred to the subcommittee on working methods which met during the Committee of Experts' November 2008 session to discuss ways to make the General Report more useful to the Conference Committee on the Application of Standards. Discussions were also initiated on different working methods that could be utilized in drafting next year's General Report on employment. She concluded by noting that the members of the Committee of Experts were grateful that the Employer and Worker Vice-Chairpersons of the Conference Committee on the Application of Standards, Mr Potter and Mr Cortebeeck, were once again able to meet with the members of the Committee of Experts, to further the dialogue between the two committees. In encouraging member States to fully apply ratified Conventions, the two committees, in a sense, worked in tandem with the Committee of Experts engaging in the technical legal analysis and the Conference Committee focusing on implementation. As such, the Committee of Experts found it most useful to increase its understanding of how this process could be made more efficient, in addition to ensuring a spirit of mutual respect and cooperation between the two committees.

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41. The Employer members and the Worker members, as well as all Government members who spoke, welcomed the presence of the Chairperson of the Committee of Experts in the general discussion of the Conference Committee.
 42. The Employer members pointed out that the participation of the Chairperson of the Committee of Experts in the work of the Committee reflected the essential fact-finding role of the Committee of Experts in relation to the work of the Conference Committee. Without the help of the Committee of Experts, this Committee could not function. They expressed appreciation of the positive relationship and goodwill that had reigned between the Employer and Worker members in recent years, without which the work of the Conference Committee would not be successful. They also recognized the work of the Director of the International Labour Standards Department and her staff who served as the secretariat to this Committee. They were especially appreciative of the second edition of the bound report of the Conference Committee's 2008 report, which included the relevant observations by the Committee of Experts concerning the cases that had been discussed. However, they indicated that the Readers' note could be improved through the addition of a subheading highlighting the report of the Conference Committee in the section on that Committee, as had been done in the preceding section for the report of the Committee of Experts. The Readers' note could also be improved by adding a section on the "Role and functioning of the Office in ILO standards supervision", in line with paragraph 60 of the March 2008 report of the Governing Body Committee on Legal Issues and International Labour Standards (GB.301/LILS/6(Rev.)).
 43. With regard to the composition of the Committee of Experts, it should be noted with concern that only 16 of the 20 experts were currently appointed. Given the significant workload of the Committee of Experts, the Employer members encouraged the Director-General to propose as a matter of urgency to the Governing Body a number of candidates for the vacancies so they could be appointed without delay to ensure the effective and efficient operation of the Committee of Experts. The economic crisis and the content and impact of ILO standards highlighted the need for the appointment of experts with economic credentials as part of the Experts' fact-finding role.
 44. They once again expressed appreciation of the experts' invitation to exchange views with them during the December 2008 session of the Committee of Experts, as well as of the continued use of the format of dialogue on issues rather than statements of position. In this respect, they considered that the supervision of standards could benefit from time to time from greater integration of the Committee of Experts, the present Committee and the LILS Committee on certain subjects, such as a joint working group on the preparation of article 19 survey questionnaires. This would facilitate maintenance of the traditional role of article 19 surveys, while promoting the objectives of the 2008 ILO Declaration on Social Justice for a Fair Globalization. In that respect, with reference to the comments made by the Committee of Experts in relation to the 2008 Declaration, they reaffirmed that the essential role of the Committee of Experts was to find facts based on ratified Conventions. The 2008 Declaration, as a political commitment by ILO Members, had no direct relevance to the finding of facts relating to the implementation of a country's treaty obligations. References to the 2008 Declaration were not necessary to validate ILO standards that had been adopted and ratified, and the inclusion of references to the Declaration in individual observations that had their own legitimacy and validity served no purpose.
 45. Considering the value attached to international labour standards, the Employer members had repeatedly stressed the need to continue to review the existing body of standards in order to ensure that they remained up to date in a rapidly changing world. Past decades had seen three working parties established to review ILO standards: two Ventejol Working Parties, in the 1970s and 1980s, and the Cartier Working Party from 1995 to 2002. As early as 1987, the Ventejol Working Party had stressed that its classification had been

made at a given point in time and that it would require review from time to time in the light of developments. A regular review mechanism, within either the Governing Body or its LILS Committee, would give rise to two main activities: reviewing and classifying ILO standards, and following up such review and classification. Both activities should be synchronized with and informed by cyclical reviews under the follow-up to the ILO's 2008 Declaration on Social Justice, as well as with the work of any other ILO bodies dealing with standards.

46. The Employer members noted the restoration of the section on “Highlights and major trends”, after a four-year absence. However, it was not in line with the central purpose of the main report of the Committee of Experts, which was to provide the Conference Committee with facts that assisted it in its central role of determining whether ratified Conventions were fully implemented. The section would therefore be more appropriate in the Information document on ratifications and standards-related activities. With regard to anniversaries, as highlighted in the report of the Committee of Experts, they recalled the tenth anniversary of the adoption of the Worst Forms of Child Labour Convention, 1999 (No. 182). They welcomed the fact that, in ten years, 169 of the 182 ILO member States had ratified the Convention and that significant progress had been achieved through IPEC and other programmes.
47. They very much appreciated that single and double footnotes had been highlighted in the report of the Committee of Experts, as the Employer members had requested for several years. It was now easier to find critical cases of non-compliance, although this would be further facilitated if they were indicated in the table of contents. Cases of progress were an important validation of the supervisory process. The utility and transparency of this designation would be enhanced if the elements were highlighted in the conclusions of the Committee of Experts that were directly related to the identification of such cases. It would also be interesting to be provided with statistics on cases of progress by Convention and on whether overall progress was increasing or decreasing by Convention. The new section concerning cases in which the need for technical assistance had been highlighted was important in view of the emphasis placed by the Conference Committee on technical assistance and direct contacts where implementation of a ratified Convention fell short of its requirements. They requested clarification on whether the Office would provide technical assistance in all the cases listed, how such cases would be prioritized and how they would fit into the overall technical assistance framework.
48. With reference to the new section on cases of good practice, the Employer members raised the question of the meaning of this term and its relationship to the standards set out in a specific Convention. They considered that the term “good” implied something above the minimum standards required by a Convention, possibly an ideal practice, but feared that this might deter implementation. Despite the criteria indicated for good practices, it was still difficult to define the term and differentiate them from cases of progress. Indeed, four of the cases of good practice were also listed as cases of progress. Moreover, a large number of the designations of good practices related to the Employment Policy Convention, 1964 (No. 122), which did not prefer one particular economic approach over another and was complicated by the current economic crisis. In view of the illustrative nature of good practices, they questioned whether the designation was helpful.
49. They recalled that in previous years they had objected to mini-surveys or commentaries outside the general process of article 19 surveys. This year, the Committee of Experts had created a very challenging environment for the Conference Committee and for ratifying countries during the economic crisis by addressing five issues, not only in the Highlights section, but also in general observations on the subjects of: freedom of association, collective bargaining and industrial relations; the elimination of child labour and the protection of children and young persons; employment security; social security; and

indigenous and tribal peoples. This was asking too much at a time of economic crisis. What was needed was stability and clarity on the implementation of standards, not additional reporting requirements which distracted from action to facilitate job creation, productivity improvements and the raising of the standard of living. Previous recessions had shown the importance of keeping a clear focus on priorities and not trying to do too much.

50. With regard to the general observation on freedom of association, the Employer members stated that the Committee of Experts had focused on export processing zones (EPZs), which accounted for 0.5 per cent of all workers. The general observation appeared to set out a whole new set of reporting requirements on EPZs, as well as additional data on the informal economy. While agreeing with the need for greater attention to be paid to the implementation of ILO standards in the informal economy, they recalled that this problem was not unique to Convention No. 87 and that, as a reporting problem, it should be raised in the LILS Committee. Similarly, the general observation on light work under Convention No. 138 also appeared to create new reporting requirements without the approval of the Governing Body. They added that the general observation on the Termination of Employment Convention, 1982 (No. 158), did not contribute to a better understanding of what was required to give full effect to the Convention. In contrast, the general observations on social security and indigenous and tribal peoples did not raise any particular issues and were an illustration of the correct approach to making general observations that were useful and contributed to the implementation of the Conventions concerned.
51. As in previous years, the Employer members called for the section on collaboration with other international organizations and functions relating to other international instruments to be transferred to the Information document. Moreover, it had always been the understanding of the Employer members that the role of the Committee of Experts was to pronounce on the facts in relation to the provisions of ratified Conventions. They therefore failed to understand the purpose, within the mandate of the Committee of Experts, of the first 32 pages of the Information document. For example, what was the purpose of reviewing all the developments since the previous year's Conference? Why was a section included on Myanmar, when the case of that country had been more than adequately addressed by the Governing Body, the comments of the Committee of Experts and the report of the Liaison Officer. Finally, they welcomed the valuable section on technical assistance and appreciated in particular the significant effort made by the Office to expand country profiles so as to include references to the respective observations of the Committee of Experts and the discussions of the Conference Committee.
52. The Worker members welcomed the report of the Committee of Experts, as well as the report by the subcommittee responsible for examining its working methods. They considered that these reports would once again facilitate good cooperation and constructive dialogue between the two committees.
53. First, it was commendable that the priority actions expected of governments were clearly identified in the Report of the Committee of Experts. Governments could therefore address pressing issues as a matter of priority and then find solutions for the other comments made by the Committee of Experts.
54. Second, the identification of "good practices" was useful as they were a source of inspiration for other member States for the implementation of ratified Conventions. But what was a good practice? Mere compliance with the provisions of Conventions was clearly not sufficient in itself as such compliance derived from the obligations assumed by countries. It was also possible to follow the non-exhaustive criteria listed in paragraph 59 of the General Report. However, the attribution of the classification of "good practice"

should be exercised with caution, as inclusion under this appellation did not necessarily mean that there remained no other problems of application in practice. Their purpose was educational, through encouragement, as illustrated by several such cases which were also classified as cases of progress. It was to be commended that certain governments served as examples for others, but that was not sufficient in itself. The objective was still the optimal implementation of Conventions in practice for the greatest benefit of workers' rights.

55. Third, the possible implications of the 2008 Declaration, particularly in relation to General Surveys, raised certain issues and it would be necessary to see the results of the implementation of the new questionnaire design under article 19 of the Constitution. It was to be hoped that this new approach would incite more in-depth discussions of the General Survey in the Conference Committee and that the impact of these discussions would reinforce the ILO's standards policy, particularly in the context of the economic crisis. The description of the new procedure provided by the Representative of the Secretary-General in her introductory speech was encouraging, and it could be seen not as a weakening of the fundamental value of General Surveys, but as a means of promoting future ratifications.
56. The Worker members welcomed the fact that the Committee of Experts had taken into account their comments concerning the visibility of these cases, which justified the inclusion of footnotes. The countries that were requested to provide early reports, detailed reports or even full particulars to the Conference were clearly identified.
57. The initiative of the Committee of Experts to highlight cases in which technical assistance would be useful was to be welcomed. This initiative improved complementarity between the activities of the two Committees and the Office. It was to be hoped that human and financial resources would be allocated to meet these fully justified demands. Finally, it was to be welcomed that the call made to workers' organizations to send their comments had been successful, since the number of comments received had once again increased. Workers' and employers' organizations could also request technical assistance from the Office, if they experienced difficulties in replying.
58. The emphasis placed in the report on "Highlights and major trends" was to be noted with interest. This chapter formed part of the follow-up to the 2008 Declaration and reaffirmed the essential role of the ILO in promoting international labour standards. The Committee of Experts had emphasized four elements: (i) the 60th anniversary of Convention No. 87, which was one of the foundations of social dialogue and the emancipation of workers, yet it remained one of the least ratified. Freedom of association was denied to billions of workers throughout the world, and especially the most vulnerable, such as migrant workers and those employed in export processing zones; (ii) the 50th anniversary of Convention No. 111, which was generally poorly applied and, in addition to ratification, required action to change attitudes; (iii) significant events concerning Convention No. 138; and (iv) the application of ILO social security standards in the context of the global financial crisis.
59. The Government member of Germany, speaking on behalf of IMEC, indicated that the ILO supervisory system was unique in the international framework of human rights procedures. In light of the 2008 Declaration, a comprehensive discussion had started with respect to its implications on ILO standards policy, mainly in relation to the General Surveys. IMEC appreciated the open and effective discussions in the tripartite consultations and in the LILS Committee, and the adjustments made so far. In this process, IMEC had emphasized the need to preserve the authoritative value of General Surveys, while recognizing that the new approach could increase the impact of the standards system. In this regard, IMEC appreciated the guidance provided by the Committee of Experts and encouraged it to continue its close cooperation with the Office. The Conference Committee had the

responsibility to ensure that the capacity, visibility and impact of the ILO supervisory system continued to evolve positively despite the inherent challenges.

- 60.** With respect to the Committee of Experts, IMEC welcomed its continuous efforts to improve the quality, presentation and accessibility of its report, such as the country profiles. She also appreciated the decision by the Committee of Experts to insert a section highlighting cases of good practices, which could serve as inspiration for governments. The criteria for the selection of good practices, focusing on new and innovative ways of implementing a Convention while extending the coverage of the minimum standards of the Convention, seemed feasible. IMEC attached great importance to the combination of the work of the supervisory bodies and the practical guidance provided through technical cooperation as one of the key dimensions of the ILO supervisory system. The follow-up of cases of serious failure had been enhanced through the heightened attention given to this complementarity by the Committee of Experts and the more systematic references to technical assistance in the conclusions of the Conference Committee. Finally, IMEC expressed concern that the Committee of Experts had been operating at less than its full capacity for most of the past decade. It had been operating for more than two years with only 16 of the 20 experts appointed. The speaker therefore reiterated the appeal to fill all vacancies on the Committee of Experts without any further delay. She also called on the Director-General to ensure that the essential work of the International Labour Standards Department was among his top priorities.
- 61.** The Worker member of Senegal highlighted the role played by the Committee of Experts in gathering information which enabled the Conference Committee to fulfil its mandate. This element of synergy gave the ILO supervisory mechanism its force, and he commended the efforts made by the Committee of Experts to develop its working methods and improve the participation of workers, employers and governments in order to reinforce the supervisory system and give life to tripartism. The human and financial resources available to the International Labour Standards Department and the Committee of Experts had to be sufficient to enable them to ensure the promotion of standards-related activities. That was a fundamental element and the report of the Committee of Experts needed to be a user-friendly document that was also accessible to those who were not familiar with the jargon used by the Committee. Finally, while the development of good practices was important, the Committee of Experts needed to remain vigilant concerning the manner in which Conventions were implemented.
- 62.** The Government member of Cuba encouraged the Committee of Experts to maintain its interest and continuous reflection with a view to making its working methods more effective. She referred with particular interest to paragraph 9(2) and (3) of the report of the Committee of Experts. Subparagraph (2) emphasized good practices as an inspiration for countries in their efforts to identify methods appropriate to their national conditions for the application of Conventions in cases where comments had been made previously. She warned that it would be necessary to evaluate the outcomes of the application of so-called good practices so as to assess their effectiveness. With regard to subparagraph (3), she expressed appreciation of the contribution made by the Committee of Experts in reviewing article 19 questionnaires and hoped that it would also make a contribution to reviewing article 22 report forms. She recalled the need to avoid the duplication of information and to take into account the effects that the 2008 Declaration could have. With regard to cases that were noted with interest, her Government expressed appreciation of the varied range of situations indicated in paragraph 56 of the report, which included innovative measures not necessarily requested by the Committee and which contributed to the achievement of the objectives of a specific Convention, as in the case of the application of Convention No. 81 by Cuba. Her Government commended the activities carried out for the implementation of Convention No. 138. She recalled the progress achieved in Cuba in this regard, such as the 100 per cent school attendance rate for children of school age.

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- 63.** The Government member of the Syrian Arab Republic said that his country considered the report of the Committee of Experts to be a basic and important reference for the formulation of programmes on labour standards, employment and social protection, especially in the current global crisis. He added that his Government had the political will to apply international labour standards, which were considered to be the compass in identifying relevant labour legislation and regulations. However, certain countries under military occupation faced particular challenges in applying labour standards, and he hoped that this would be taken into consideration by the Conference Committee.
- 64.** The Worker member of Pakistan expressed appreciation of the work of the Committee of Experts. He recalled that the ILO supervisory system was considered to be the conscience of the world and that the Conference was the world parliament of labour. The principles highlighted in the ILO Constitution were necessary to establish lasting peace based on social justice. The Declaration of Philadelphia laid down that labour was not a commodity and that poverty anywhere constituted a danger to prosperity everywhere. These essential principles had been reiterated in the 1998 and 2008 ILO Declarations. He urged governments to bring their law and practice into conformity with the fundamental Conventions and to demonstrate their commitment and solidarity to achieving the objectives of the ILO. He further recalled that, while the Committee of Experts examined a very large number of cases every year, a maximum of 25 or 26 could be discussed by the Conference Committee. He therefore urged those governments that were on the list of individual cases to take the necessary measures in accordance with the international obligations they had assumed through the ratification of the respective instruments and in so doing to translate the recommendations of the Committee of Experts into national law and practice.
- 65.** He expressed concern that Convention No. 87 was still one of the least ratified of the fundamental Conventions. Moreover, the countries that had not ratified it included several of those with the largest populations. He therefore called on those countries that had not yet done so, and particularly those in Asia and the Pacific and those of chief industrial importance, to ratify Convention No. 87 and, in so doing, to demonstrate their solidarity and commitment to the ideals of the ILO. With reference to the 50th anniversary of the adoption of Convention No. 111, he emphasized the need to bring an end to discrimination against women through the adoption of the recommended economic and social reforms in developing countries, and the promotion of free education and training to strengthen their employability. Measures also needed to focus on rural and migrant workers, domestic and temporary women workers, who were the poorest of the poor. There was a need to formulate progressive measures and ensure their implementation through efficient labour inspection systems. In his own country, despite the difficulties, the labour movement had been focusing on improving the situation of women workers through the organization of their representation at all levels and through education and training programmes.
- 66.** The Government member of Nigeria, speaking on behalf of the African group, expressed her appreciation to the Director of NORMES and the Committee of Experts on the Application of Conventions and Recommendations for their efforts in producing the report of the Committee of Experts. She recommended that the Committee of Experts be fully staffed to enable it to accomplish more for member States and the ILO.
- 67.** The Worker member of the Bolivarian Republic of Venezuela said that the Committee of Experts' working methods relating to the fundamental ILO Conventions and paragraphs 73 and 119 of its General Report, in particular on the role of employers' and workers' organizations and of the ILO supervisory bodies, raised concerns among the Venezuelan workers. This was owing to the fact that the opinions expressed neither reflected reality nor were the most representative. She was of the opinion that the people's struggle against capitalism was a burning issue and that the present structural crisis of the capitalist system

was an opportunity for Latin America. It was essential that the ILO adapt to the new context and make it possible for all social partners to express their opinions. She emphasized the Venezuelan Government's commitment to comply with Convention No. 87 and indicated that there had been an increase in the number of trade unions.

C. The role of international labour standards in the context of the current global economic and financial crisis

68. During the course of the general discussion of the Conference Committee on the Application of Standards, the Employer members emphasized that the current global economic crisis and the stress that it was placing on workplaces and people highlighted the importance of the implementation and maintenance of ratified international labour standards. The economic crisis could not and should not be used as an excuse to lower standards. Now more than ever labour standards mattered, and the work of the Committee of Experts and of the Conference Committee also really mattered. Any gains that anyone believed could be obtained by lowering standards were illusory. No sustainable recovery could be built without sustainable labour standards.
69. The primary cause of the current financial crisis was a failure of governance in the financial sector, not a failure of markets in general. The Employer members therefore took strong exception to the statement with regard to social security in paragraph 133 of the General Report of the Committee of Experts that the "global financial crisis calls for a State that is willing and able to effectively regulate markets by all appropriate means". They hoped that the intended meaning of the sentence was not as broad as it appeared and that what was really meant was that voluntarily ratified standards, including existing social security schemes, should be maintained without exception. History had repeatedly demonstrated that the over-regulation of markets was counterproductive in terms of sustainable economies, job growth, poverty alleviation, productivity growth and a rising standard of living. The world needed a balance between the maintenance of labour standards and economic flexibility to stimulate job creation and raise productivity. Paul Krugman, the Nobel Prize winner, had rightly said that "productivity isn't everything, but in the long run it is almost everything". The over-regulation of markets inevitably slowed productivity and job growth, which were now needed more urgently than they had ever been over the past 80 years.
70. Difficult times required creativity and innovation, also in the context of the Conference Committee. As the only standing Committee of the Conference that had the important role of holding Members accountable for freely ratified labour standards, the present Committee had an important contribution to make to the conclusions of the Committee of the Whole as they related to the supervision of standards. The Employer members therefore proposed that, following the conclusion of the general discussion: (1) the Officers of the Conference Committee be authorized to issue a joint statement to the Committee of the Whole on ILO standards supervision and the economic crisis; (2) as soon as possible, a special edition of the report of the Conference Committee, limited to the comments by Committee members on the economic crisis and standards, should be issued and submitted to the Committee of the Whole, with the normal reports of the Conference Committee being issued in the usual way; and (3) a proposal be made that the agenda of the Conference in 2010 include an item for the adoption of a Recommendation setting out the ILO approach in times of crises in general, and not just the present crisis.
71. The Worker members indicated that they believed more than ever in the importance and the impact of ILO standards and the supervisory mechanisms. In these times of global financial and economic crisis, just when a crisis related to climate change would threaten

employment if serious measures were not taken, reflection was required on the need for national and international regulatory mechanisms.

72. They recalled that the ILO had been created in 1919 to promote social progress and overcome major social and economic conflicts through dialogue and cooperation. Its characteristic was that it brought together workers, employers and governments at the international level in a spirit of constructive compromise in the search for common solutions. This was its most original feature, which allowed it to combine the interests of the various parties while setting out their mutual responsibilities for the implementation of shared social objectives through the negotiation of Conventions and Recommendations. Together the three components developed legislation, adopted standards on working conditions and formulated social policies, in which field member States would normally have considered only themselves to be competent. Social dialogue was therefore an essential tool to ensure harmonious economic and other transitions. A historical reading of the crises that had affected the global balance and jeopardized peace, and the most significant ILO interventions, showed that the Organization had played a decisive role in rebuilding the world economy. This had been the case during the Great Depression of 1929 and following the Second World War, which had seen the emergence of the shared political will to be open to fundamental changes in economic and labour matters. These changes had played a very important structuring role at the individual, community and economic levels and as factors of peace and justice. They were embodied in the Declaration of Philadelphia, from which very many standards were derived and which nobody had challenged at the time.
73. Globalization had overturned the conceptions of social and industrial relations at both the national and international levels, as the Conference Committee had already noted, particularly in relation to the review of General Surveys. Neoliberal theories had tended to dominate the world economy and had challenged the relevance of protecting workers' rights, while governments were now using the pretext of the crisis to continue applying neoliberal policies. In this approach, which was considered "modern", workers were often reduced to a simple economic variable, a cost, and there was no longer room for dignity, social justice and basic social protection. It was now fashionable to say that the adoption of standards overprotecting workers was an obstacle to economic development. Supporters of structural adjustment policies had always been more interested in the functioning of markets than the issue of working conditions.
74. However, there would not be any economic progress if workers were not protected against precarious situations, which could only be eradicated through adequate protection of the employment contract, working hours, occupational safety and health, the right to education and training and to social security. With respect to the application of ILO social security standards in the context of the global financial crisis, social safety nets were in greater demand, at a time when resources were decreasing due to declining tax revenue and social security contributions. Responsibility for the proper administration of social security institutions lay with governments, which could assume this responsibility alone or with the social partners. The call made by the Committee of Experts to strengthen the institutional and regulatory capacity of countries for the improvement of social protection in the broadest sense needed to be supported in order to ensure social protection covering health, pension schemes and decent unemployment benefits and to enable workers to cope with restructuring and professional transitions that they had not sought. Workers who were too precarious would never be productive and compliance with ILO Conventions was therefore a factor of competitiveness.
75. Without wishing to anticipate the substance of the discussions that would take place on 15 and 16 June, it was nevertheless appropriate to recall certain elements of the report of the discussion held at the ILO European Regional Meeting in Lisbon in February 2009

concerning the means of responding to the crisis: *“The Conventions and Recommendations of the ILO constitute a rich reference of international labour standards many of which articulate principles of particular relevance during periods of economic difficulty. International cooperation to counteract the crisis is greatly facilitated by the large measure of mutual understanding and common practice in the region regarding the application of ILO standards.”* This approach recognized that ILO Conventions were modern and relevant for managing the consequences of the crisis. Without listing them all, reference should be made to the eight fundamental Conventions, as well as those relating to wages in the broad sense, the termination of the employment relationship, migrant workers, labour clauses in public contracts, health and safety, tripartite consultations, and the Employment Relationship Recommendation, 2006 (No. 198), the importance of which should not be underestimated. The report of the Lisbon Meeting also highlighted the undisputed added value of social dialogue and collective bargaining to counter the negative impact of the crisis on working conditions and the lives of enterprises, thus reaffirming the relevance of Conventions Nos 87 and 98. The Worker members concluded with the hope that the ILO would find, especially after the G20 Summit held in London, an undisputed role as a partner to other international organizations, such as the OECD, WTO, World Bank and IMF.

76. The Government member of Germany, speaking on behalf of the Government members of the Industrialized Market Economy Countries (IMEC), noted the special focus of this year’s Conference on the ILO’s response to the employment and social policy consequences of the economic and financial crisis. IMEC believed that this Committee, charged with promoting the application of international labour standards, had to emphasize the benefits of fundamental principles and rights at work for human capital development and economic growth in general and, in this specific instance, for global economic recovery. Failure to ensure fundamental principles and rights at work at such a critical time would represent not only a moral failure to uphold universally recognized rights, but also a failure of economic policy to ensure growth and recovery.
77. IMEC noted with interest the observations of the Committee of Experts concerning the application of social security standards in the context of the global financial crisis. It shared the concern that the financial crisis might be severe and long lasting, thereby posing a real threat to the financial viability and sustainable development of social security systems, and possibly undermining ILO social security standards. On this point, the speaker firmly agreed that it was necessary to enhance social protection and that the ILO could provide valuable guidance in this regard. IMEC shared the hope expressed by the Committee of Experts that out of this crisis would emerge an understanding of the need to ensure the full integration of the social dimension into the emerging post-crisis financial and economic order.
78. The Government member of Norway, speaking on behalf of the Nordic Government members of Denmark, Finland, Iceland, Sweden and Norway, supported the statement by the Government member of Germany made on behalf of IMEC and wished to add the following points. She said that this was an extraordinary year, marked by the worst global economic crisis for decades. The crisis was affecting the world of work, with many companies struggling economically and even facing bankruptcy, leaving a large number of workers out of jobs. There was a risk that the economic downturn would worsen working conditions, even in workplaces not directly hit by the crisis. The ongoing effort for decent work for all was meeting new obstacles and hurdles.
79. She emphasized that economic crises and regression were not an excuse to pay less attention to ILO Conventions and to deprive the workforce of their acquired rights at work. Measures needed to be taken to avoid a global “race to the bottom” with working conditions deteriorating, and social protection weakened, workers’ rights undermined and

unemployment increasing. Protectionism was not the answer. Coherent solutions had to be found in order to address the crisis. The ILO had an important message in its Decent Work Agenda and had to be at the forefront in the process of formulating policies to counter the negative effects of the crisis. The poorest and most vulnerable were the ones who suffered the greatest adverse effects of the crisis. In this regard, she emphasized that gender equality and gender-sensitive policies were particularly important, and that the work of improving the situation of women in the labour market needed to be strengthened, rather than undermined, during the ongoing financial crisis.

- 80.** It was necessary to be prepared to work even harder to ensure that the fruits of globalization were more evenly shared. Challenging tasks lay ahead for world leaders, including those of important organizations such as the IMF and the ILO. They had to deal with the crisis in a way that stabilized the financial and economic systems, reduced unemployment and supported, rather than undermining, the shared aspiration of decent work for all. The economic crisis made the task of improving working conditions even more important than before. Strong political will was required to halt the negative effects of the crisis on working conditions. Failing in this would harm long-term economic and social development.
- 81.** In times of economic crisis, the ILO had an important role to play both to provide assistance to the most vulnerable constituents and to maintain its system of international labour standards. In this respect, the work carried out by the Committee of Experts and the Conference Committee was of great importance. It was first and foremost the responsibility of each country to protect its workers from abuse by implementing and enforcing labour laws and regulations. Corporate social responsibility was an additional tool and complemented the responsibilities of governments under ILO Conventions.
- 82.** She added that tripartism and effective social dialogue were crucial tools for both individual countries and the globalized world in order to overcome the crisis. The Nordic countries had a long tradition in these fields. When employers and workers came together and discussed problems among themselves or with the government, they generally found solutions that all parties could accept. For the Nordic countries, this had proved to be an effective way of combating unemployment and downturns in the labour market, as tripartism had contributed to prosperity and sustainability, and a well-functioning working life. In conclusion, she expressed the hope that the discussion in the Committee of the Whole would lead to conclusions that would help to maintain and promote labour standards and the ILO's Decent Work Agenda also during the financial crisis, and that international society would join efforts in this endeavour.
- 83.** The Worker member of Senegal pointed out that the promotion of standards in a context of financial crisis, which was giving rise to food, energy and economic crises, continued to be the best guarantee of dignified and decent living conditions the world over. The role of the Committee of Experts was crucial in this regard. With respect to social security, the financial turbulence had led to a fall in the value of pensions amounting, in some cases, to 45 per cent. The issue of wages could not be neglected in the current difficult context. Vulnerable groups, such as migrant workers, were at risk of being sacrificed due to the reduced labour market.
- 84.** The Government member of Cuba referred in particular to the application of social security standards. In the context of the current global economic crisis, the Committee of Experts had made a very pertinent request in its general observation concerning the measures adopted by governments and social security institutions to address the impact of the crisis on social protection. In Cuba, in December 2008, a new Social Security Act had been adopted which endorsed the universal nature of the social security system, covering 100 per cent of workers and the whole of the population, and providing for new cash

allowances to raise the level of benefits. ILO action in the field of social protection was vital in view of the current crisis.

85. The Worker member of Pakistan recalled that the present meeting was being held at one of the most difficult times in modern history, with millions of jobs being lost every day. Some 500 million people were now subject to acute poverty, over 50 million had lost their jobs and 1 billion were subject to hunger due to the financial crisis. In such a situation, the role of the Conference Committee took an even greater importance in promoting decent work, social protection, respect for fundamental rights and the development of productive employment through national and international action.
86. He welcomed the good work carried out by ILO/IPEC to promote the elimination of child labour. However, he noted that the figures indicated in paragraph 124 of the report of the Committee of Experts concerning the numbers of people affected by poverty would have to be revised in view of the effects of the financial crisis, with millions of people losing their jobs and the heightened risk of child and bonded labour in developing countries. This situation needed to be addressed with strong political will at the national and international levels with a view to the adoption of the necessary policies and plans of action. Finally, he welcomed the comments of the Committee of Experts on the role of the State in rebuilding social security in the wake of the financial crisis, particularly in view of the losses suffered by private pension schemes in countries at all levels of development.
87. The Employer member of Gabon presented, in the light of her personal experience as head of a company, the position of an African employers' organization (Employers' Organization of Gabon for Import/Export – SIMPEX) regarding the global economic crisis. She recalled that the problems of an enterprise not only had an impact on the employer but also on the worker. Those two partners were inseparable.
88. With respect to the formal economy, the speaker emphasized that practical solutions to assist enterprises in the context of the financial crisis should involve intensive dialogue between sectoral organizations, national organizations of employers and governments; this for reasons of both clarity of governmental decision-making processes, including on investment budgets, as well as of other government decisions concerning labour administration which covered labour standards. This would give enterprises the opportunity to clearly present their problems due to economic crisis and its implications for the status of employment. To illustrate her point, she referred to the fruitful discussions held during a conference organized in May 2009 by the Ministry of Finance. It had been critical that both the enterprises of the Gabonese Employers' Confederation (CPG) and the Government had placed employment security and the possibility of more and productive decent jobs at the heart of the discussion. Another key subject commonly expressed at the conference was the importance of small and medium enterprises and the need for company measures to avoid closure and layoffs. The Office should take these issues at hand when proposing solutions to the financial crisis.
89. The speaker further addressed the issue of the informal economy, an economy which was considered legal in Gabon. This economy, which was providing employment as well as goods and services that would otherwise not be supplied to consumers by the formal economy, needed help. The report on the High-level Tripartite Meeting on the Current Global Financial and Economic Crisis of the Governing Body of March 2009 highlighted the possible link between the informal economy and international labour standards and, in particular, the risks of a new upsurge of child labour due to the crisis. In order to avoid such a disaster, the speaker suggested encouraging the consumption of goods from the legal informal economy that were not offered by the formal economy. Such consumption would allow for a modernization of tools and working methods of the enterprises of the informal economy which would increase their productivity and entail a progressive

formalization of those enterprises. New employers' organizations could thus be established, which would allow those enterprises to be informed about laws governing enterprises and labour law, including the prohibition of child labour. The financial crisis was a reality and not merely a theoretical problem. The ILO needed to ensure that stakeholders in the field were involved so as to take into account the very practical aspects of the crisis.

- 90.** The Worker member of Benin focused his remarks on the underlying causes of the current crisis. The analyses heard so far within the framework of the ILO did not address the causes of the economic crisis but only its consequences in terms of unemployment, poverty and the degradation of social protection. To speak of a “systemic crisis” led one to think that the economic crisis was an act of fate. Apparently, the world was refusing to see that, if the system was not working, it was because its fundamental mechanisms were outdated. The capitalist system had run its course and displayed its limitations. For those countries worst affected, the solution was not to wait for the International Monetary Fund (IMF) or the World Bank, with their fateful structural adjustment programmes. In fact, as the President of Benin had declared in 1999 in Abuja, structural adjustment programmes were a catastrophe for all countries that had been subjected to them. The analysis of the underlying causes of crises in the capitalist system given by Karl Marx in his time was still relevant, and it was important today, instead of paying lip service to workers' rights against a background of mass dismissals, to attack the root causes of economic crises rather than vainly attempting to halt their consequences.
- 91.** The Government member of Nigeria, speaking on behalf of the African group, aligned herself with what she thought to be a consensus among most of the speakers that the current global economic crisis should not be used as an excuse for lower labour standards. The link between economic recovery and workers' protection could not be over-emphasized. Social security and the improvement of the provision of social safety nets should be part of the response to the global economic crisis. She reminded the Committee that a number of countries in the African region were developing countries with high unemployment rates, a large informal economy and a number of other challenges aggravated by the global economic crisis. Therefore, targeted technical assistance which generated the creativity and innovation needed for the implementation of international labour standards, without losing focus on much needed employment creation, would be appreciated.
- 92.** The Worker member of the Bolivarian Republic of Venezuela was of the opinion that capitalism, on which the policies of G8, G20, World Bank and IMF were based, was partially responsible for the crisis. He pointed out that those players planned to solve the crisis at the expense of the workers, but that a number of countries had adopted a different course of action than those that had led to the crisis. In certain countries the concept of “social property” was being introduced as an approach to changing the relationship between capital and work so as to ensure a fairer distribution of capital. Countries like Ecuador, Bolivia, Nicaragua and Cuba, however, were being persecuted by the capitalistic system which was attempting to prevent them from being free. The speaker was of the opinion that States should avoid privatizations and adopt specific measures to avoid workers having to pay for the consequences of the crisis. To this end, the Bolivarian Republic of Venezuela was considering a “social salary” as an instrument to ensure access to education, retirement, medicines and employment. He indicated that Venezuela's unemployment rate was 7.6 per cent and its minimum wage was US\$446, which made it the highest minimum wage in Latin America. Furthermore, in the Bolivarian Republic of Venezuela even workers from the informal economy were protected. In conclusion he asked that changes be made to avoid the dangers of capitalism.

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93. The Employer members pointed out that the Committee's general discussion had shown a convergence of views regarding the implementation of standards during the current economic crisis.
 94. The Worker members confirmed their support for a statement relating to the effects of the crisis, as the Conference Committee's contribution.
 95. Taking into account the discussion that had taken place in this forum and the suggestions of various speakers with regard to the economic and financial crisis, the Chairperson announced that the Conference Committee on the Application of Standards would prepare a statement on the matter. This would be transmitted to the Committee of the Whole for information.

Statement of the Conference Committee on the Application of Standards on the importance of international labour standards within the context of the global economic crisis

96. Following the general discussion in the Committee on the Application of Standards of the report of the committee of Experts on the Application of Conventions and Recommendations, the Committee on the Application of Standards agreed that the Officers report to the Committee of the Whole on their debate, as it considered that it had an important tangible input to make to the debate on the global economic crisis.
97. There was a clear consensus in the Committee on the importance of the role of international labour standards in dealing with the current crisis. The Committee emphasized that the crisis must not be used as an excuse for lowering standards. There could be no sustainable economic recovery without sustainable and up to date labour standards. It recalled that treaty obligations, voluntarily undertaken, were to be fully respected and that ensuring respect for fundamental principles and rights at work resulted in undeniable benefits to the development of human capital and economic growth in general and, more particularly, to global economic recovery.
98. The Committee stressed that international labour standards provided essential tools and useful guidance in developing effective policies for sustainable economic growth and recovery. The aim of international labour standards was to reflect a carefully balanced framework bearing in mind workers' and employers' concerns so as to ensure relevance to changing circumstances while underlining the importance of implementing labour standards.
99. There was no doubt that the crisis impacted upon both workers and employers, as well as their organizations and the informal economy. Labour standards, productivity and job growth were essential to sustainable economies and to the protection of those who were most vulnerable. Beyond the fundamental rights at work, standards related to wage protection, employment promotion and social safety nets also served as indispensable baselines for the protection of all workers.
100. The Committee considered that the Committee of the Whole might be inspired by the role played by the ILO in earlier times of crisis and economic recession or depression by envisaging a return to this question at the Conference in 2010 with a view towards the adoption of an instrument to guide Governments in their policy making and action, as well as the social partners, when confronted by critical global crises.

Fulfilment of standards-related obligations

- 101.** The Employer members noted the statement by the Committee of Experts in paragraph 15 of its report that some member States had made substantial progress in addressing serious failures relating to reporting. This improvement, which was to be applauded, appeared to be the result of the individualized practical steps taken, on which further information should be provided. In addition, they called upon the Office to intensify its strategy of raising awareness and identifying more accurately the underlying problems, and providing targeted technical assistance. Governments should continue to build up institutional capacity to comply with standards-related obligations and, prior to ratification, they needed to examine carefully their capacity to comply with the obligations to both implement and report on the respective Conventions. Ratification was not an end in itself and should only be undertaken when there was a realistic chance of compliance with both types of obligations. In the longer term, the reporting problem would only be overcome through the simplification of the language used and the reconciliation of the diverse reporting requirements, especially during the current economic crisis. They added that although the failure to reply to the comments of the supervisory bodies had decreased slightly, there were still 519 cases of failure to reply from 46 countries. This problem of the failure to reply to the comments of the supervisory bodies required further examination. The experience of recent years showed that simply resending the same comments was not the most effective solution.
- 102.** Moreover, the Employer members emphasized that, notwithstanding the efforts made by the Office, the continued decline in the number of article 22 reports received threatened the functioning, and eventually the credibility of the ILO's supervisory system. They hoped that the technical cooperation programme referred to by the representative of the Secretary-General would offer a sustainable long-term approach to reversing this decline. Finally, the Employer members expressed agreement with the concern voiced by the Committee of Experts in relation to the increase in the number of government reports that did not indicate the representative organizations of employers and workers to which they had been communicated. In view of the tripartite nature of the ILO, this problem was significant and it would be useful if the countries concerned could be listed.
- 103.** The Worker members pointed out that in recent years the two Committees, with the assistance of the Office, had strengthened the follow-up of cases of serious failures and it was to be welcomed that some countries had made significant progress in addressing most of the failures cited. The Committee of Experts had noted that almost all countries had taken action to overcome their difficulties. The technical assistance activities in the framework of the individualized follow-up to the comments of the supervisory bodies, undertaken by the Office with the assistance of standards specialists in subregional offices, had clearly been successful. These activities needed to be continued to identify more effectively the difficulties behind these shortcomings and to find solutions. Governments and non-metropolitan territories had been called upon to seek technical assistance from the Office to overcome their problems.
- 104.** The Worker members hoped that the improved rate of reporting noted this year would continue and regretted that too many governments continued to send their reports after the 1 September deadline. In fact, almost 68 per cent of the reports arrived late, which complicated the work of the Committee of Experts. The proper functioning of the supervisory system could only be ensured if the reports were submitted on time. It was also to be regretted that of the 35 Governments that had been asked by the Office to reply to observations and direct requests, only five had sent the requested information. The Governments which had not yet done so needed to provide the requested information and, if necessary, seek the technical assistance of the Office.

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- 105.** The Government member of Cuba emphasized the need for governments to comply with their reporting obligations. The technical assistance provided by the Office should be carried out in a practical manner to assist governments in the preparation of reports for submission within the established time limits and to ensure their quality, which was essential for the sound functioning of the supervisory mechanisms. Governments needed to create the necessary conditions so that the technical assistance received from the ILO could be applied effectively and given effect in the most rational manner possible.
- 106.** The Government member of the Syrian Arab Republic indicated that this year his country had submitted all the reports due related to standards. He reiterated the importance of technical cooperation in preparing such reports, and the valuable assistance provided by the ILO Regional Office in Beirut.
- 107.** The Government member of Oman, also speaking on behalf of the Government members of the Gulf Cooperation Council (GCC), highlighted the urgent need for the appointment of Arabic-speaking labour standards specialists in both the Regional Office for the Arab States and at ILO headquarters in Geneva so that they could provide technical assistance to member States with a view to improving their capacity to prepare reports and train national officials responsible for labour standards. He also called for the report forms to be reviewed and both observations and direct requests to be simplified to help member States meet their reporting obligations and facilitate the channels of communication between the ILO and member States. Finally, efforts should be made to provide an Arabic version of all documents distributed to the members of the Conference Committee, as Arabic was one of the official languages of the ILO.
- 108.** The Government member of Nigeria, speaking on behalf of the African Group, emphasized that that additional reporting requirements should not be the focus since countries had already enough challenges in meeting the current level of reporting obligations. She requested that technical assistance should focus on capacity building in the areas of both reporting and implementation.

The reply of the Chairperson of the Committee of Experts

- 109.** The Chairperson of the Committee of Experts, responding to points made, referred first of all to the strong exception made by the Employer members to paragraph 133 of the Experts' Report, which discussed the impact of the financial crisis on social security, where it stated: "the global financial crisis calls for a State that is willing and able to effectively regulate markets by all appropriate means". She explained that in that paragraph, the members of the Committee of Experts were discussing a financial crisis that had affected the financial stability of social security funds, many of which had been badly affected by the fall in share values on stock markets worldwide. They were referring to the fact that certain financial investment vehicles, such as hedge funds, often were outside the coverage of financial regulation and, also, that there seemed to have been lax monitoring of regulated items, such as credit lending standards. As a result, the Experts were referring to regulation of financial markets, and not of labour markets. Moreover, the term "appropriate means" had been used since the way in which governments chose to act to ensure financial stability was different in different national contexts.
- 110.** Turning to the concern voiced by Worker members that the financial crisis may have a negative impact on the application of standards, she pointed out that it would be ironic indeed if this happened, because it was not some failure of labour markets that caused the economic crisis, and a speedy recovery depended on well functioning labour markets. Observance of fundamental Conventions could lead to efficient labour markets, and

several Conventions focused on the capacity of governments to improve the functioning of labour markets. This economic crisis had been caused by a decrease in aggregate demand. For a recovery to occur, purchasing power must increase. Pursuing sound strategies for full, freely chosen employment was a basis for a sustainable recovery.

111. With regard to comments made on additional reporting obligations, the speaker underlined that the Committee of Experts did ask for additional information in some instances, but it did not deem this to constitute an additional reporting obligation. Rather, the Committee of Experts sometimes found itself seriously hampered in its ability to discharge its fact-finding obligations because of the inadequate information submitted by some governments, to the extent that it was difficult to determine whether a Convention was fully applied in law or in practice. As such, in its general observations, the Committee sought to clarify what information would be responsive to questions asked in the article 22 survey questionnaires.
112. With regard to cases of good practice, she agreed that in some instances it might be difficult to distinguish these from cases of progress. She further agreed that the Employment Policy Convention, 1964 (No. 122), was a Convention that did not prefer any one economic approach, but it did prescribe a specific procedural orientation, beginning with a government declaring and pursuing a policy of full, freely chosen employment. As a result, the Committee of Experts found that the different ways in which governments pursued this policy did result in examples of good practice in that they were innovative or creative. It was for governments to decide whether a specific good practice that had been highlighted was relevant in the national context and whether it could be adapted to its particular national circumstances.
113. Concerning the comments made by the employers' and workers' spokespersons regarding the number and diversity of cases double footnoted, she noted that every year it was very difficult for the members of the Committee of Experts to narrow down the number of cases because, regrettably, there were many instances of grave situations. She assured the Committee that the Experts would nevertheless endeavour to formulate a list that enabled the Conference Committee on the Application of Standards to discharge its mandate.
114. Turning to the concern raised by the Workers' spokesperson about continued failure in reporting, which impeded the Committee of Experts' work, she stressed that this was a concern which the Experts shared. In this matter, the work of the two Committees was synergistic. The Committee of Experts highlighted those member states with a serious failure in reporting. She had observed that a large number of reports were transmitted to the Office just before or during the Conference, when governments were urged to submit their information or otherwise come before the Conference Committee, thus demonstrating the salutary effect of this approach.
115. In conclusion, the speaker encouraged employers' and workers' organizations to submit comments on Conventions, so that the Committee of Experts could better appreciate how Conventions were applied not only in law, but also in practice, in a specific national context. In furtherance of this understanding, she invited the Employer and Worker Vice-Chairpersons of the Conference Committee once again to meet with the Committee of Experts during its 2009 November session. She underlined that this could only be of benefit to the Committee of Experts as it endeavoured to produce a technical legal analysis that was not a theoretical discourse, but one relating to real world conditions, so that the mission of the ILO of promoting social justice could be furthered.

The reply of the Representative of the Secretary-General

- 116.** At the very outset, the representative of the Secretary-General wished to thank all those who had participated in this discussion and to underline its importance for the secretariat in the discharge of its core responsibilities in supporting the work of the supervisory bodies. The Chairperson of the Committee of Experts had already responded to certain matters raised concerning the report of the Committee of Experts and its General Survey. Before turning to the matters falling within the Office's responsibility, the speaker wished to respond to two requests made respectively by IMEC and the Employer members.
- 117.** IMEC had requested that the Office provide the Conference Committee with an agenda of work for each session. This concerned the discussion on individual cases concerning the application of ratified Conventions. At present, the provisional working schedule provided the Committee with a detailed order of business up until the special sitting concerning cases of serious failure. Currently, at the end of the last sitting of the day, the secretariat orally informed the Committee of the cases to be discussed the following day. To respond to IMEC's request, the secretariat would immediately take this proposal forward at this session with a provisional schedule for the discussion of the individual cases that would be regularly updated. This provisional schedule would be published in a D. document that would be distributed to the Committee.
- 118.** The Employer members had called for a greater integration between the Conference Committee, the Committee of Experts and the LILS Committee of the Governing Body on certain matters of common interest such as the preparation of the questionnaires concerning General Surveys. She would bring this proposal to the attention of the LILS Committee and examine the practical arrangements that could be made depending on the subject matter to be discussed.
- 119.** The representative of the Secretary-General then addressed the following matters: (i) Enhanced synergies between the comments made by the supervisory bodies and ILO technical cooperation and assistance; (ii) the composition of the Committee of Experts, and (iii) the Information document on ratifications and standards-related activities.
- 120.** Turning to the issue of enhanced synergies between the comments made by the supervisory bodies and ILO technical cooperation and assistance, the speaker noted that this year, a number of speakers had underlined once again the importance of the technical assistance provided by the Office, in relation to the application of international labour standards at the national level.
- 121.** This was a major issue for the supervisory bodies and, indeed, the Organization as a whole especially in the present circumstances. This Committee gave a new impetus in 2005 to the combination of the supervisory bodies' work and the Office's technical assistance as regards both the submission of reports and the application of ratified Conventions. As IMEC underlined in its statement, this was a key dimension of the ILO supervisory system. It was also in line with giving effect to the Social Justice Declaration that the ILO effectively assisted its Members in their efforts to make progress on a tripartite basis towards all the strategic objectives.
- 122.** Concerning the submission of reports, as a number of speakers had noted, since the launch of the so-called individualized follow-up, some concrete progress had been made. The Employer members had a question with regard to the "practical steps" which were introduced last year to increase the technical assistance provided by the Office and to which reference was made in paragraph 15 of the General Report of the Committee of Experts. At the outset, she recalled that the Office would present to the November 2009

session of the Governing Body, an assessment of the arrangements put in place for individualized follow-up of the comments of the supervisory bodies. This assessment would detail all the activities carried out by the Office at that date. The practical steps referred to in the report of the Committee of Experts consisted of upscaling the mobilization of the entire field structure on the issue so as to increase the frequency of the follow-up with the Governments concerned throughout the year.

- 123.** Since 2005, on the basis of the report of this Committee, the Office had been sending a number of letters to the Governments concerned to offer its technical assistance. The Standards Department had also been contacting the Directors of each field office to draw their attention to the cases in question. This involved focusing on the countries which encountered persisting difficulties as well as offering the Department's support. The objective was to deliver prompt and relevant assistance to these countries thus enabling them to submit the reports due in time for their examination by the Committee of Experts. In the course of September, the Office undertook a second round of follow-up with the countries which had still not submitted their reports by the deadline of 1 September or which had not replied to the offer of assistance. A third round of follow-up was carried out on the basis of the Committee of Experts' report during the month of February to encourage Governments to submit the reports before the Conference. Alongside these three main rounds of follow-up, the Standards Department had numerous contacts with the field standards specialists concerning the concrete assistance given to member States.
- 124.** In addition, the Standards Department had taken the following steps: (i) together with the ILO Training Centre in Turin, the Department had designed and implemented a Distance Training Course on best practice in international labour standards reporting. The pilot version of this course was held from February to April 2009; (ii) ensuring on a more systematic basis the participation in the Turin Centre's training activities of the governments facing the most profound difficulties with the submission of their reports. These governments were considered on a priority basis for a fellowship from the Office to enable them to participate either in the pre-conference course on international labour standards or through the new distance learning course; and (iii) the Department had endeavoured to include the most serious cases of failure to submit reports and to give effect to the comments of the supervisory bodies in the broader ILO technical cooperation activities, notably in the Decent Work Country Programmes. Furthermore, the Office had prepared a technical cooperation project aimed at strengthening the implementation of international labour standards on the basis of the supervisory bodies' comments. This project, once funded, would address the difficulties that were most frequently encountered. Donors' support on this technical cooperation project would be very important.
- 125.** To respond to the concern raised both by the Employer and the Worker members on the particular obligation of member States to reply to the comments made by the Committee of Experts, the speaker agreed that this was an aspect where difficulties persisted and, in fact, it would be the next phase of the development of individualized follow-up. After the awareness-raising phase, the Office would focus on the relevance of the information provided in response to the comments made by the Committee of Experts. The Office would also give closer consideration to another issue, highlighted by the Committee of Experts in its report, and underlined by the Employer members: the discharge by Governments of their constitutional obligation to communicate copies of the reports and information to representative employers' and workers' organizations. The Office would propose to the Committee of Experts at its next session to better highlight the cases where Governments had failed to fulfil this important obligation.
- 126.** Turning to the technical assistance provided concerning the application of ratified Conventions, and more specifically to the question raised by the Employer members as to the determination of priorities concerning cases in which the need for technical assistance

had been highlighted by the Conference Committee and the cases which the Committee of Experts had decided to highlight in its last report, she recalled that the effective delivery of technical assistance hinged on the governments' willingness to receive such assistance. Secondly, this technical assistance could take various forms (on the spot mission, comments on labour legislation, participation in training activities, advice etc.). Importantly, identifying cases for technical assistance was an intrinsic element of the dialogue of both Committees with governments and was essential to improving the application of ratified Conventions at the national level. Highlighting these cases was essential to ensuring the effective integration of the comments of the two committees into ILO technical cooperation and assistance. This was particularly valid for the Committee of Experts' comments given their high number (2,506 comments at the last session). It was therefore useful for the Office if, out of the 2,506 comments made by the Committee of Experts in its current report, 129 cases were identified as priority cases for the Office as a whole. Ultimately the identification of such cases would contribute to a more transparent functioning of the supervisory system and induce the Office to be more proactive and accountable.

- 127.** In respect of the concerns raised by certain speakers that the Committee of Experts was still not functioning to its full operating capacity, the representative of the Secretary-General indicated that at the end of the last session of the Committee of Experts, there had been five vacancies. Since the beginning of the year, the Office had worked hard to be able to propose to the Officers of the Governing Body a suitable number of candidates with the required qualifications. Following the appointment of one new expert at the Governing Body's last session, four vacancies still remained to be filled. Further candidates would be proposed to the Governing Body at its June, and perhaps November 2009 sessions. Hence, by the beginning of the next session of the Committee of Experts, the number of vacancies should be further reduced.
- 128.** The Employer members had once again questioned the contents of the information document on ratifications and standards-related activities prepared by the Office that accompanied the report of the Committee of Experts. This information document was prepared under the sole responsibility of the Office, in close consultation with the field offices and the Turin Centre. As could be seen from paragraph 9(4) of the Committee of Experts' General Report, the Experts agreed to keep section IV in its General Report, merely shortening it to focus on its own interactions with other international bodies. Following a request made by the Employer members in 2003, a number of topics which had been previously dealt with in the General Report of the Committee of Experts, were shifted to the information document as they related to the Office's activities rather than to the discharge by the Committee of Experts of its mandate. As a result, the information document was richer than a simple list of ratifications. In preparing the information document, the objective of the Office was to summarize all the factual developments concerning ILO standards-related activities so as to inform the tripartite constituents and give visibility to these activities. It was the only comprehensive source of information giving a global picture of the standards-related activities across the Organization rather than in relation to the actions of particular bodies.

D. Reports requested under article 19 of the Constitution

The Occupational Safety and Health Convention (No. 155) and Recommendation (No. 164), 1981, and the Protocol of 2002 to the Occupational Safety and Health Convention No. 155

129. The Committee devoted part of its general discussion to the examination of a General Survey carried out by the Committee of Experts on the application of the Occupational Safety and Health Convention (No. 155) and Recommendation (No. 164), 1981, and the Protocol of 2002 to the Occupational Safety and Health Convention No. 155. The General Survey took into account information from 123 member States including information in 262 reports communicated by member States under article 19 of the ILO Constitution. According to its usual practice, the Committee of Experts also made use of available information in the reports submitted under articles 22 and 35 of the Constitution by those member States that had ratified Convention No. 155 and the Protocol. Information on national law and practice in the preparatory work to the Protocol was also taken into account, as appropriate. Observations and comments received from 28 employers' and workers' organizations, to which government reports were communicated in accordance with article 23(2) of the Constitution, were also reflected in the General Survey.

Response by the Employer and Worker members

130. The Employer members welcomed the opportunity offered by the General Survey to discuss occupational safety and health (OSH), which was a core theme of the ILO's work. Social dialogue played an important role in this respect, since a high level of OSH could only be achieved through cooperation between all of the parties concerned. For an OSH system to function, OSH regulations had to be respected and applied by workers. The Employer members welcomed the fact that the General Survey reported many positive developments in different regions of the world. In particular, they appreciated the views expressed by the Committee of Experts that globalization and the activities of international enterprises had had a positive impact on the advancement of OSH in developing countries.
131. Although noting that the ratification rate of Convention No. 155 was above average, with 52 ratifications as of September 2008, the Employer members wondered why a Convention addressing a subject of such fundamental importance was not more widely ratified. In this respect, they considered that the information contained in the General Survey on the obstacles to ratification facing member States was not sufficient to permit further research into the reasons for this low level of ratification.
132. In the General Survey the Committee of Experts had repeatedly emphasized the flexible nature of Convention No. 155 and recalled that member States could, *inter alia*, exclude from the application of the Convention certain branches and categories of workers. However, the Employer members considered that, by indicating that member States which made such exceptions should progressively include the workers concerned in the near future, the Committee of Experts was limiting the flexibility of the Convention.
133. They further considered that the Committee of Experts had not taken into account the fact that, at the time of the elaboration of Convention No. 155 in 1981, highly developed OSH systems were already in place in many ILO member States. The Convention not only created a framework for already existing OSH systems, but also established its own system

which, due to its specificity, created obstacles to ratification. Although the majority of ILO instruments on OSH had received the full support of the tripartite constituency, they faced ratification difficulties in many countries.

134. The Employer members emphasized that OSH was a core concern for employers and their interest in reducing and preventing occupational accidents and diseases. Employers had the overall responsibility for creating a safe and healthy working environment and the best way to secure this objective was through the adoption of a preventive approach. The development of an OSH culture at the national level in collaboration with governments and workers was the key to success and society as a whole should adopt and maintain a culture of improving OSH and supporting the efforts of employers in this respect. However, the responsibilities incumbent on governments should not be transferred to employers; for example, in a country without adequate health protection, the Government was responsible for the development of a health protection system.
135. The fact that the General Survey only focused on three ILO instruments relating to OSH had allowed the Committee of Experts to examine them in detail. Such a detailed examination would not have been possible if, for example, all the instruments directly or indirectly related to OSH had been considered. The Employer members called on the Governing Body to take this consideration into account when selecting instruments for future General Surveys.
136. Despite the progress achieved in the field of OSH, the Employer members agreed with the Committee of Experts that the current global situation was far from satisfactory. In addition to the immeasurable human suffering caused by occupational accidents and diseases, their economic cost was estimated at 5 per cent of GDP. In this respect, it was vital to address the particular challenge relating to OSH faced by small and medium-sized enterprises (SMEs), which employed the majority of workers worldwide. Another important challenge was that of the informal economy, which accounted for over 90 per cent of the workforce in some developing countries. The issue in this respect was more to find ways of formalizing the informal economy than of applying OSH measures in the informal economy.
137. The Employer members noted that paragraph 24 of the General Survey seemed to imply that OSH standards could only be guaranteed through laws and regulations and that there would be no protection in the absence of ratification of the Convention. Although the Employer members recognized the importance of laws and regulations in this context, they were not the only means of achieving appropriate standards, as there were many actors and types of instruments that could contribute to a good level of OSH.
138. The Employer members emphasized the very low level of ratification of the 2002 Protocol. This might be due to the nature of the instrument, as in the case of other Protocols. They recalled that, at the time of the adoption of the 2002 Protocol, they had indicated a preference for an instrument in the form of a Recommendation. The current low rate of ratification seemed to confirm that a Recommendation would have been a more effective instrument. They added that information on the application of Protocols was not easily accessible in the APPLIS database. This should be remedied as increased visibility could improve their ratification rate.
139. In view of the importance of comments from workers' and employers' organizations regarding the implementation of OSH standards in practice, the Employer members regretted that such comments had only been received from 28 workers' and employers' organizations in 14 member States. They asked the Office to encourage the social partners to provide more such comments.

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- 140.** In Chapter 2 of the General Survey, which provided an overview of practice regarding the scope and possible exclusions from the application of Convention No. 155, the Committee of Experts had given some examples of workers excluded from OSH protection, including workers in SMEs, homeworkers and domestic workers. While it was also in the interests of employers to ensure that OSH standards were applied to all categories of workers, the exclusions that had been made indicated that there were clear problems regarding the control and implementation of OSH regulations in relation to these categories of workers and that capacity for enforcing such regulations needed to be strengthened.
- 141.** According to the General Survey, over half of the ILO's member States had already or would adopt national OSH policies, while only 31 of the 52 member States that had ratified Convention No. 155 had fully complied with this important requirement. The Employer members therefore concluded that ratification did not necessarily imply better application of the Convention.
- 142.** With regard to the flexibility provided for in Article 8 of the Convention, the Employer members supported the statement in paragraph 93 of the General Survey that, in addition to laws and regulations, other methods consistent with national conditions and practice could be used to give effect to the Convention, such as collective agreements, guidelines, codes of practice and technical standards. The possibility of choosing such methods of implementation gave employers and workers and their organizations an important role to play in the implementation of the Convention, thereby guaranteeing that real needs were addressed.
- 143.** In paragraphs 96 to 108 of the General Survey relating to the enforcement of laws and regulations provided for in Article 9 of the Convention, the Employer members noted the emphasis placed by the Committee of Experts on the need for an adequate and appropriate system of inspection, equipped with the necessary material and human resources. In accordance with the position they had taken during the discussion of the 2006 General Survey on labour inspection, the Employer members emphasized that a well-functioning labour inspection system was a necessary precondition for effectively functioning labour law. Although progress had been made, much still remained to be done in many countries to ensure that this goal was achieved. They were of the view that the preventive and monitoring functions of labour inspectorates were as important as their enforcement functions. They therefore disagreed with paragraph 99, which seemed to imply that enforcement functions should be given priority. They recalled in this respect that emphasis on prevention was in line with the new concept of a preventative safety and health culture, which had become more important and effective over recent years. Employers had an interest in ensuring that OSH standards were applied; too often deficiencies of application were caused by a lack of awareness, information and advice.
- 144.** With regard to the overview of education and training on OSH in member States in accordance with Article 14 of the Convention, the Employer members once again emphasized the need to take measures to create a preventative safety and health culture. Although OSH concerns were integrated in the early stages of education in many countries, this did not seem to be the case in many developing countries, as described in paragraph 120. This was an important task for the ILO, which should provide these countries with advice and assistance in this respect.
- 145.** The Employer members then turned to the question addressed in paragraph 147 of whether workers should be able to withdraw from work in situations presenting an imminent and serious danger to their life and health. This had been hotly debated during the preparatory work for the Convention. The final solution reflected in the Convention was a compromise, and the Employer members noted that practice differed from legislation in this respect. They agreed with the Committee of Experts that there was no unconditional right to

withdraw from or cease work. With reference to paragraph 149, the Employer members affirmed that the right to cease work could not be a general right. The size and internal organization of the enterprise and the capacity of the workers had to be taken into account. In companies with complex activities, only technical experts could establish whether this right was appropriately exercised.

- 146.** With respect to the cooperation between employers and workers required by Article 20 of the Convention, the Employer members drew attention to the practice in the United Kingdom and New Zealand, whereby employers and workers were free to decide on their own model of cooperation (with a series of models at their disposal). They considered that this was preferable to imposing a specific model.
- 147.** In paragraphs 215 to 217 of the General Survey, the Committee of Experts considered that the question of the provision of OSH measures at no cost to workers, in accordance with Article 21 of the Convention, should be read in conjunction with Article 16, paragraph 3, of the Convention, and the requirement that, where appropriate, the employer should provide adequate protective clothing and equipment. The Employer members did not agree entirely with the views expressed by the Committee of Experts in this regard, because Article 21 did not specify who should bear the cost of the OSH measures. In most cases, this was the responsibility of employers, but situations could be envisaged in which other institutions, such as state authorities, bore such costs.
- 148.** The Employer members noted that, according to paragraphs 218 and 220 of the General Survey, the Committee of Experts had assumed that the list of instruments in the appendix to Recommendation No. 164 had been replaced by the list of instruments contained in the annex to Recommendation No. 197. Such an assumption contradicted the fact that Recommendation No. 164 had been considered to be an up to date instrument by the Cartier Working Party. It would therefore be preferable for the annex to Recommendation No. 164 to be deleted. Against this background, the Employer members recalled that, in their view, a regular review mechanism should be established to review the determinations made by the Cartier Working Party.
- 149.** With regard to the obstacles to the ratification of Convention No. 155 described in Chapter 4 of the General Survey, while many member States had taken steps to bring their regulations into compliance with the Convention, many had also encountered obstacles to ratification. Those member States that intended to ratify the Convention should be provided with support from the ILO, taking into account the flexibility and scope of the Convention. In this context, particular account should be taken of the problems experienced in developing countries related to the practical application of OSH regulations in SMEs, agriculture and the informal economy. The ILO should provide advice and develop an advanced application and implementation plan with a view to the ratification of the Convention. In general, the Employer members would have liked to be provided with more information on the obstacles to the ratification of Convention No. 155 and the extent to which they could be removed. They also maintained that support should be provided to member States wishing to ratify Convention No. 187, which was more up to date.
- 150.** While generally agreeing with the conclusions of the Committee of Experts in the General Survey, the Employer members wished to make the following points. They regretted, as indicated in paragraph 289, the limited access to information regarding the application of the Convention in practice. This was a critical issue, since even the best regulations were of no value if they were not applied in practice. The Office should therefore pay more attention to the practical application of Conventions in article 19 questionnaires, and explicitly address this question to workers' and employers' organizations. In paragraph 292, the Committee of Experts had pointed to a certain level of complacency in respect of initial exclusions from the scope of the Convention, with the result that there

appeared to be little change in the exclusions made over time. The Employer members proposed that, before speaking of complacency, the reasons for maintaining exclusions should be examined. An examination should also be carried out of the particular instances in which the exemptions made from the application of the Convention were too limited to ensure its application in practice. They concurred with the proposal made in paragraph 298 of the General Survey that multinational enterprises (MNEs) could support medium and small-sized enterprises in taking minimum prevention and protection measures, but added that account needed to be taken of the role played by confidentiality and competition in the exchange of information. Moreover, they noted that the OSH networks of MNEs had a positive influence on developments in the field of OSH.

- 151.** In the view of the Employer members, OSH was of fundamental importance for a functional working life and labour market. Shortcomings in OSH protection and a high number of employment injuries represented high costs for enterprises and society at large. Moreover, the General Survey also showed that many member States that had not ratified the Convention had high OSH standards. They therefore questioned the conclusion by the Committee of Experts that the Convention should be actively promoted. In this respect, it was suggested that those member States that experienced difficulties in ratifying Convention No. 155 should give priority to the ratification of Convention No. 187.
- 152.** The Worker members indicated that in their view the General Survey was of considerable stature and contained interesting technical considerations that workers could draw upon for their action in the field. However, they wished to voice certain concerns. The ILO Constitution provided that the protection of workers against sickness, disease and accidents at work was a fundamental element of social justice. This has been confirmed by the Declaration of Philadelphia in 1944 and the 2008 ILO Declaration on Social Justice for a Fair Globalization. Concern for OSH was even more relevant today, when millions of workers around the world were suffering from the consequences of an economic and financial crisis for which they were not responsible and which would not have affected them in the same way had the goals of social justice and decent work been achieved. This issue was clearly related to the subject of the General Survey because, using the economic crisis as a pretext, savings were often wrongly being made on measures to protect health and safety at work or to prevent occupational hazards.
- 153.** The Worker members emphasized that the data contained in paragraph 3 of the General Survey on the number of accidents and deaths due to occupational accidents and diseases was alarming, firstly because work-related fatalities appeared to be on the increase, and secondly because the figures provided were most probably significantly underestimates of the real situation.
- 154.** On a more positive note, the Worker members added that, as a result of global economic growth and scientific and technological progress, risk-management capacities had increased and these advances were reflected in standards systems. The particular value of social dialogue on issues related to safety and health at work had received recognition, at least formally. Nevertheless, insufficient progress had been made towards decent and safer working conditions, and the situation in SMEs continued to give rise to concern.
- 155.** The Worker members emphasized that Convention No. 155 and Recommendation No. 164 provided for the adoption, implementation and continuous improvement of national OSH policies aimed at prevention, rather than compensation, and that these instruments did not set out many detailed obligations, but rather a methodology based on the accountability of governments and the social partners, who had to be associated at all stages of the national policy process in relation to occupational safety and health. In addition, the Convention contained certain flexibility clauses. Convention No. 155 was therefore a modern instrument in its design, and was also compatible with voluntary approaches, such as

corporate social responsibility. Although the Convention had entered into force on 11 August 1983, it had so far only been ratified by 53 member States. The 2002 Protocol had entered into force on 9 February 2005, but had only been ratified by five member States. The Worker members noted that the Committee of Experts examined the reasons for this low rate of ratification in Chapter IV of the General Survey. The obstacles identified should be addressed through the provision of ILO technical assistance. Lessons also needed to be drawn from the fact that only 28 national organizations of employers and workers from 14 member States had made comments on the report.

- 156.** The Worker members were opposed to exclusion clauses. The scope of application of Convention No. 155 and Recommendation No. 164 should be as broad as possible. They covered all workers and all branches of economic activity. However, Article 2 of Convention No. 155 provided for the possibility to exclude, in part or in whole, limited categories of workers under certain conditions. The possibility to make exclusions appeared to be used mostly by developing countries, usually for domestic workers. The Worker members warned against certain practices, such as the designation of service providers as being self-employed merely to deprive them of OSH protection. Reports from several countries also referred to workers in the informal economy, who were not covered by the relevant OSH legislation. The Worker members therefore strongly supported the view expressed by the Committee of Experts that exclusions should be progressively phased out. Particular attention should be paid to workers in SMEs, who should not be excluded from OSH protection, but should be the subject of specific monitoring and offered technical and/or financial assistance, according to their specific needs.
- 157.** The Worker members considered that OSH legislation should be applicable to the informal economy. The Committee of Experts had rightly pointed out that the application of national legislation to the informal economy, where many of the global workforce were employed, was one of the biggest challenges for many countries. However, OSH was probably the easiest point of entry for the extension of basic protection at work into the informal economy. They agreed with the Committee of Experts that governments should be encouraged to consider the formulation and implementation of strategies and programmes that could strengthen the protection of workers in the informal economy, while regretting that no reference had been made to the Employment Relationship Recommendation, 2006 (No. 198), which was one of the most pertinent instruments in this respect.
- 158.** The Worker members noted with interest that in many countries specific structures and mechanisms for consultation with workers and employers had been established relating to the definition, implementation and review of preventive measures in the area of OSH. It was important to ensure that these consultations were held in practice and their outcome followed up.
- 159.** In the field of OSH, the Worker members were in favour of a globally binding strategy and the imposition of joint responsibility on the ILO's tripartite constituents. The Plan-Do-Check-Act model was the core of a coherent national and dynamic policy of prevention. Such a policy implied the involvement of many actors, beyond purely national or parastatal entities. The policy also needed to be progressive, and should therefore be subject to an ongoing review process to allow technological progress to be taken into account. This required the collection of reliable statistics, institutional support to organize the collection and processing of data and, in particular the development of specific objectives and the definition of indicators, possibly with the social partners.
- 160.** The Worker members were in agreement with the Committee of Experts concerning the importance of reliable statistics and the need for the Office to develop a promotional strategy with a view to encouraging member States to compile and provide statistics, based

on international classification systems. However, they felt that it was necessary to go a step further and develop a methodology anchored in binding guidelines and incorporating indicators, based on existing good practice and focusing on the five main spheres of action indicated in Article 5 of Convention No. 155. The proposed guidelines would provide orientation for ILO technical assistance and labour inspectorates and would be perfectly adapted to the systemic approach developed by the instruments covered by this General Survey and by Convention No. 187.

- 161.** The Worker members also emphasized the fundamental role of labour inspectors, who should be sufficient in number, well trained and engaged in preventive action. As indicated in the General Survey of 2006 on labour inspection, it was crucial that inspection services were allocated the necessary material and human resources to be able to function effectively so that, as a minimum, they had the capacity to inspect workplaces under their authority with sufficient frequency. The issue of funding for inspection services was a recurring problem in a number of countries. Some positive developments had, however, been reported: many countries were in the process of restructuring and modernizing the labour inspection systems in general and, in some cases, these efforts were specifically aimed at OSH inspection services. The Worker members noted with particular interest the good points scheme (“the Smiley scheme”) adopted in Denmark, which made it compulsory to publish inspection results and the situation with regard to the safety and health conditions in the enterprise. This approach offered an interesting means of combining legislation, its enforcement, sanctions and corporate social responsibility.
- 162.** The Worker members agreed with the Committee of Experts that OSH was an area in which corporate social responsibility could play an important role. This approach rested on three ideas. Firstly, that investments in preventing risks of occupational accidents and diseases were productive. Secondly, that prevention was a shared responsibility in which the workers needed to cooperate in accordance with their means, but that it was those who had the greatest financial, human and technical resources that had the primary obligation to respect the law. Thirdly, that corporate social responsibility was part of the solution. They also agreed that investment in risk prevention should be seen as a productive investment and that prevention was an area in which the responsibilities had to be shared. Corporate social responsibility could be part of the solution, as emulation and the educational value of good corporate practices had to be recognized. However, the primary source of advice and information on OSH was still the labour inspection services and the various state agencies. Moreover, the possibility of referring to good corporate practices should not exempt the government from investing in effective prevention policies accessible to all enterprises, whatever their size, financial capacity or level of access to information technology. Many transnational agreements concluded with firms with a European or global focus related to OSH questions. Although they raised legal issues, such as the representativeness of the parties, such agreements facilitated dissemination and positive convergence. However, priority needed to be placed on compliance with the law, collective agreements and the national practices that were in force. Corporate social responsibility could only enrich the applicable law in member States.
- 163.** In conclusion, the Worker members expressed their support for the conclusions contained in the General Survey, while regretting that they were sometimes too weak in view of the challenges that needed to be addressed for nothing less than the protection of human lives.

Main themes in the ensuing discussion

- 164.** Generally the Survey was well received. According to the Government member of Belgium the General Survey constituted a real reference book from which a manual for trainers and vocational schools could be drawn. In the same vein, the Government member

of Sweden expressed the view that the General Survey was a comprehensive and thorough product, and particularly an important landmark, as it emphasized the shift from the prescription of protective measures to prevention as a significant step in the development of OSH standard setting. The Government member of the Bolivarian Republic of Venezuela considered the General Survey to provide an appropriate frame of reference for national systems in terms of prevention and continuous improvement. However, the Worker member of Canada echoed the concerns voiced by the Worker spokesperson, and noted that the concluding remarks of the General Survey did not ascribe a major role to governments nor to the ILO. The ILO should come up with an action plan to define a path towards the future. In general, the bureaucratic picture given in the General Survey concerning, for example, various dialogue structures, the right to participation as well as training and education issues did not paint a complete picture of the real situation. The follow-up to the report should help to construct a more complete picture. The Worker member of South Africa added that the conclusions and recommendations of the General Survey were weak in addressing the ongoing challenges in view of the extremely high number of deaths, injuries and diseases resulting from poor or unsafe working conditions.

Relevance of the instruments and their approach to occupational safety and health

- 165.** Several speakers emphasized the relevance of the instruments at issue and the approach to OSH they expressed. The Government member of Algeria stated the issue of worker protection was more topical than ever, particularly in the light of the estimated data on the numbers of work-related accidents that occurred each year. The issue of occupational safety and health needed to be further promoted by the ILO to create general awareness among all stakeholders, including governments, employers and workers, occupational doctors and prevention engineers.
- 166.** The Government member of Belgium highlighted that while referring to some positive developments, the General Survey also pointed to matters of concern, such as the exclusion of certain categories of workers from OSH protection, the risks of adverse effects of new compounds and the emergence of new diseases.
- 167.** The Government member of Canada supported the primary objective of the instruments covered by the General Survey, namely to establish a safe and healthy working environment through the adoption of progressive and coordinated measures at both the national and enterprise levels, with the full participation of the parties concerned. The Government of Canada shared the concerns indicated in the General Survey regarding the high human and economic costs of occupational accidents and diseases and was determined to improve OSH through the implementation of laws and practices that were in conformity with the principles set out in the relevant ILO instruments. However, this constituted a challenge in view of the rapidity of socio-economic and technological changes. Efforts in this area required specialized knowledge, a vision of OSH that focused on prevention, the development of tools and initiatives adapted to the size of every enterprise and the sharing of responsibility between governments, employers and workers. The adoption of Convention No. 187 and Recommendation No. 197 corroborated the importance of a culture of prevention. Supplementary efforts to raise awareness were also needed, especially in relation to young workers. Furthermore, emphasis needed to be placed on training, activities in support of SMEs, research into the causes of accidents, and the means of reducing their number and emerging issues, such as musculoskeletal disorders and violence and stress at work.
- 168.** The Government member of Cuba stated that OSH standards were extremely relevant to the work of the ILO in promoting social justice. She reaffirmed that, bearing in mind the

damaging effects of the economic crisis on productivity, continued emphasis needed to be given to achieving and maintaining a safe and healthy work environment. The ILO Declaration on Social Justice for a Fair Globalization included certain OSH standards and was therefore of relevance to the present General Survey. The General Survey indicated that significant progress had been achieved in many countries in implementing the Conventions. The dissemination of information and training for enterprises, trade unions and workers were examples of preventive measures that had a positive effect in reducing occupational accidents and diseases. Supervising the implementation of legislation and other practical OSH measures would also be necessary. A labour inspection system that functioned efficiently was an important factor in achieving positive results in eliminating and preventing occupational risks.

- 169.** The Government member of India emphasized that investment in workplace safety led to overall increases in profits and productivity, and Convention No. 155, which called for action in essential areas pertaining to OSH, was therefore of great relevance in promoting a safe working environment.
- 170.** The Worker member of India noted that the data on occupational accidents and diseases compiled in good faith by the ILO on the basis of information provided by governments did not reflect the reality on the ground, as occupational accidents and diseases were not reported correctly. In an era of constant job losses, employers were asking workers to choose between jobs and OSH. Workers were compelled to accept any hazardous job without protection and risked early death. In most cases, governments lacked the political will to help workers, letting themselves become subservient to the interests of corporations and MNEs. Moreover, out of a concern for their public image, governments sometimes preferred to maintain OSH figures at a moderate level.
- 171.** The Government member of the Republic of Korea emphasized that OSH was of crucial importance for the quality of work and human dignity. Convention No. 155 and its national policy provisions was the most basic Convention in the field of OSH.

Occupational safety and health and the informal economy

- 172.** A number of speakers referred to the question of OSH in the informal economy. The Government member of Cuba stated that there was no reason why the so-called informal economic sector (economy) should remain on the fringes of national integration policies in relation to safety and health, as it was in the greatest need of basic protection and standards for the safety and health of workers. The focus should be on what could be done, even with limited resources, such as programmes of practical measures to reduce work-related accidents and diseases. The protection of children was of particular importance as, in a number of countries, many children worked in the informal sector in extremely dangerous jobs which should be eliminated and which constituted some of the worst forms of child labour. Emphasis had been placed on corporate social responsibility with a view, for example, to establishing effective measures to examine the causes of risks and ways of removing them from the workplace, as well as providing worker representatives with opportunities for dialogue so that they could play an active role in improving labour standards.
- 173.** The Government member of India stated that the provisions of the Convention allowing for the exclusion of specific categories of workers from its implementation were particularly helpful for developing countries that could encounter initial difficulties in ensuring uniform coverage. Cooperation between management and workers was key to the success of the Convention. It was also essential for employers to discharge their responsibilities in

the area of OSH with seriousness and sincerity and for workers to be well informed about, and aware of, their rights. The General Survey showed that many constituents were rightly concerned about OSH coverage for workers in the informal sector. It was the primary responsibility of every national government to extend the benefits of OSH facilities to workers in all sectors, even though that could be difficult to achieve in the case of informal sector workers, particularly migrant workers and those in seasonal or temporary jobs. With continued efforts by governments, OSH policies were shifting in emphasis, ceasing to focus solely on inspection-related activities and moving towards the development of collaborative partnerships for better management of OSH at the workplace level. The promotion of OSH in the informal sector could be achieved to a large extent through corporate social responsibility and public-private partnership initiatives, together with government efforts, especially down the supply chain. India enjoyed two advantages for both employers and workers in terms of ensuring OSH: its lively and active tripartite mechanisms and its proactive media, particularly at the regional level, which provided early feedback and could help to ensure corrective actions. While appreciating the concerns expressed and acknowledging that there were perceived legal gaps regarding the informal sector, he nevertheless emphasized that no OSH privileges existed for that sector, and that existing legislation could be extended in specific circumstances through enabling provisions. India remained strongly committed to, and would continue its efforts towards, advocating and establishing OSH measures for all workers.

- 174.** The Worker member of India stated that in addition to other problems concerning available data on occupational accidents and diseases, such statistics did not include deaths and accidents in the unorganized sector, which remained unprotected in all respects. During the process of capitalist globalization, the informalization of the formal sector had become common in all countries, both developed and developing, so as to be able to buy labour at the cheapest rate, no matter whether the labourers could withstand exploitation or succumbed to death. Profits had to be ensured in the context of global competition. Due to this informalization, workers who had previously been covered were now outside the scope of OSH measures. The informal sector today was by and large bigger (approximately 90 per cent of the workforce in developing countries) and not covered by OSH. The commercialization of health-care provisions had led to workers dying without health care. The entire agricultural sector remained unprotected, with regular deaths occurring due to infection by pesticides. The outsourced workers concerned were not part of the informal sector, but rather a part of the formal economy, and their status was determined by the interests of big business. The ILO should examine how soon the majority of these working people could be covered by OSH measures. Finally, the dumping of chemical hubs in developing countries, including India, by developed countries was a serious problem. These were major killers and a danger to OSH. The people would resist and fight the MNEs, but they needed the ILO's help for this purpose.
- 175.** The Worker member of Pakistan stated that the Committee of Experts had rightly pointed to the high number of fatal accidents and injuries at the workplace. However, in practice far more accidents and occupational injuries occurred than were ever reported in the informal and rural sectors, which were not covered by the legislation. Both fatal and non-fatal accidents not only involved unbearable tragedies for the individuals, their families and sometimes their communities (such as in the case of Bhopal), but also demoralized other workers on account of the unsafe working conditions.

MNE's and occupational safety and health

- 176.** A few speakers addressed the role of MNE's in awareness-raising efforts. The Employer member of Belgium recalled that, during the discussion in 2003 leading to the adoption of Convention No. 187, agreement had emerged on the concept of a preventative safety and

health culture, as defined in Article 1(d) of Convention No. 187. He referred to the challenges and opportunities which, according to the Committee of Experts, needed to be taken into account for future action in this area. These included encouraging MNEs to serve as role models, supporting the implementation of workplace strategies through corporate social responsibility initiatives and sharing information and extending training capacities to assist smaller enterprises in the implementation of at least basic preventive and protective measures. Increased attention should be paid to awareness raising, promotional efforts, training and adequate OSH information and education, not only by governments, but also employers' and workers' organizations. He emphasized that voluntary initiatives in the area of OSH which went beyond compliance with national law had been adopted not only by MNEs, but also by SMEs. He also referred to the recent creation by the International Organisation of Employers (IOE) of a global OSH network (GOSH), bringing together companies with the aim of exploring, disseminating and encouraging good practice in OSH, thereby offering a direct response to the call made by the Committee of Experts. One particular initiative was the establishment and worldwide dissemination of an OSH training programme for company managers, with the support of the ILO Turin Centre. An important element during the 2003 discussion of the Global Strategy on Occupational Safety had been to "practice what you preach", which should also be borne in mind by governments. Governments at all levels in different countries not only employed a vast number of people, but could also influence millions of enterprises through large contractors and supply chains by ensuring that effect was given to OSH legislation, with the focus on prevention. He recalled that these conclusions also called on the Office to improve the mainstreaming of OSH in other ILO activities and progressively to apply the integrated approach to all other areas of ILO activities. The challenges that the Committee of Experts had identified for MNEs applied to the Office, which still had a long way to go to assume leadership in the field of OSH in its own practices, programmes and initiatives.

177. Finally, the Worker member of the Syrian Arab Republic, noting that the Committee of Experts counted on MNEs to play a dynamic role in OSH, expressed the view that this could only happen if MNEs combined economic progress with investment in safety. OSH had to remain the primary concern for the ILO, particularly in view of the increasing number of occupational accidents.

National practice and ratification prospects

178. Several speakers provided additional or complementary information regarding national practice with regard to OSH and the ratification prospects of the relevant instruments. The Government member of Algeria stated that his country in recent years had taken a series of measures to improve prevention of occupational hazards. These included the adoption of standards on the use of chemicals and the establishment of an organizational framework for consultation and action involving all stakeholders at the enterprise level. The labour inspectorate had significant prerogatives in relation to OSH and had benefited from government measures for its modernization and strengthening. The Government would continue its efforts to protect the fundamental rights of workers and ensure the implementation of international labour standards.
179. The Government member of Belgium indicated that his Government should soon ratify Convention No. 155 and had begun the process of ratifying Convention No. 161. Belgium and, more generally, the European Union, were developing a global culture of prevention and national OSH programmes as part of the global European OSH strategy for the period 2007–12, with the involvement of the social partners.

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- 180.** The Government member of Cuba recalled that his country had ratified both Conventions Nos 155 and 187. The OSH system in Cuba was compatible with the instruments covered by the General Survey and was based on the general principles of social security and joint legislative and regulatory provisions that aimed to achieve the physical, mental and social well-being of workers, as well as to protect corporate wealth by eliminating, controlling or reducing occupational risks. Such provisions covered all enterprises and all workers. They emphasized responsibility at all managerial levels within work organizations with a view to preventing work-related accidents, fires, explosions, diseases and other incidents, and particularly for the protection of women and children. Trade unions enjoyed broad participation and decision-making powers, including union inspections, and formed part of the National Occupational Safety and Health Group, along with representatives of the central administration of the State and businesses. The Group was competent to design and propose national strategies to evaluate the level of compliance with OSH programmes and regulations and worked with similar structures at the provincial and municipal levels to develop a preventive OSH culture. The national labour inspection system endeavoured to achieve safety and health for all workers and adopted a preventive approach in its activities.
- 181.** The Government member of India had ratified ILO Conventions Nos 81, 115, 136 and 174 and encouraging progress was being made towards the ratification of Conventions Nos 155, 162 and 176. Despite full support for the spirit of those three Conventions, which was reflected in national legislation, some of their provisions inhibited ratification. The General Survey rightly pointed out that many member States were making efforts to implement Conventions even if they had not ratified them. Such States included India, which was a signatory to the Seoul Declaration on Safety and Health at Work. A major recent initiative by the Government had been the formulation of a national policy on safety, health and the working environment, which envisaged a statutory framework on OSH for all sectors of industry, including the informal sector, and the enactment of enabling legislation on safety, health and the working environment.
- 182.** The Government member of Iraq said that his country had a specialized OSH centre, staffed by a range of occupational health experts and equipped with modern facilities to check workers' health and ensure they did not fall prey to occupational diseases. The centre was responsible for carrying out workplace inspections and risk assessments to verify the safety of equipment and had facilities for diagnosing occupational diseases. It also ensured that all necessary safety and health precautions were taken in factories and laboratories. Although Iraq had not ratified Conventions Nos 155 and 187, it had taken their provisions into consideration in a special chapter on OSH in the draft Labour Code, which it had prepared with technical assistance from the ILO. The application of these provisions was the responsibility of the OSH centre. He added that a tripartite labour inspection committee undertook inspections of workplaces together with specialists from the centre, and reported to the centre so that any necessary action could be taken.
- 183.** The Government member of the Republic of Korea had hosted the 18th World Congress on Safety and Health in 2008, which had adopted the Seoul Declaration on Safety and Health at Work. His Government was strongly committed to improving OSH at the workplace and reducing occupational accidents and diseases at the national and global levels in line with the spirit of the Declaration and in accordance with Convention No. 155. A second five-year Industrial Accident Prevention Plan was being implemented and a third five-year plan was to be launched in 2010.
- 184.** The Government member of Morocco indicated that the completion of an overarching legal framework governing OSH and the implementation of the national prevention strategy would improve prospects for the ratification of Convention No. 155. Action had been taken to modernize labour inspection and organize awareness-raising campaigns. The

ratification process of the Asbestos Convention, 1986 (No. 162), was almost complete and several laws had been adopted to improve the implementation of the Benzene Convention, 1971 (No. 136).

- 185.** The Government member of Oman indicated that the laws and regulations of the member States of the Gulf Cooperation Council (GCC) were generally in conformity with ILO instruments, that the member States of the GCC had adopted a joint OSH regulation adapted to the labour market and another set of regulations was being drafted in cooperation with the ILO. Some of the GCC States were taking steps to ratify Convention No. 155.
- 186.** The Government member of the United Kingdom referred to the long-standing work undertaken in the United Kingdom in this area, with legislation dating back to the 1833 Factories Act. He recalled the radical overhaul of OSH legislation that had been undertaken in the 1970s with the adoption of the Health and Safety at Work Act. The goal-setting proportionate approach to occupational safety and health set out in the Health and Safety at Work Act had proven to be successful. Since then, fatalities in the United Kingdom had fallen by 75 per cent and the number of reported non-fatal injuries had fallen by 70 per cent. Some of the reduction was related to changes in occupation to less hazardous industries, but it was nevertheless a substantial achievement. The speaker noted that, although the intention behind Convention No. 155 was commendable, the prescriptive language used in some of its Articles meant that the United Kingdom would have to make a number of time-consuming and ultimately (in his view) unnecessary changes to its law and practice to ratify the Convention. The Government believed that its health and safety system already met, and in some cases exceeded, the great majority of provisions set out in Convention No. 155. The system of national policies, measures and arrangements worked in practice and was compatible with the Convention. The Government did not consider that increasing the level of prescription in OSH law and practice in the United Kingdom to accommodate the Convention would bring safety and health benefits. The OSH system in the United Kingdom called on employers, workers and their representatives to work together to achieve health and safety standards, rather than feeling they were merely fulfilling a bureaucratic exercise. From the point of view of the Government as a regulator, it was important to deploy a range of interventions to encourage high health and safety standards. These included enforcement and the appropriate mix of regulation, guidance, codes of practice and promotional campaigns. The world of work was changing, and this might be accelerated by the current worldwide economic downturn. The increasing number of small businesses and the risks that arose in new sectors needed to be taken into account. In particular, as economies recovered and expanded, this might pose challenges for the maintenance of health and safety standards, as new businesses were created and new and inexperienced workers taken on. The new strategy reinforced the importance of some key areas of work, including the Health and Safety Executive's efforts to carry out investigations and secure justice, the need for strong leadership and to customize support for SMEs. The United Kingdom had been one of the first member States to ratify Convention No. 187. He added that Conventions such as No. 187 were the way forward and other member States that had not yet ratified it should consider doing so.
- 187.** The Government member of the Bolivarian Republic of Venezuela indicated that his Government had ratified Convention No. 155 in 1984 and had reversed the tendency of not attributing prime importance to the establishment of a safe environment and the protection of workers' safety. The right to decent and safe work was included in the Constitution at the same level as a human right. The participation of workers' and employers' organizations had been one of the principal elements in the advancement of OSH, as well as their rights and duties in the workplace and the obligation to establish OSH committees. This right covered each and every workplace, where democratically elected delegates were responsible for prevention. There were currently 83,920 registered delegates responsible

for prevention and 22,400 OSH committees. The national strategy included promoting the management of OSH by implementing standards such as those relating to the reporting of occupational diseases and through the development of OSH programmes providing for workers' participation in all phases. Legal requirements to inform and educate included the obligation of the employer to inform workers in writing of the principles of prevention, particularly unsafe conditions and exposure to dangerous conditions. The legislative framework – the Organic Act of 2005 and its Partial Regulations of 2007 – had been developed in consultation with the social partners. They were supplemented by educational and training activities on OSH, broad labour inspection and workplace visits in the various sectors and services, in the public and private sectors, as well as dissuasive sanctions and incentive measures to overcome violations. In accordance with the provisions of Convention No. 81, the previous year 28,890 inspections and 13,967 follow-up inspections covering 2 million workers had been carried out.

- 188.** Among the Worker members, a Worker member of Senegal added the view that Convention No. 155 provided a clear, practical and effective mechanism to ensure the safety of workers, but regretted that this approach had not yet been implemented in practice in his country. Although statistics on occupational accidents and diseases were greatly needed, they were not available. The concept of occupational diseases was difficult to apply in practice and the list of occupational diseases needed to be updated. Although prevention was of key importance, a preventive culture was not part of the mentality in his country. The role of labour inspection needed to be reviewed and social dialogue had to be more effective.
- 189.** The Worker member of the Bolivarian Republic of Venezuela indicated that the promotion of OSH was a fundamental issue and that workers needed to play a central role in raising awareness of risks and in protection measures, as well as in the fields of training, organization and supervision. She indicated that, in her country, the Organic Act of 2005 on prevention and conditions in the working environment had transformed the world of OSH in the country. With reference to the protection of workers and their representatives, she said that it was envisaged to include provisions in this respect in her country's legislation, together with protection from dismissal for prevention delegates, and that enterprise committees had been established. There were approximately 300,000 prevention delegates in both the public and private sectors. Risk prevention mechanisms were being established and OSH was being promoted intensely. The major obstacle was the attitude of some employers' sectors, such as the food sector, which not only violated contracts and jeopardized food sovereignty, but ignored workers' protection and failed to invest in technology. She indicated that reflection was needed on the inclusion of health and safety issues in the collective agreements that were under discussion in her country so as to protect life and health.
- 190.** Finally, the Worker member of Colombia cautioned that the ratification of Conventions was one thing, but that strict supervision of their implementation was another. Moreover, before ratification, the issue should be discussed at the national tripartite level. The Worker representative of Pakistan indicated that much was needed in Pakistan to strengthen labour inspection in conformity with Convention No. 155.

The way forward

- 191.** A number of speakers expressed their views with regard to the way forward in this area for the ILO and its constituents. The Government member of Sweden said that the significance of work and the working environment for individual health and corporate success had been very widely discussed recently in Sweden and abroad. Previous research in this area had concentrated on risk elimination at the workplace, but now attention was turning to a more

preventive and promotional approach. Paragraph 304 of the concluding remarks was of special interest as it referred to the economic dimension of OSH. The Committee of Experts had noted that preventive OSH measures could represent savings to companies and enhance productivity, and had called for further research in this area. She presented the main conclusions of recent Swedish research on the work environment as a factor of competitiveness. There was compelling evidence that sound and systematic initiatives for improving the work environment would lead to positive results in many areas cherished by companies, such as the health of their staff. In general, work supported health. At best, the work environment could promote creativity and give individuals a sense of significance and context. A healthy work environment improved the health of the individual. An inclusive workplace also offered the possibility for large numbers of citizens to earn their living through work. Discussions about the work environment often revolved around the health and well-being of the individual. Recent research suggested that the effects of the work environment on quality and productivity could be substantially higher than those related to personal economics. Economic and demographic challenges should not be incentives to neglect the issue of the work environment. Emphasis should continue to be placed on the importance of the work environment for important strategic issues, such as quality, creativity and social responsibility, and on the fact that a healthy work environment was a key factor of productivity and competitiveness.

- 192.** The Government member of India considered that global efforts to address OSH concerns should concentrate on establishing an increasingly safe and healthy working environment through progressive concerted action at the national and enterprise levels, with the full involvement of all stakeholders. The work of the ILO in that direction was commendable and all member States should support the cause.
- 193.** The Government member of the Bolivarian Republic of Venezuela indicated that he was alarmed by the figures of occupational accidents reported by the ILO and expressed support for follow-up measures to examine this situation and to promote a culture of prevention such as the one that was being developed in Venezuela. The ILO should be creative in assessing how to deal with such serious and urgent occupational accidents, since the lives of workers were in jeopardy.
- 194.** The Worker members of the Nordic countries, referring to Article 14 of Convention No. 155 concerning the inclusion of questions of occupational safety and health and the working environment at all levels of education and training, emphasized the need to generate, from a very early age, a health and safety culture for future employees so as to raise their expectations concerning the working environment, wherever they worked. This was, of course, equally important for future employers and managers. The trade unions had on several occasions pointed to the importance of improving OSH training at all levels of the education system. OSH questions were, to some extent, included in vocational education curricula. But the need to raise awareness and improve knowledge of OSH issues was equally important for people aiming at more academic careers. The present focus on OSH mainly in vocational training no doubt reflected the traditional concentration on the physical and chemical aspects of health and safety issues, rather than organizational and psychosocial issues. The Nordic trade unions agreed with the conclusion of the Committee of Experts concerning the importance of broadening access to training and adequate information and of the integration of OSH at all levels of education. This was one of the most essential means of achieving decent, safe and healthy working conditions and working environment. Many member States, including the Nordic countries, needed to make further efforts to achieve this objective in the years ahead. It was also very important that today's employers and managers at all levels received comprehensive OSH training. Many of the decisions that they made might have profound effects on OSH. At present, OSH training was too often reserved for safety representatives and members of working environment committees. In relation to the recording and notification of work-related

accidents and diseases, satisfactory systems needed to be developed to: (a) prioritize measures and economic sectors in special need of attention; (b) measure progress and the effectiveness of OSH systems; (c) continuously update the list of occupational diseases; and (d) assist enterprises to prevent work-related accidents and diseases. They emphasized the need to resolve the problem of the inadequacy of statistics. Another important issue that needed to be addressed was how to deal with the data that had been registered when the enterprise or occupational health service closed. The conservation of these data might prove important for statistical purposes and also for the individual employee. Finally, with regard to Article 4 of Convention No. 155, they noted that, according to the trade union organizations in Finland, further action was necessary for its full implementation in Finland.

- 195.** The Worker member of Canada indicated that there was a need to identify the barriers to the implementation of OSH measures. The main obstacle, therefore, was related to the effective recognition of the right to organize and freedom of association in many countries. Much greater emphasis therefore needed to be placed on the link with freedom of association as an element in the solutions to be developed. With regard to government reporting on the progressive extension of OSH protection to excluded categories of workers, he indicated that the follow-up should include more comprehensive issues and be framed as an ILO plan of action. He added that governments needed to exercise much more leadership, along with the social partners, the ILO and MNEs. They needed to bring worker and employer groups together to engage collectively in examining and making proposals on how best to follow-up to the General Survey.
- 196.** The Worker member of Colombia emphasized that OSH had always been a determining factor in the quality of life of workers. He said that it was indispensable to pay special attention to self-employed workers, migrant workers, workers in the informal economy, and in general those who were least protected due to the decreased value placed on labour in the capital-labour relationship. He also emphasized the importance of labour inspection in implementing OSH, although Ministries of Labour and labour inspectorates were often not appropriately funded, especially in Colombia, where there was no Ministry of Labour. Moreover, it was indispensable to ensure the communication of information and guidance to facilitate sound OSH policies designed to ensure that workers and employers took the necessary action. He indicated that workers shared the concerns of the Committee of Experts on the manner of ensuring OSH when two or more employers were engaged in certain workplaces, and that this was a growing concern due to frequent reported abuses, including fictive contracts, associated work cooperatives and subcontracting in general. He also agreed with the conclusions of the General Survey calling for a positive environment with prospects for the future in which OSH would no longer be a mere hope, and would be translated into reality. He emphasized in this respect that the promotion of OSH was a shared responsibility among the tripartite partners and a challenge.
- 197.** The Worker member of France said that the General Survey focused attention on the question of OSH in a world of industry, trade and services that was being completely restructured, resulting in the current systemic crisis, which was having a negative impact on OSH. Following the adoption of the Convention, hundreds of millions of workers from rural areas had entered the industrial sector and services without adequate training. The Protocol took into account industrial change and its economic consequences, but the use of new products and processes was still poorly understood. It was therefore important to ensure that accidents or diseases whose cause had not yet been formally established, but which might be suspected, were declared. The tragic experience of asbestos showed the relevance of the precautionary principle. Workers needed to be able to exercise the right of withdrawal while awaiting protective measures, and should not suffer prejudice for reporting dangerous situations. Occupational safety and health committees should be generalized. Regulations relating to public procurement should highlight the observance of

OSH standards as a mandatory requirement for the award of a contract, as well as compliance with the ILO's fundamental and priority Conventions. It was not right that workers should have to risk their lives or health in the workplace. Observing safety precautions could considerably reduce the number of accidents. It was the responsibility of the employer to establish rules and prevention and protection measures. Nevertheless, workers themselves and their unions needed to be involved and had the right to intervene in the organization of prevention and safety, participate in OSH committees and implement the right to cease work. Finally, the role of labour inspection was also essential: inspectors needed to be able to prepare a list of safety requirements where necessary, verify their implementation in full independence and impose penalties for inaction. The ILO had adopted a large number of instruments, particularly at the sectoral level, which should be fully taken into account in national laws. MNEs also needed to export best practices. At the national level, a culture of safety and health should be developed in all workplaces. The absence of local laws did not justify inaction of employers at the workplace, which was entirely their responsibility. Considerable progress still needed to be made worldwide, and particularly in France, which had not yet ratified the Convention and only had ratified five of the 18 Conventions covered by the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). In the absence of legislation, employers and workers could nevertheless put in place preventive and protective measures, and this actually occurred in practice. However, the basic principles should be included in mandatory, binding and enforceable standards.

198. The Worker member of Pakistan emphasized that it was the duty of the State and employers to protect the health and life of workers against accidents and occupational diseases. The lack of safety caused a great loss of skilled labour and affected productivity, bringing financial burdens on enterprises. As only 52 member States had ratified Convention No. 155, the others should demonstrate their commitment to decent work and the safety and health of workers by ratifying this important Convention. Legislation in line with Convention No. 155 and Recommendation No. 164 needed to be adopted and effective enforcement machinery established in accordance with Convention No. 81. Education and training programmes for workers and employers needed to be extended and strengthened, with information being disseminated widely among the stakeholders. Data needed to be collected on accidents and their causes and prevention measures adopted by governments and management. There also needed to be a transparent system for holding delinquent employers accountable. He added that it was important to develop social dialogue on OSH in both bipartite and tripartite contexts, and to develop research and publications on labour inspection and social security institutions. Moreover, a safety culture needed to be developed by training trade union trainers in OSH. The ILO should be more proactive in extending technical assistance to governments and the social partners, and the resources of the SafeWork Department should be strengthened in this regard. With regard to the remarks made by the Employer members in relation to the role of labour inspection, he did not agree that the advisory functions of the labour inspectorate should override its enforcement functions. It was the State's responsibility to ensure the implementation of Conventions, laws and regulations. The payment of damages and costs should be overseen by the State so as to impose an effective deterrent on enterprises. With regard to the right to withdraw in the event of imminent danger, he indicated that this was a recognized right in many countries. He provided information on the strategy followed by trade unions in his country for the promotion of a safer work culture through collective bargaining, continuous education and training programmes, and by influencing the Government. Protection should be extended to workers in the informal economy, including the rural sector and SMEs. Short- and long-term plans needed to be devised in this regard.

199. The Worker member of South Africa considered that greater emphasis should be placed on the rights of workers and the obligations of employers in relation to OSH. Trade unions should participate in policy formulation to ensure the establishment of joint health and

safety programmes, including awareness raising. He said that there were deliberate attempts in certain workplaces by employers to ignore trade unions as stakeholders in improving compliance with OSH laws and regulations. Trade union representatives should be involved in providing written evidence of risk assessment, health and safety, inspection and the investigation of accidents to avoid their repetition. Greater emphasis needed to be placed on: (1) promoting the further development of the OSH national action plans, involving the social partners and relevant ministries and departments; (2) promoting workplace prevention measures through the development of health and safety policies and health and safety management systems involving workplace health and safety representatives and committees; and (3) giving consideration in SMEs, where health and safety committees were not established, to regional and roving safety representatives. If all these were put into effect, the number of deaths and diseases would be minimized.

- 200.** The Worker member of the United States was of the view that the ratification of Conventions, the promulgation of standards, the passage of laws or the establishment of a government agency for the protection of the health and safety of workers would not in and of themselves make workers safe. The reality was that proper funding and staffing levels were essential elements of any system designed to monitor workplace safety and health. Emphasis needed to be placed on the strengthening and development of meaningful institutional capacity in public agencies in developed as well as developing countries. He added that the very nature and design of Convention No. 155, Recommendation No. 164 and the Protocol allowed for changes and growth and the desire to continually improve OSH standards. The greater emphasis placed on the development of ergonomic standards in the workplace was a major area of opportunity for the advancement of OSH in the sense that, as technology continued to progress, so did the pace of work, thereby increasing the number of workplace injuries due to repetitive motion. Injuries such as carpal tunnel syndrome and trigger finger could be lessened significantly through the promulgation of simple ergonomic standards, which needed to be constantly reviewed and updated due to the reality of technological advances and ever-changing production techniques. Emphasis on OSH needed to be maintained in view of the “plateau” effect in statistics on fatal and non-fatal accidents and diseases mentioned in the General Survey. It would also be beneficial to assess the impact of immigration on the reporting of occupational accidents and diseases. For example, in recent years, the number of workplace injuries and fatalities had increased among immigrant populations because they were less likely to take action to redress injustice for fear of retaliation, thereby exacerbating the reality of under-reporting. Finally, he recalled that labour representation had a direct and significant impact on OSH. Organized labour was actively engaged at all levels of government to bring about improvements in workers’ safety and health through collective action. A workforce with professional worker representation was a better educated workforce and was more likely, regardless of immigration status, to exercise rights and to report and seek remediation of unsafe working conditions. Studies had shown that better standards of health and safety were achieved in a unionized environment and that levels of compliance were lower in non-unionized workplaces.

Final remarks

- 201.** The Employer members welcomed the discussion of the General Survey and emphasized that it was important to ensure the extension of an effective OSH culture. Indeed, the most important aspect was to raise awareness of this essential objective, which should be done at an early age in the context of education and training in accordance with the activity and size of the enterprise. Perhaps less importance should be attached to the issue of ratification or to the constant development of new regulations in the various forms that they took, such as codes of practice, of which there were many examples at both the national and international levels, promoted by such international bodies as the CIS, the ISO

and the European Agency for Safety and Health. In its work on OSH, the ILO needed to draw more fully on the experience of national and international occupational safety and health institutions. It was also important to ensure that labour inspection systems operated effectively. Moreover, even where inspection systems had reached a high level, they still needed to be continually adapted to technological developments. The Employer members emphasized that OSH was an absolute priority and that it was not acceptable to use the current financial crisis as a pretext for letting OSH standards fall. They observed that many countries that had not ratified Convention No. 155 had a high standard of OSH. They therefore expressed doubts about the conclusion reached by the Committee of Experts that further action should be taken to promote the ratification of the Convention. Indeed, information should be gathered on the obstacles impeding the ratification of Convention No. 155. Should obstacles persist to the ratification of Convention No 155, it might be preferable to promote the ratification of Convention No. 187. In conclusion, the Employer members emphasized that all parties, governments, employers and workers alike, needed to assume their responsibilities in the field of OSH, and that the blame for specific accidents could not normally be attributed to a single party.

- 202.** The Worker members thanked the speakers from the three groups and indicated that the discussion had been rich in information and that greater efforts were needed to promote Convention No. 155. While Convention No. 187 usefully supplemented the provisions of Convention No. 155, ratification of the former could not be considered as an alternative to ratification of the latter. The obstacles to ratification that had been reported could be removed through social dialogue and ILO technical assistance. The existence of legislation and good practice could not exempt a member State from ratifying an ILO instrument. It was essential to further promote the development, in collaboration with the social partners, of national plans of action containing sectoral plans in the field of OSH. It was also essential, especially in the context of the crisis, to reinforce the training and the capacity of labour inspection services to take action and to implement coherent policies among the various ministries concerned. Conventions Nos 81 and 129 were fundamental in this regard. Workers and their representatives needed to be involved in implementing preventive measures and risk management at the enterprise level, as well as in the development of safety and health policies covering small companies, subcontractors and the informal sector. SMEs needed to be assisted, not excluded. The Office needed to increase its efforts in the areas of training, the provision of assistance and international cooperation, and to follow up on the idea of developing specific indicators for occupational safety and health. Many governments had emphasized the fact that the implementation of preventive safety and health policies resulted in increased competitiveness. Indeed, the absence of protection involved costs and this should be taken into account in indicators.

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- 203.** With respect to the General Survey on occupational safety and health, the Chairperson of the Committee of Experts welcomed the numerous positive responses, as well as the many valuable comments and suggestions made. She shared the views expressed that it would have been helpful to have more information on OSH in practice. More accurate data and statistics would probably have enabled the Committee of Experts, as requested by the Worker members, to be more emphatic in its conclusions. She also agreed with the Employer members that it would have been useful and relevant to have further information as regards the obstacles to ratification. She also welcomed the initiative taken by the IOE to set up a global network on OSH (GOSH) that would bring together MNEs with the goal of exploring, disseminating and encouraging good practice.

- 204.** With reference to the question raised by the Employer members regarding the application and monitoring of the flexibility clauses in the Convention, the Chairperson of the Committee of Experts noted that in monitoring the use of these flexibility clauses, and in

the context of a continuing dialogue, the Committee of Experts had always been and would continue to be sensitive to the needs of countries that made use of them. As regards the reference by the Employer members to the conclusions in the General Survey related to the annex to Recommendation No. 164, the Chairperson noted that this annex included a list of instruments relevant for OSH. Without questioning the decision by the Cartier Working Group that Recommendation No. 164 was up to date, she stated that the subsequent adoption of a new list of OSH instruments in the annex to Recommendation No. 197 had caused the old list of instruments in the annex to Recommendation No. 164 to be replaced. She also welcomed the information that the Officers of the Committee would develop conclusions on the basis of the discussions held in the Conference Committee. These conclusions would no doubt reflect these and other issues raised during the discussion of the General Survey and address the calls for proposed follow-up action by the ILO and its constituents in order to bring action forward in the area of OSH. She concluded by encouraging employers' and workers' organizations to submit comments on the application of Conventions, so that the Committee of Experts could better appreciate how Conventions were applied not only in law, but also in practice, in specific national contexts. In furtherance of this understanding, she invited the Employer and Worker Vice-Chairpersons of the Conference Committee once again to meet with the Committee of Experts during its session in November 2009. She added that the Committee of Experts endeavoured to produce a technical and legal analysis that was not a theoretical discourse, but one relating to real world conditions, so that the mission of the ILO of promoting social justice could be furthered.

- 205.** In her reply, the representative of the Secretary-General noted that there were three issues arising from the discussion on the General Survey that she wanted to address: first, as regards the question of recording and notification, the need for accurate and reliable statistical information on the actual impact of OSH had been emphasized by the Employer members and echoed by many other speakers. This was an area where further concerted efforts were required by all parties concerned, not only for developing the required recording and notification systems, but also the required methodological tools. In this respect, she had taken due note of the proposal made by the Employer members to promote the ratification of the Protocol to Convention No. 155 by giving it increased visibility in the APPLIS database. Secondly, due note had also been taken of the proposal made by the Worker members to develop a methodology for the collection of data related to OSH with guidelines and indicators, based on existing good practice and covering the five main spheres of action mentioned in Article 5 of Convention No. 155. She indicated that, in her view, the development of indicators in the area of OSH should be discussed in the context of the development of decent work indicators. It would also have to be addressed in the context of reporting under Convention No. 187, which requires national programmes to include indicators of progress. Finally, note had been taken of the numerous calls for a more proactive approach by the ILO to provide technical assistance to member States to overcome obstacles to the ratification of Convention No. 155. She undertook to ensure that all the interested departments, including field offices, carried out the necessary follow-up.

Conclusions on the General Survey on occupational safety and health

- 206.** Following the discussion and the high level of exchange that took place in the Committee on the General Survey on occupational safety and health, the Committee decided to formulate the following conclusions. It considered that the General Survey was a valuable reference document not only for the tripartite constituents but also for trainers and vocational schools.

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- 207.** The Committee recalled that the ILO Constitution provided for the protection of workers against sickness, disease and accidents at work as a fundamental element of social justice. This had been confirmed by the Declaration of Philadelphia and the Social Justice Declaration. The Committee noted the data contained in the Committee of Experts' report on the high human and economic costs of occupational accidents and diseases. While it welcomed the comprehensive analysis of the legislative framework for occupational safety and health in the world, it regretted the lack of up to date data on occupational accidents and diseases.
- 208.** The Committee also noted the common agreement that occupational safety and health was and remained a subject matter of fundamental importance for all parties concerned also in the present context of the financial and economic crisis. It recognized that occupational safety and health was of crucial importance for the quality of work and human dignity. The Committee also considered that investment in workplace safety was a key factor in productivity and competitiveness and that Convention No. 155 was important in the promotion of a safe and healthy working environment. In this regard, the Committee stressed that all tripartite constituents – governments, employers and workers and their organizations – had an important role to play in promoting a preventative safety and health culture and this required concerted action at national and enterprise levels.
- 209.** Considering the importance of the instruments in question, the Committee considered that the ILO should adopt an action plan on occupational safety and health as recommended by the Governing Body which should include, inter alia, the following:
- (a) The Office should complete the information provided by the Committee of Experts on obstacles to ratification of the relevant instruments and provide technical assistance as appropriate to member States of the ILO to address these obstacles. In addition, the Office should develop a strategy for the promotion of the ratification and the effective implementation of the Occupational Safety and Health Convention, 1981 (No. 155), its 2002 Protocol and/or the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).
 - (b) Collect, evaluate and disseminate statistical data on occupational safety and health. The Committee invited all parties concerned, including governments, employers and workers and their organizations, public officials and labour inspectors and the ILO and its field offices, to cooperate in this regard.
 - (c) Promote a preventative safety and health culture aimed at sensitizing all levels of the workforce and management.
 - (d) Develop a methodology for evaluating occupational safety and health in practice, including specific occupational safety and health indicators.
 - (e) Conduct empirical studies on the economic impact of occupational safety and health standards.
 - (f) Broaden access to occupational safety and health education and training, integrate it at all levels of education and ensure that at the enterprise level, occupational safety and health training included not only occupational safety representatives but also managers and employers.
 - (g) Promote and disseminate best practices in the field of occupational safety and health prevention.

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- (h) Examine ways of addressing the challenges faced for the implementation of occupational safety and health measures by SMEs and the informal economy to enable them to put occupational safety and health measures in place.
 - (i) Develop systems concerning recording and notification of occupational accidents and diseases, to:
 - (i) prioritize measures and economic sectors in special need of attention;
 - (ii) measure progress and the effectiveness of Occupational Safety and Health systems;
 - (iii) continuously update the list of occupational diseases; and
 - (iv) assist enterprises to prevent work-related accidents and diseases.

E. Compliance with specific obligations

- 210.** The Worker members emphasized that the serious failures by member States to fulfil their obligations impeded the proper functioning of the supervisory system and allowed the countries concerned to take unfair advantage of this non-compliance with their obligations, as it was impossible to review national law and practice. They noted that the individual cases that would soon be discussed were of a different nature, but that the failures considered so far were much more serious. Member States should take all possible steps to meet their obligations by having recourse, if necessary, to the technical assistance of the ILO.
- 211.** The Employer members recalled that the obligation to submit reports constituted a fundamental element of the ILO supervisory system. These obligations were intended to prevent governments that had neglected their reporting duties from obtaining an undue advantage. Compliance with reporting obligations was essential for dialogue between the ILO supervisory system and member States on the implementation of ratified Conventions. Any form of failure to comply with these obligations therefore constituted a serious failure in the supervisory system. They noted with interest that the report of the Committee of Experts offered a better understanding of some of the reasons for the failure by member States to fulfil their reporting and other standards-related obligations. It was also to be welcomed that a number of African countries had explained their difficulties during the discussion. The Employer members suggested that an approach should be adopted under which less emphasis was placed on the out of date Conventions, as identified by the Governing Body. Finally, they strongly encouraged member States to request technical assistance from the Office where issues of capacity arose in relation to compliance with reporting and related obligations.
- 212.** In examining individual cases relating to compliance by States with their obligations under or relating to international labour standards, the Committee applied the same working methods and criteria as last year.
- 213.** In applying those methods, the Committee decided to invite all governments concerned by the comments in paragraphs 27 (failure to supply reports for the past two or more years on the application of ratified Conventions), 32 (failure to supply first reports on the application of ratified Conventions), 36 (failure to supply information in reply to comments made by the Committee of Experts), 87 (failure to submit instruments to the competent authorities), and 99 (failure to supply reports for the past five years on

unratified Conventions and Recommendations) of the Committee of Experts' report to supply information to the Committee in a half-day sitting devoted to those cases.

Submission of Conventions, Protocols and Recommendations to the competent authorities

- 214.** In accordance with its terms of reference, the Committee considered the manner in which effect was given to article 19, paragraphs 5–7, of the ILO Constitution. These provisions required member States within 12, or exceptionally 18, months of the closing of each session of the Conference to submit the instruments adopted at that session to the authority or authorities within whose competence the matter lay, for the enactment of legislation or other action, and to inform the Secretary-General of the ILO of the measures taken to that end, with particulars of the authority or authorities regarded as competent.
- 215.** The Committee noted from the report of the Committee of Experts (paragraph 85) that considerable efforts to fulfil the obligation to submit had been made in certain States, namely: **Grenada, Namibia and Peru**. In addition, the Committee received information about the submission to the National Assembly or the ratification of recent Conventions by four governments, namely: **Burkina Faso, Chad, Senegal and Spain**.

Failure to submit

- 216.** The Committee noted that in order to facilitate the work of the Committee, the report of the Committee of Experts mentioned only the governments which had not provided any information on the submission to the competent authorities of instruments adopted by the Conference for seven sessions at least (from the 88th Session in May–June 2000 to the 95th Session in May–June 2006). This time frame was deemed long enough to warrant inviting Government delegations to the special sitting of the Conference Committee so that they may explain the delays in submission.
- 217.** The Committee further noted the regret expressed by many delegations at the delay in providing full information on the submission of the instruments adopted by the Conference to parliaments. Delays from other relevant agencies than the ministries of labour were evoked. Some governments had requested and obtained the assistance of the ILO to clarify how to proceed and to complete the process of submission to national parliaments in consultation with the social partners.
- 218.** The Committee expressed concern at the failure to respect the obligation to submit Conventions, Recommendations and Protocols to national parliaments. It also recalled that the Office could provide technical assistance to contribute to compliance with this constitutional obligation.
- 219.** The Committee noted that the 46 countries were still concerned with this serious failure to submit the instruments adopted by the Conference to the competent authorities, that is, **Antigua and Barbuda, Bahrain, Bangladesh, Bosnia and Herzegovina, Cambodia, Cameroon, Cape Verde, Central African Republic, Chile, Comoros, Congo, Côte d'Ivoire, Croatia, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Gambia, Georgia, Ghana, Guinea, Haiti, Ireland, Kazakhstan, Kenya, Kiribati, Lao People's Democratic Republic, Libyan Arab Jamahiriya, Mozambique, Nepal, Papua New Guinea, Paraguay, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sierra Leone, Solomon Islands, Somalia, Sudan, Tajikistan, The former Yugoslav Republic of Macedonia, Turkmenistan, Uganda, Uzbekistan and Zambia**. The Committee hoped that appropriate measures would be taken

by the governments and the social partners concerned so that they could bring themselves up to date, and avoid being invited to provide information to the next session of this Committee.

Supply of reports on ratified Conventions

220. In Part II of its report (Compliance with obligations), the Committee had considered the fulfilment by States of their obligation to report on the application of ratified Conventions. By the date of the 2008 meeting of the Committee of Experts, the percentage of reports received was 70.2 per cent, compared with 65.0 per cent for the 2007 meeting. Since then, further reports had been received, bringing the figure to 78.0 per cent (as compared with 73.2 per cent in June 2007, and 75.4 per cent in June 2006).

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

221. The Committee noted with regret that no reports on ratified Conventions had been supplied for the past two years or more by the following States: **Cape Verde, Guinea, Guinea-Bissau, Sierra Leone, Somalia, United Republic of Tanzania (Zanzibar), Togo, Turkmenistan and United Kingdom** (British Virgin Islands and Falkland Islands (Malvinas)).

222. The Committee also noted with regret that no first reports due on ratified Conventions had been supplied by the following countries:

Antigua and Barbuda

- since 2004: Conventions Nos 161, 182;

Armenia

- since 2007: Conventions Nos 14, 150, 160, 173;

Dominica

- since 2004: Convention No. 169;
- since 2006: Convention No. 147;

Equatorial Guinea

- since 1998: Conventions Nos 68, 92;

Kyrgyzstan

- since 1994: Convention No. 111;
- since 2006: Conventions Nos 17, 184;

Liberia

- since 1992: Convention No. 133;

Saint Kitts and Nevis

- since 2002: Conventions Nos 87, 98;
- since 2007: Convention No. 138;

Saint Lucia

- since 2002: Convention No. 182;

Sao Tome and Principe

- since 2007: Conventions Nos 135, 138, 151, 154, 155, 182, 184;

Seychelles

- since 2007: Conventions Nos 73, 144, 147, 152, 161, 180;

Tajikistan

- since 2007: Convention No. 182;

The former Yugoslav Republic of Macedonia

- since 2004: Convention No. 182;
- since 2007: Convention No. 144;

Turkmenistan

- since 1999: Conventions Nos 29, 87, 98, 100, 105, 111.

It stressed the special importance of first reports on which the Committee of Experts based its first evaluation of compliance with ratified Conventions.

- 223.** In this year's report, the Committee of Experts noted that 46 Governments had not communicated replies to most or any of the observations and direct requests relating to Conventions on which reports were due for examination this year, involving a total of 519 cases (compared with 555 cases in December 2007). The Committee was informed that, since the meeting of the Committee of Experts, 18 of the Governments concerned had sent replies, which would be examined by the Committee of Experts at its next session.
- 224.** The Committee noted with regret that no information had yet been received regarding any or most of the observations and direct requests of the Committee of Experts to which replies were requested for the period ending 2008 from the following countries: **Bolivia, Burundi, Cape Verde, Congo, Czech Republic, Dominica, Equatorial Guinea, Gambia, Guinea, Guinea-Bissau, Guyana, Islamic Republic of Iran, Ireland, Kyrgyzstan, Lao People's Democratic Republic, Liberia, Nigeria, Paraguay, Russian Federation, Saint Kitts and Nevis, Saint Lucia, Sao Tome and Principe, Sierra Leone, Solomon Islands, United Republic of Tanzania, Thailand, Togo, Uganda and United Kingdom** (Bermuda, British Virgin Islands, Falkland Islands (Malvinas), Gibraltar, St Helena).
- 225.** The Committee noted the explanations provided by the Governments of the following countries concerning difficulties encountered in discharging their obligations: **Bangladesh, Cape Verde, Central African Republic, Czech Republic, Haiti, Liberia, Mozambique,**

Papua New Guinea, Sudan, Togo, Uganda and United Kingdom (Bermuda, British Virgin Islands, Falkland Islands (Malvinas), Gibraltar, St Helena).

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

Supply of reports on unratified Conventions and Recommendations

227. The Committee noted that 262 of the 492 article 19 reports requested on the Occupational Safety and Health Convention, 1981 (No. 155), the Occupational Safety and Health Recommendation, 1981 (No. 164), and the Protocol of 2002 to the Occupational Safety and Health Convention, 1981, had been received at the time of the Committee of Experts' meeting, and a further nine since, making 55.1 per cent in all.
228. The Committee noted with regret that over the past five years none of the reports on unratified Conventions and Recommendations, requested under article 19 of the Constitution, had been supplied by: **Cape Verde, Democratic Republic of the Congo, Gambia, Guinea, Kyrgyzstan, Liberia, Russian Federation, Saint Kitts and Nevis, Sao Tome and Principe, Seychelles, Sierra Leone, Somalia, Tajikistan, The former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Turkmenistan, Uganda, Uzbekistan and Vanuatu.**

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

229. The Committee noted this year that the Governments of **Bangladesh and Saint Vincent and the Grenadines** had failed to indicate, over the past three years, whether they had communicated, in accordance with article 23(2) of the Constitution, copies of reports supplied under article 22 to the ILO, to the representative organizations of employers and workers.

Application of ratified Conventions

230. The Committee noted with particular interest the steps taken by a number of governments to ensure compliance with ratified Conventions. The Committee of Experts listed in paragraph 54 of its report new cases in which governments had made changes to their law and practice following comments it had made as to the degree of conformity of national legislation or practice with the provisions of a ratified Convention. There were 49 such cases, relating to 40 countries: 2,669 cases where the Committee of Experts was led to express its satisfaction with progress achieved since it began listing them in 1964. These results were tangible proof of the effectiveness of the supervisory system.
231. This year, the Committee of Experts listed in paragraph 57 of its report, cases in which measures ensuring better application of ratified Conventions had been noted with interest. It noted 213 such instances in 103 countries.

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

Specific indications

233. The Government members of **Bahrain, Bangladesh, Cambodia, Cape Verde, Central African Republic, Comoros, Congo, Côte d'Ivoire, Czech Republic, Djibouti, Haiti, Islamic Republic of Iran, Ireland, Kenya, Kiribati, Liberia, Mozambique, Nepal, Nigeria, Papua New Guinea, Paraguay, Russian Federation, Sudan, United Republic of Tanzania, United Republic of Tanzania (Zanzibar), Timor-Leste, Togo, Uganda and United Kingdom** (Bermuda, British Virgin Islands, Falkland Islands (Malvinas), Gibraltar, St Helena), had promised to fulfil their reporting obligations as soon as possible.

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

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

Special cases

235. The Committee considered it appropriate to draw the attention of the Conference to its discussion of the cases mentioned in the following paragraphs, a full record of which appears as Part Two of this report.
236. As regards the application by the **Islamic Republic of Iran of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)**, the Committee noted the statement of the Government representative and the discussion that followed. The Committee noted that the Committee of Experts had raised a number of issues, including: the lack of any improvement in the social dialogue situation in the country; the need for information on the practical measures to implement the national plans and policies relevant to equality in employment and occupation, and the results achieved; the situation of women in vocational training and employment; discriminatory job advertisements; discriminatory laws and regulations; the situation of unrecognized religious minorities, in particular the Baha'i, and ethnic minorities; and the importance of accessible dispute resolutions mechanisms. The Committee of Experts, noting the Government's indication that a comprehensive bill prohibiting any form of discrimination in employment and education had been drafted, had expressed the hope that every effort would be made to adopt in the near future a comprehensive law on non-discrimination which was fully in conformity with the Convention. The Committee took note of the Government's statement that it would provide full information, including detailed statistics, on all the issues raised by this Committee in 2006 and 2008 and by the Committee of Experts. The Government stated that the Charter of Citizenry Rights had been a successful instrument to ensure the protection of rights including non-discrimination, and that it had been used to discipline judges who did not adequately ensure the rights of citizens. The Government also provided information on training provided to judges on citizens' rights and referred to a joint project with the United Nations Development Programme on human rights promotion and

development of justice. The Government indicated that the judiciary had declared null and void a range of administrative orders. On the issue of quotas regarding the access of women and men to university, the Government acknowledged that such quotas existed in 39 fields of study, stating that the aim was to balance the participation of women and men. The Government also provided information on certain cases relating to the infringement of the rights of minorities and discrimination against women. Information on programmes to promote women in employment and as entrepreneurs was also provided. Regarding the Baha'i, the Government referred to one recent case ruling in favour of a Baha'i institution that had complained that its land had been unlawfully seized. The Government acknowledged that the cultural and historical fabric of the society meant that progress in bringing law and practice into conformity with the Convention would be slow, but expressed its commitment to continuing to move forward in that direction. The Government asked for coordination and closer cooperation among various governance bodies and the national social partners, as well as assistance from the ILO. The Committee regretted that there was an ongoing need to discuss this case regularly before this Committee given the absence of progress on the range of issues that had been raised over the years. It noted that during its most recent examination in June 2008, it had requested the Government to take urgent action on all the outstanding issues with a view to fulfilling its promises of 2006 that it would bring all its relevant legislation and practice into line with the Convention by no later than 2010, and requested the Government to provide complete and detailed information to the Committee of Experts at its 2008 session in reply to all the pending issues. The Committee noted with concern the lack of information that had been provided to the Committee of Experts, despite this specific request, and that a range of serious issues remained outstanding. The Committee expressed its deep concern that, due to the continuing context of repression of freedom of association in the country, meaningful social dialogue on these issues at the national level had not been possible. The Committee, while acknowledging that certain achievements had been made in the past in respect of vocational education and employment of women, remained concerned at the lack of evidence of any real progress made with respect to their situation in the labour market. Detailed information on the number of women actually finding employment after their education and training was still lacking and concerns remained with respect to existing and draft legislation limiting women's employment. The Committee also noted the need for information on the quota system in universities and how it was applied in practice, as well as information on the impact on women's employment of the recent law limiting working hours for women with children. The Committee noted that the outstanding issues raised by the Committee of Experts in this regard remained unanswered. The Committee expressed continuing concern about the situation of religious and ethnic minorities with regard to their equal access to employment and occupation, and the failure to provide adequate statistical information in this regard. It concluded that the Baha'i continued to be subject to discrimination as regards access to education and employment without any significant measures being taken by the Government to bring discriminatory practices, including on the part of the authorities, to an end. The Committee urged the Government to take immediate and urgent action to ensure the full application of the Convention, both in law and practice, and to establish genuine social dialogue in this context. The Committee urged the Government to provide full, objective and verifiable information in its report to the Committee of Experts when it was next due, in reply to the issues raised by this Committee and by the Committee of Experts. It expressed the firm hope that such information would evidence that concrete progress had been made on all the matters raised.

237. As regards the application by **Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee took note of the written and oral information provided by the Government representative and the detailed discussion that followed. The Committee also recalled that it had discussed this serious case on numerous occasions over the last two decades and that its conclusions had been

listed in a special paragraph for continuous failure to implement the Convention since 1996. The Committee deplored the gravity of the information provided to the Committee of Experts by the International Trade Union Confederation (ITUC) with respect not only to the long-standing absence of a legislative framework for the establishment of free and independent trade union organizations, but also of the grave allegations of arrest, detention and denial of workers basic civil liberties, some of which have been examined by the Committee on Freedom of Association. The Committee took note of the statement made by the Government representative in which he stressed that Myanmar was in the process of transforming to a democratic society and that freedom of association rights, as well as other basic civil liberties, have been provided for in the new Constitution. Once the Constitution comes into force, labour organizations will emerge in line with it and will be able to carry out activities for the interests of workers. With regard to the question of the recognition of the Federation of Trade Unions of Burma (FTUB), the Government reiterated its previous statement that the Ministry of Home Affairs declared the FTUB to be a terrorist organization in 2006; it was therefore not possible to recognize it as a legitimate organization. As regards the allegations of murder, arrest, detention, torture and sentencing of trade unionists, the Government explains that action was not taken because of the exercise of trade union activities but rather due to breaches of existing laws and attempts to bring hatred and contempt upon the Government. The Government also provided information on the role played by the Township Workers' Supervisory Committee in dispute settlement. Recalling that fundamental divergences existed between the national legislation and practice ever since the Convention was ratified more than 50 years ago, the Committee once again urged the Government in the strongest terms to adopt immediately the necessary measures and mechanisms for the full assurance to all workers and employers of the rights provided for under the Convention. It once again urged the Government to repeal Orders Nos 2/88 and 6/88, as well as the Unlawful Association Act, so that they could not be applied in a manner that would infringe upon the rights of workers' and employers' organizations. While taking due note of the Government's statement that its Constitution was overwhelmingly approved through a referendum by over 90 per cent of the population and that it included respect for freedom of association and basic civil liberties, the Committee wishes to highlight the intrinsic link between freedom of association and democracy and observes with regret that the Government has embarked upon a road map for the latter without ensuring the basic requisites for the former. The Committee was obliged once again to stress that respect for civil liberties was essential for the exercise of freedom of association and called upon the Government to take concrete steps urgently, with the full and genuine participation of all sectors of society regardless of their political views, to ensure that the Constitution, the legislation and the practice are fully brought into line with the Convention. It urged the Government to take all measures to ensure that workers and employers could exercise their freedom of association rights in a climate of complete freedom and security, free from violence and threats. The Committee continued to observe with extreme concern that many people remain in prison for exercising their rights to freedom of expression and association, despite its calls for their immediate release. The Committee therefore once again calls upon the Government to ensure the immediate release of: Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Sin and Myo Min, as well as all other persons detained for exercising their basic civil liberties and freedom of association rights. The Committee once again recalled the repeated recommendations made by the Committee of Experts and the Committee on Freedom of Association for the recognition of trade union organizations, including the FTUB, and urged the Government to put an end to the persecution of workers or other persons for having contact with workers' organizations, including those operating in exile. The Committee recalled its previous conclusion that the persistence of forced labour could not be disassociated from the prevailing situation of a complete absence of freedom of association and the systematic persecution of those who try to organize and called upon the Government to accept an extension of the ILO presence to cover the matters relating to Convention No. 87. The Committee urged the Government

to transmit all relevant draft laws and a detailed report on the concrete measures taken to ensure significant improvements in the application of the Convention, including as regards the serious matters raised by the ITUC, to the Committee of Experts at its upcoming session. The Committee expressed the firm hope that it would be in a position to observe meaningful progress in this regard at its next session.

- 238.** As regards the application by **Swaziland of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee took note of the statement made by the Government representative and the debate that took place thereafter. The Committee observed that the comments of the Committee of Experts had referred for many years to the need to repeal the Decree/State of Emergency Proclamation and its implementing regulations and the Public Order Act, as well as to restrictions to the right to organize of prison staff and domestic workers, the right of workers' organizations to elect their officers freely and the right to organize their activities and programmes of action. The Committee took note of the Government's detailed reply in relation to the allegations of arrest and detention of the Secretary-General of the Swaziland Federation of Trade Unions (SFTU). While the Government acknowledged that the police called Mr Sithole to headquarters for questioning in relation to serious insults allegedly made in respect of the King in his presence, the Government representative insisted that this had nothing to do with his trade union activity and he was not detained any further. The Government representative provided further information in relation to the other allegations and, while admitting that some elements were true, he stressed that there were also serious inaccuracies. He also indicated that the request for change of the national Constitution had already been tabled with the High-Level Social Dialogue Steering Committee, as requested by the 2006 ILO high-level mission. He further informed that a draft law within the framework of the Labour Advisory Board amended some provisions objected to by the Committee of Experts and would be put before the Parliament this year. Finally, the Government representative stressed that workers' rights were fully guaranteed by the 2005 Constitution. The Committee noted with concern the Government's reply to the allegations submitted by the ITUC to the Committee of Experts concerning the acts of violence carried out by the security forces and the detention of workers for exercising their right to strike, and felt itself obliged to recall the importance it attached to the full respect of basic civil liberties such as freedom of expression, of assembly and of the press. The Committee stressed that it was the responsibility of governments to ensure respect for the principle according to which the trade union movement can only develop in a climate free from violence, threat or fear and called upon the Government to ensure the release of any persons being detained for having exercised their civil liberties. The Committee regretted that, although the Government had benefited from ILO technical assistance for some time now, including through a high-level mission, the legislative amendments requested for many years now had yet to be adopted. The Committee urged the Government to take the necessary measures so that the amendments requested by the Committee of Experts would finally be adopted. Noting with concern that the Special Consultative Tripartite Committee of the High-Level Steering Committee on Social Dialogue had not met for several months, the Committee, stressing the importance of social dialogue, particularly in these times of economic crisis, urged the Government to reactivate this Committee as a matter of urgency. It further highlighted its outstanding calls to the Government to repeal the 1973 Decree, to amend the 1963 Public Order Act, as well as the Industrial Relations Act, and expressed the firm hope that meaningful and expedited progress would be made in the review of the Constitution before the Social Dialogue Steering Committee, as well as in respect of other contested legislation and bills. The Committee offered the continuing technical assistance of the Office in regard to all the above matters. The Committee requested the Government to transmit a detailed report to the Committee of Experts for its meeting this year containing a time-line for resolution of all the pending questions. The Committee expressed the firm hope that it would be in a position to note tangible progress next year.

Continued failure to implement

239. The Committee recalled that its working methods provide for the listing of cases of continued failure over several years to eliminate serious deficiencies, previously discussed, in the application of ratified Conventions. This year the Committee noted with great concern that there had been continued failure over several years to eliminate serious discrepancies in the application by **Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**.
240. The government of the country to which reference was made in paragraph 237 was invited to supply the relevant reports and information to enable the Committee to follow up the abovementioned matter at the next session of the Conference.

Participation in the work of the Committee

241. The Committee wished to express its gratitude to the 50 governments which had collaborated by providing information on the situation in their countries and participating in the discussion of their individual cases.
242. The Committee regretted that, despite the invitations, the Governments of the following States failed to take part in the discussions concerning their countries, fulfilment of their constitutional obligations to report: **Armenia, Bolivia, Burundi, Cameroon, Chile, Democratic Republic of the Congo, Equatorial Guinea, Gambia, Georgia, Ghana, Guinea, Guinea-Bissau, Kazakhstan, Lao People's Democratic Republic, Rwanda, Sao Tome and Principe, Sierra Leone, Somalia, Tajikistan, Thailand, The former Yugoslav Republic of Macedonia, Uzbekistan and Zambia**. Likewise, the Governments of the following States did not take part in these discussions while informing the Committee of the reasons for their non-participation: **Bosnia and Herzegovina, Croatia** and the **Libyan Arab Jamahiriya**. The Committee decided to mention the cases of all these States in the appropriate paragraphs of its report and to inform them in accordance with the usual practice.
243. The Committee noted with regret that the Governments of the States which were not represented at the Conference, namely: **Antigua and Barbuda, Dominica, Guyana, Kyrgyzstan, Saint Kitts and Nevis, Saint Lucia, Seychelles, Solomon Islands, Turkmenistan and Vanuatu** were unable to participate in the Committee's examination of the cases relating to them. It decided to mention these countries in the appropriate paragraphs of this report and to inform the Governments, in accordance with the usual practice.

Geneva, 16 June 2009.

(Signed) Mr Sergio Paixão Pardo
Chairperson

Mr Christiaan Horn
Reporter

