



## SECOND ITEM ON THE AGENDA

**Proposals for the agenda of the 93rd  
Session (2005) of the International  
Labour Conference****Contents**

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## Introduction

1. In accordance with its regular practice, the Governing Body holds in November each year a first discussion on items that are proposed to be placed on the agenda of the International Labour Conference which takes place two-and-a-half years later. The purpose of this discussion is to select a shortlist of items for closer scrutiny in March the following year. The general practice has been to fix the agenda of the International Labour Conference, which will be held two years later, at that time.
2. The present document, submitted for consideration by the Governing Body at its 285th Session (November 2002), thus contains, in the first part, proposals for items which could be placed on the agenda of the 93rd Session (2005) of the International Labour Conference.
3. Since 1997, the Governing Body has extended the scope of the November discussion to include also an examination of items that could be considered for inclusion in the agenda of future Conferences. These are items which do not appear to be at a sufficiently developed stage to be acted upon immediately, but which could be considered for Conferences held after 2005. Such other proposals are contained in the second part of this document. The Governing Body might wish to indicate which other proposals should be taken as priority for research work and consultations by the Office in order to advance their level of preparation, taking into account the resources and time necessary for this to be done.
4. It should also be recalled that the Governing Body decided at its 279th Session (November 2000) to adopt a new approach to ILO standard setting and other standards-related activities and to place items on the agenda of the International Labour Conference for general discussions based on an “integrated approach”.<sup>1</sup> This decision does not affect the regular practice to place items on the agenda of the International Labour Conference which are proposed for standard setting or for general discussions. The first general discussion based on an integrated approach will focus on occupational safety and health and will be held at the 91st Session (2003) of the Conference. It will be followed by a discussion on migrant workers at the 92nd Session of the Conference in 2004.
5. Before presenting the proposals, a question raised by the members of the Governing Body in November 2001 concerning the follow-up to Conference discussions based on an integrated approach will be examined.

## Follow-up to Conference discussions based on an integrated approach

6. The Governing Body has requested the Office to examine to what extent it would be possible to enable a consideration of items in follow-up to general discussions based on an integrated approach (“follow-up items”) earlier than would follow from application of the regular procedures, and the possible implications this might have on the procedure for the selection of items for the Conference. As noted previously, the intended outcome of these general discussions is a plan of action regarding future ILO action in relation to international labour standards, other types of instruments, and promotion of standards as

<sup>1</sup> See GB.279/4, GB.279/5/2, as well as GB.280/2.

well as technical cooperation, dissemination of information and knowledge management. In accordance with its regular procedures the Governing Body would be called upon to give appropriate follow-up to the different elements in such a plan of action.

7. It should be noted that the plan of action might contain several subject matters that could result in separate items on the agenda of the Conference as well as in other contexts. These items will most probably have to be taken up at different sessions of the Conference. Certain items might be prepared according to the single discussion procedure, while other items may require a double discussion. It might be possible to place some items on the agenda without delay to the extent that the preparatory work will already be well under way, while others may require additional research that the Office will carry out pursuant to directions given by the Governing Body.
8. In the present context, the relevant issue to consider would be follow-up items involving *standard setting*. The question of when the Conference could consider a follow-up item depends on the procedures for *placing* standard-setting items on the agenda of the Conference, as well as the method and time required for *preparing* items on the agenda.
9. Article 10, paragraph 1, of the Standing Orders of the Governing Body provides that: "When a proposal to place an item on the agenda of the Conference is discussed for the first time by the Governing Body, the Governing Body cannot, without the unanimous consent of the members present, take a decision until the following session." The first discussion currently takes place in November each year and the second discussion in March the following year. Accordingly, the Governing Body will hold the first discussion on the agenda for the Conference in 2005 at this session and the second discussion in March next year.
10. Taking the possible follow-up to the Conference discussion in 2003 as an example, the first regular occasion for the Governing Body to consider a follow-up item would be in November 2003 in the context of the first discussion on items for the Conference in 2006. The agenda for this session of the Conference would then be fixed at the next session in March 2004.
11. The only earlier occasion to have a follow-up item on the agenda of the Conference would be at the Conference in 2005 – i.e. the agenda of the Conference session that is currently to be discussed – although the outcome of the first general discussion based on an integrated approach (obviously) only will be known in June 2003. One possibility would be for the Governing Body to hold its regular two discussions on the agenda and in its decision on which items to place on the agenda of the Conference in 2005 "reserve" a place for a follow-up item. This decision would have to be taken without knowing what the actual outcome of the general discussion would be. If such a decision were taken, a discussion on this follow-up item could be held in November 2003. However, as the time available for the preparations of this item would already at this stage be eight months shorter than usual, it would not be possible to discuss this item a second time in March 2004. A decision in November 2003 to place a follow-up item on the agenda of 2005 would thus have to be unanimous. A schedule for reduced intervals for the preparations of this item would be called for.
12. The Office and the constituents normally have 26 months between the decision to place an item on the agenda and the holding of the first (or only) Conference discussion and an additional year in the case of a double discussion. These time frames take into account not only the actual preparation but also translation, printing and dispatch of the required reports and comments thereon. A decision in November 2003 to examine an item in June 2005 would reduce the available time by eight months. Whether or not such a reduction would be appropriate would have to be examined in the light of the scope and difficulty of

the actually proposed follow-up item. Such an assessment can hardly be done “in abstracto”, i.e. without a concrete proposal, or “ex-ante”, i.e. before any proposal has been developed. It should also be taken into account that reduced intervals in any event increase the demands on all parties concerned to maintain the level of quality required.

13. To sum up, according to regular procedures, one (or several) follow-up item(s) emanating from the Conference discussion in 2003 could be considered in the context of the Conference in 2006. Subject to the conditions stated above, there is no obstacle from a legal point of view to considering a follow-up item in the context of the Conference in 2005. However, the Governing Body would have to take into account the obvious difficulties of “reserving” a place on the agenda beforehand and maintaining a high level of quality in the preparations with less time available.

### Proposals for the agenda of the 93rd Session (2005) of the International Labour Conference

14. The proposals submitted for consideration by the Governing Body for the 93rd Session (2005) of the International Labour Conference include two proposals for standard setting, one proposal for general discussion and three proposals for general discussion based on an integrated approach.
- *Two proposals for standard setting.* In the area of fundamental principles and rights at work, the Office resubmits for consideration the proposal for the **possible extension of the grounds on which discrimination is prohibited in Article 1 of Convention No. 111.**<sup>2</sup> In the area of employment, the Office submits a proposal on **promoting decent work in the reconstruction of conflict-affected countries.** This subject matter has previously been presented for a general discussion, but is now suggested for standard setting.
  - *One proposal for general discussion.* With reference to a proposal raised at the 283rd Session (March 2002) of the Governing Body, the Office is submitting a new proposal to place the item **the role of the ILO in technical cooperation** on the agenda of the Conference in 2005 for a general discussion. In 1987, the Conference concluded that it would be desirable for the International Labour Conference to review the technical cooperation programme regularly, at least every five years and, as noted in March 2002, the last such discussion was held in 1999.
  - *Three proposals (one new) for a general discussion based on an integrated approach.* In the area of fundamental principles and rights at work the proposal to hold a discussion on the subject of **child labour and protection of children and young persons** with a wide and comprehensive approach to the question of child labour is resubmitted in a slightly updated form. This discussion would be aimed at setting further directions for how standards, promotion, advocacy and technical cooperation activities can be combined to increase the protection of children and young persons. The second proposal for an integrated approach is also a resubmitted item **gender equality in the world of work.** The third item is a proposal to discuss the question of **decent jobs and productivity.** This subject matter has been proposed previously for general discussion but the scope of this discussion is proposed to be broadened to be based on an integrated approach with a view to developing a plan of action in this area as part of the implementation of the Global Employment Agenda.

<sup>2</sup> This proposal remains unchanged as compared to the proposal on this subject matter examined by the Governing Body at its 283rd Session.

15. With reference to the proposals submitted for consideration by the Governing Body in November 2001, it should be noted that the item **work and family in the twenty-first century** is not now presented for consideration as the main and substantive issues proposed for discussion in this proposal appeared to overlap with parts of the proposal “gender equality in the world of work”. Furthermore, the proposal to hold a general discussion on the item **strengthening tripartism and social dialogue** is not presented for the time being. This proposal might require further consideration in the light of the follow-up to the “resolution concerning tripartism and social dialogue”, adopted at the 90th Session (2002), which will be discussed at the present session of the Governing Body.

### Proposals for the agenda of future Conferences

16. Three proposals are resubmitted for consideration in the context of the agenda of future Conferences. These include the two proposals for a discussion on **working time** and of **prevention of sexual harassment in the workplace**. As regards both these subject matters, the Office is pursuing its research activities with a view to developing an appropriate framework for future Conference discussions on each of these subjects. It should be recalled that, at the 93rd Session (2005) of the Conference, the Committee on the Application of Standards will examine a General Survey on the Hours of Work (Industry) Convention, 1919 (No. 1), and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30). The Governing Body is also invited to reconsider a proposal in the area of special categories of workers relating to **port work**. It is proposed to hold a general discussion on the basis of an integrated approach with a view to developing a plan of action for future ILO directions in this area. Such discussion would enable the constituents to consider an appropriate follow-up to decisions by the Governing Body, based on the work of the Working Party on Policy regarding the Revision of Standards, to revise several instruments in this area. Depending on the developments in the maritime sector, this proposal could be considered for the Conferences of 2006 or 2007. The Governing Body may wish to consider expressing its views as to the need to prioritize further work on either of these three items.

### Agenda of the 93rd Session (2005) of the International Labour Conference

17. At its 93rd Session (2005), the Conference will have before it the following standing agenda items:
- reports of the Chairperson of the Governing Body and of the Director-General including the Global Report on forced labour under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work; and
  - information and reports on the application of Conventions and Recommendations.
18. Furthermore, the agenda of the 92nd Session (2004) of the International Labour Conference, as drawn up at the 283rd Session of the Governing Body includes the following items: (1) a comprehensive standard (a Convention supplemented by a Recommendation) on work in the fishing sector (*first discussion*); and (2) migrant workers (*general discussion based on an integrated approach*). As a result, a second discussion on a comprehensive standard on work in the fishing sector would therefore be on the agenda of the 93rd Session (2005) of the Conference. It should also be recalled that it is envisaged to convene a Maritime Session of the International Labour Conference in 2005 to adopt an instrument consolidating all ILO maritime instruments.

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## Purpose of the first discussion

19. The Governing Body is invited to hold a first discussion on the proposals contained in the first part of the present document in the framework of the provisions of article 10, paragraph 1, of its Standing Orders with a view to selecting a number of items for closer scrutiny at its 286th Session (March 2003). For that session, and based on this selection, concise statements of law and practice stipulated in article 10, paragraph 2, of the Standing Orders of the Governing Body will be prepared, as appropriate. In March 2003 the Governing Body will then determine which items will be selected to complete the agenda of the 93rd Session (2005) of the International Labour Conference.
20. As noted above, in addition to selecting the items for closer scrutiny at its 286th Session (March 2003), on the basis of the proposals submitted, the Governing Body is also invited to give indications concerning other proposals which could take priority for research work and consultations by the Office. The level of preparation of such proposals could thus be advanced, taking into account the resources and time necessary for this to be done.
21. *In order to draw up the agenda of the 93rd Session (2005) of the International Labour Conference and to develop items for the agenda of future Conferences, the Governing Body is invited –*
  - (a) *to examine the proposals for the agenda of the International Labour Conference contained in the present document;*
  - (b) *to select the proposals to be examined in greater depth at its 286th Session (March 2003), when it will finalize the agenda of the 93rd Session (2005) of the International Labour Conference; and*
  - (c) *to indicate the proposals for which research work and consultation might be accelerated.*

## Part I. Proposals for the agenda of the 93rd Session (2005) of the International Labour Conference

### Fundamental principles and rights at work

#### 1. *New measures concerning discrimination in employment and occupation – Extension of the grounds on which discrimination is prohibited in Article 1 of Convention No. 111 (standard setting)*

##### Summary

In its Special Survey of 1996 on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Committee of Experts found that a number of grounds on which discrimination is prohibited in other ILO standards, in other international standards, and above all in national legislation, are not covered by this Convention. Convention No. 111 is, however, the ILO's principal instrument against discrimination. It is therefore recommended that the Governing Body consider the adoption of a Protocol which would leave the Convention itself unchanged and would allow countries ratifying it to accept formally additional grounds on which discrimination would be prohibited. This would consolidate the ILO's protection against discrimination, and bring the ILO into closer harmony with more recent international human rights instruments adopted by other organizations and with developing national practice.

### Introduction

- 22.** In its 1996 Special Survey on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Committee of Experts on the Application of Conventions and Recommendations recommended that consideration be given to adopting a Protocol to the Convention that would provide additional grounds on which discrimination would be prohibited under the Convention, taking account of changes which have taken place in this field and are reflected in national law, as well as incorporating prohibited grounds of discrimination already covered in other ILO Conventions.
- 23.** The Committee of Experts suggested adding a Protocol that could be ratified in addition to the Convention, either by countries that had already ratified it, or at the time of ratification of the Convention. Convention No. 111, one of the ILO's fundamental Conventions, would remain unmodified. There appears to be general agreement that the approach to consolidate and extend the grounds on which discrimination should be prohibited in employment and occupation would be the preferred one, should the subject be dealt with.

### The situation in national law and practice

- 24.** Convention No. 111 requires ratifying States to take action against discrimination in employment and occupation on the basis of race, colour, sex, religion, political opinion, national extraction and social origin. The Committee found, however, that there was sufficient indication in national laws on discrimination, or in other ILO Conventions, to merit the adoption of a Protocol that would allow States to undertake additional obligations in respect of some or all of the following criteria (listed in alphabetical order): age, disability, family responsibilities, language, matrimonial status, nationality, property, sexual orientation and state of health. Recent research reveals an increasing number of countries extending grounds of prohibited discrimination to include the aforementioned

ones. Indications are given below of how these criteria are addressed in national law and practice.

### Age

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

### State of health

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

### Disability

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

have adopted measures to protect disabled workers in certain aspects, i.e. access to employment, or promulgated laws that cover the rights of the disabled (*Benin, Bolivia, France, Gabon, Honduras, Iceland, Italy, Luxembourg, Madagascar, Poland, Uruguay, Venezuela and Viet Nam*).

### Sexual orientation

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

### Language

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

### Coverage in other standards

- 30.** The Committee of Experts also devoted considerable attention in the Special Survey to the additional grounds for discrimination that are covered in other ILO standards. [Even though] Convention No. 111 [is the ILO's principal instrument on the prevention of discrimination,] [it] does not cover many of the areas on which ILO standards offer the strongest – and often the only – protection in international law. These include age,<sup>3</sup>

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

nationality,<sup>4</sup> trade union membership,<sup>5</sup> disability<sup>6</sup> and family responsibilities.<sup>7</sup> The adoption of a suitable Protocol would allow the consolidation of protection and added coherence in the ILO's advisory and supervisory efforts on the subject. This may be a particularly important point in the context of the ILO's work in bringing its body of standards up to date and rendering them more coherent.

31. For example, Convention No. 156 on workers with family responsibilities, adopted after Convention No. 111, calls for persons to be protected against discrimination, as defined in Convention No. 111 on the basis of their family responsibilities. Convention No. 158 on termination of employment, 1982, prohibits termination on grounds, inter alia, of race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction, social origin or absence from work during maternity leave.
32. Finally, human rights standards adopted by other international organizations since the 1958 ILO Convention have further expanded the protection offered in international law against discrimination, without all these grounds being covered in Convention No. 111.<sup>8</sup> The

<sup>4</sup> The Maternity Protection Convention, 1919 (No. 3), Art. 2; Maternity Protection Convention (Revised), 1952 (No. 103), Art. 2; Plantations Convention, 1958 [and Protocol, 1982] (No. 110), Arts. 2 and 46; Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), Art. 6; Seamen's Welfare in Ports Recommendation, 1936 (No. 48), Para. 3; Vocational Training (Agriculture) Recommendation, 1956 (No. 101), Para. 3(1); Indigenous and Tribal Populations Recommendation, 1957 (No. 104), Para. 35(b); Plantations Recommendation, 1958 (No. 110), Para. 2. It should be noted that the ground of nationality is fundamental to the standards relating to migrants and that provisions intended to ensure them equality of opportunity and treatment and/or protection against discrimination are therefore included in the corresponding instruments, namely: the Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48), Arts. 2 and 10; Migration for Employment Convention, 1939 (No. 66); Migration for Employment Convention (Revised), 1949 (No. 97), Art. 2; Equality of Treatment (Social Security) Convention, 1962 (No. 118), Art. 3; Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); Maintenance of Social Security Rights Convention, 1982 (No. 157); Migration Statistics Recommendation, 1922 (No. 19); and the Migration for Employment Recommendation, 1939 (No. 61); Migration for Employment Recommendation (Revised), 1949 (No. 86); Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955 (No. 100), Para. 45.

<sup>5</sup> The Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82), Art. 18(1) and (2); Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Art. 1; Plantations Convention, 1958 [and Protocol, 1982] (No. 110), Art. 2; Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), Art. 14(1) and (2); Social Policy in Dependent Territories Recommendation, 1944 (No. 70), Para. 41(3); Plantations Recommendation, 1958 (No. 110), Para. 2; Workers' Housing Recommendation, 1961 (No. 115), Para. 25. Trade union membership of migrant workers is referred to in Recommendation No. 100, Para. 38, and in the Migrant Workers Recommendation, 1975 (No. 151), Para. 8(3); Private Employment Agencies Recommendation, 1997 (No. 188), Para. 9.

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

<sup>7</sup> The Workers with Family Responsibilities Convention, 1981 (No. 156); Workers with Family Responsibilities Recommendation, 1981 (No. 165); Private Employment Agencies Recommendation, 1997 (No. 188), Para. 9.

<sup>8</sup> Selected list of international instruments: *disability* has been interpreted as included in "other status" in ICESCR, art. 2(2) – CESCR General Comment No. 5 (E/1995/22-e/c.12/1994/20, p. 99),

Committee of Experts stated that, “with a view to the coherence of international human rights law, it would be desirable to take these into account in considering the present Convention”. Of these other instruments, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, both adopted in 1966 and now widely ratified, both contain the following passage: “The States parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” On the regional level, the Committee of Experts noted also the European Convention on Human Rights, adopted in 1950, which in its Article 14 prohibits discrimination on the basis of “sex, race, colour, language, religion, political or other opinion, association with a national minority, property, birth or other status”.<sup>9</sup>

## Conclusions

- 33.** The Governing Body is therefore invited to give further consideration to the proposal by the Committee of Experts to examine a Protocol to Convention No. 111 on possible additional grounds of discrimination. The Committee recommended that the Governing Body and the Conference consider two alternative solutions in this respect. The first would be to allow States to ratify the Protocol and to choose which of the additional grounds listed in it they would wish to accept as additional obligations under the Convention (see paragraph 24). The second possibility would be to adopt a list of “core” grounds that would have to be accepted when ratifying the Protocol, and allowing States to decide to accept others from the list as well. This latter solution has been favoured by most of those who have referred to it in previous consultations. The Committee considered that this should be done with no modification to the existing instrument, but simply by the adoption of a Protocol that could be ratified on a voluntary basis.
- 34.** The Committee of Experts also pointed out that a provision already exists in Convention No. 111 allowing governments to undertake obligations in regard to grounds other than those detailed in the Convention. Article 1(1)(b) states that the definition of discrimination can be modified to include any other distinction, exclusion or preference which may be determined by the government of the ratifying country after consultation with representative employers’ and workers’ organizations. While some stated in previous consultations that this route should be pursued, the Committee of Experts suggested the Protocol as a better way of allowing States to extend the grounds covered by the Convention. It may also be noted that suggestions by the Committee of Experts to governments that they have recourse to Article 1(1)(b) have not yet met with a positive response.

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

<sup>9</sup> Many analogous provisions exist, e.g. in the Inter-American human rights provisions (OAS Charter and Protocol of Buenos Aires, Convention on Human Rights and Protocol of San Salvador); European Convention on Human Rights and various Protocols, European Social Charter and the African Charter on Human and Peoples’ Rights.

35. It may be expected that this Protocol would have several important differences from Article 1(1)(b). It should be noted that the text of the Convention provides no clear indication of how such a determination should be made or communicated to the Committee of Experts, unlike a Protocol, which is clearly open to explicit ratification. Upon adoption, a Protocol would have to be submitted to the competent authorities of all member States in the same manner as Conventions and Recommendations, and would therefore have to be considered formally by governments. There is no obligation on governments which have ratified the Convention to undertake any formal consultation on the grounds of discrimination under Convention No. 111, and they do not appear in fact to carry out consultations in this regard.
36. Ratification of the Protocol would give rise to an international obligation as well as a public commitment to the grounds specified by the government ratifying it, providing a rallying point for action concerning the prevention of discrimination in employment and occupation. Depending on national legal systems, it would embed the grounds selected in national law as well as in international commitments, in a way that a voluntary declaration under Article 1 of the Convention would not. Finally, there is no contradiction between the approach of ratifying an additional Protocol and that of making additional declarations under Article 1 of the Convention – they would be compatible and could be complementary if governments were to begin using the procedure allowed for in the Convention.

## 2. **Child labour and protection of children and young persons** (general discussion based on an integrated approach)

### Summary

The main pillars in the area of child labour are the fundamental Conventions Nos. 138 and 182 and their supplementing Recommendations Nos. 146 and 190. Based on these instruments, the InFocus Programme on Child Labour (IPEC) combines various activities from promotion of standards to technical cooperation. It is now considered timely to propose a general discussion to consider: (1) necessary measures to ensure the effective abolition of child labour in general, not limited only to its worst forms; and (2) action related to the protection of children and young persons in general including a discussion on existing instruments regulating night work of young persons and medical examination. These two are closely linked because, where there is not sufficient protection, work or employment may become hazardous and should be eliminated as child labour even where the general minimum age is reached. It is proposed to hold a general discussion at the Conference based on an integrated approach. This would enable the Conference to examine and set further directions for how standards, promotion, advocacy and technical cooperation activities can be combined to achieve the effective abolition of child labour and to increase the protection of children and young persons. In this context, the Conference could examine how to combine a promotion of the up-to-date instruments with a more systematic and tailor-made assistance to member States in order to enhance the replacement of the older instruments and to enable these older instruments to be abrogated at a later stage, as appropriate. The discussion could also address the follow-up to be given to the decisions to revise the instruments on night work of children and young persons. The question of night work of children and young persons could thus be linked to the wider issue of hazardous child labour – a priority subject covered by the two fundamental Conventions, and on which ILO assistance and guidance are strongly sought by the constituents.

### The background

37. The main pillars of the ILO's efforts to eliminate child labour, especially its worst forms, are the two up-to-date Conventions (the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182)), as accompanied by their supplementing Recommendations (the Minimum Age Recommendation, 1973 (No. 146), and the Worst Forms of Child Labour Recommendation, 1999 (No. 190), respectively).

These instruments, which figure among the fundamental Conventions, are receiving overwhelming support from member States as highlighted by the surge of ratifications.<sup>10</sup>

- 38.** As recognized by the ILO and the international community, child labour is not a subject that can be dealt with only by achieving legislative conformity with international standards. It demands comprehensive and integrated measures so as to break the vicious cycle of poverty, social inequality and child labour. This characteristic of the child labour issue is demonstrated in the transformation of the International Programme on the Elimination of Child Labour into an InFocus Programme on Child Labour (IPEC). IPEC takes a kind of “integrated” approach combining standards, promotion, advocacy, knowledge enhancement and technical cooperation activities. In fact, all IPEC activities take Conventions Nos. 138 and 182 as key instruments guiding action towards the effective abolition of child labour. In particular, the time-bound programmes, which IPEC is promoting to help countries eliminate the worst forms of child labour within a defined period of time, emphasize the need to complement the prohibition by policies and measures to address the root causes of child labour, e.g. to combat poverty and to promote universal education and social mobilization.
- 39.** It should also be recalled that these actions are undertaken in the framework of Conventions Nos. 138 and 182 and are complemented by the 1998 Declaration on Fundamental Principles and Rights at Work and its Follow-up. The effective abolition of child labour is one of the four fundamental principles in the Declaration. In the context of its follow-up, the International Labour Conference examined in 2002 a Global Report on child labour for the first time, and the next time will be in 2006.

#### A wider approach

- 40.** The recent actions in this area have focused on the elimination of child labour, especially in its worst forms. It is now timely to propose a general discussion with a wider and more comprehensive approach. The scope of such a discussion could cover two aspects regarding children and young persons: (1) how to ensure the effective abolition of child labour in general, not limited to its worst forms, but including child labour which needs to be eliminated according to Convention No. 138; and (2) how to ensure an effective protection of children and young persons in general, including a discussion on existing instruments regulating night work of young persons and medical examination.

#### *Elimination of child labour*

- 41.** Given the recent standard-setting activity in this area, this subject would appear to be covered by up-to-date standards. Thus, a discussion on these aspects of child labour at the Conference would be essentially on how to promote and accelerate further the ratification of these Conventions and assist the constituents in effectively implementing them.
- 42.** It should also be recalled that there are a number of earlier sectoral Conventions which have already been revised by Convention No. 138.<sup>11</sup> Thus further ratification of

<sup>10</sup> See appendix.

<sup>11</sup> See Article 10 of Convention No. 138. These include, in addition to those listed in the appendix, the Minimum Age (Sea) Convention, 1920 (No. 7), the Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15), the Minimum Age (Sea) Convention (Revised), 1936 (No. 58), and the Minimum Age (Fishermen) Convention, 1959 (No. 112). The promotion of Convention No. 138 as well as Convention No. 182 in the maritime and fishing sectors should also be seen in the light of

Convention No. 138 should lead to their denunciation by the countries concerned and help streamline this group of standards. However, flexibility is built into Article 10 of Convention No. 138, which contains detailed conditions for the ipso jure denunciation of most of those earlier Conventions. As a consequence, a ratification of Convention No. 138 does not always automatically result in denunciations of all the revised Conventions ratified by the same country. For example, a State that ratified Convention No. 59 (which sets the minimum age of 15 years in industry) and subsequently ratified Convention No. 138 declaring a general minimum age of 14 years continues to be bound by Convention No. 59 unless it declares the minimum age in industry to be 15 years. This situation confuses the level of the national commitment, and slows down the replacement of instruments by the up-to-date ones. The required remedy appears to be a more systematic and tailor-made assistance to member States in addition to the promotion of the ratification of Convention No. 138. The aim would be to move remaining obligations under older Conventions towards obligations under Convention No. 138 and have the older Conventions denounced and/or abrogated at a later stage as appropriate.

- 43.** In this context it should be noted that some demands from constituents for IPEC's technical cooperation are particularly standards-related, for example, when assistance and guidance are requested to help them make the national determination of hazardous work. This is one of the first requirements in tackling child labour in its hazardous forms, both under Convention No. 138 and Convention No. 182. In response, IPEC has been taking a variety of action from publication of user-friendly documents on the topic, through compilation of information on existing national rules and regulations, to preparation of experts' meetings. This type of technical assistance will continue to be provided and may well result in proposals to develop codes of practice or guidelines. A Conference discussion would add further impetus to this kind of assistance and mainstream it in the ILO's regular activities with a clear connection to the promotion of the relevant standards. More generally, a Conference discussion may also help further clarify the practical applications of the notions of child labour, including its worst forms.
- 44.** One dimension which Convention No. 182 has added to the fight against child labour is the explicit reference to operational measures required to eliminate its worst forms (e.g. monitoring mechanisms, programmes of action, time-bound measures, international cooperation) in addition to the definition of what needs to be tackled as the worst forms. Extra light is shed by Recommendation No. 190 which suggests many possible actions to be taken by many actors. A Conference discussion may also deepen a consideration for necessary measures to ensure the effective abolition of child labour in general, including child labour which is not in its worst forms but needs to be eliminated in terms of Convention No. 138.

#### *Other instruments relating to children and young persons*

- 45.** In its efforts to protect children and young persons, the ILO has also taken action by adopting standards with a specific focus on night work and on medical examination of children and young persons.<sup>12</sup>
- 46.** As regards the instruments concerning night work, the Governing Body has already decided, as a result of the work of the Working Party on Policy regarding the Revision of Standards, that Conventions Nos. 6, 79 and 90, as well as Recommendations Nos. 14 and 80, should be revised. The most recent General Survey by the Committee of Experts on

the review of the standards-related activities in the maritime and fishing sectors which is under way (see GB.280/5) or which is being proposed (see Part II).

<sup>12</sup> See appendix.

night work of women in industry<sup>13</sup> concluded that “member States are much less inclined to abolish, modify, or otherwise relax the prohibition on night work of young persons than the prohibition, if any, applicable to adult women workers” (paragraph 111 *in fine*). One of the issues to consider is whether the abovementioned revision should be done independently or considered in a wider context in direct relation with the objective of the effective abolition of child labour.

47. Convention No. 182 forged a global consensus that hazardous work by all girls and boys under 18 years of age must be tackled urgently as one of the worst forms of child labour. This reconfirms the minimum age of 18 for hazardous work under Convention No. 138. Hazardous work is defined as “work which, by its nature or *the circumstances in which it is carried out*, is likely to harm/jeopardize the health, safety or morals of children”. However, Convention No. 182, as well as Convention No. 138, leaves the determination of hazardous work to national decisions. It should be recalled that Recommendation No. 190 explicitly includes “work during the night” as one of the criteria of hazards to be considered in such determination. Therefore, it may well be argued that the revision of standards concerning night work of those under 18 years should be discussed within this general context in relation to these two fundamental Conventions. In particular, given the strong demand from constituents for the ILO’s help in the national determination of hazardous work, as indicated in paragraph 7 above, any discussion of standard setting on such issues as night work of children and young persons could be accompanied by more general consideration as to the possibility of international guidance (whether in the form of standard setting or more informal codes of practice or guidelines) on what should be the “hazardous work” to be prohibited and eliminated, supplementing the efforts for the implementation of Conventions Nos. 138 and 182.
48. More generally speaking, the conditions in which work is carried out constitute the crucial criteria for the definition of hazardous child labour to be eliminated. Thus, it can be argued that, where the safety and health at work of those under 18 is not adequately protected, employment or work falls into the notion of hazardous child labour to be eliminated even if the person has reached the general minimum age for work. From this standpoint, international labour standards relating to the protection of children and young persons, such as night work and medical examination of young persons, are inseparably linked to the issue of child labour and constitute one group of standards which should be discussed as a whole in the context of an integrated approach.
49. In the context of the work of the Working Party on Policy regarding the Revision of Standards, requests for information were adopted by the Governing Body concerning a series of Conventions and Recommendations on the subject of medical examination of young persons.<sup>14</sup> The Governing Body invited member States to inform the Office of any obstacles or difficulties encountered that might prevent or delay the ratification of Conventions Nos. 77, 78 and 124, and to contemplate the need for a full or partial revision of these Conventions including their possible consolidation. Moreover, the Governing Body invited member States to inform the Office of any obstacles or difficulties

<sup>13</sup> General Survey of the reports concerning the Night Work (Women) Convention, 1919 (No. 4), the Night Work (Women) Convention (Revised), 1934 (No. 41), the Night Work (Women) Convention (Revised), 1948 (No. 89), and the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948, ILC, 89th Session, 2001.

<sup>14</sup> See appendix. Of relevance in this context is also the Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16). The Governing Body decision to revise this Convention should be seen in the light of the review of the standards-related activities in the maritime sector which is under way (see footnote 2).

encountered in the implementation of the related Recommendations Nos. 79 and 125. A discussion of the directions to take on the subject matter of these instruments could effectively take place in the framework of an integrated approach.

- 50.** Among various possible issues relative to the protection of children and young persons, the discussion could start by indicating the areas where further standard setting, as well as other means of action, including promotion and assistance, would be required.
- 51.** This line of thought could lead further to broaden the youth employment issue. The term “youth” usually covers those whose age ranges from about 15 to 24 years old. Such a definition would clearly overlap with the definition of “child” found in Convention No. 182. The worst forms of child labour in the case of adolescents above the general minimum age and the deficit of decent work for youth may in fact be two sides of the same coin. In the implementation of Convention No. 182, when an adolescent is withdrawn from one of the worst forms of child labour, a sustainable solution for his/her social integration should be found.
- 52.** Against this background, the Governing Body might wish to retain for further examination an item for a general discussion on child labour and the protection of children and young workers based on an integrated approach at the 93rd Session (2005) of the International Labour Conference. On the one hand, such a discussion would seek to identify the directions to take to ensure the effective abolition of child labour in general, as provided not only in Convention No. 182 but also in Convention No. 138, on the other, possible action related to employment and work of children and young persons. This would allow the Conference to examine the protection of children and young persons in a wider perspective in the context of a comprehensive approach to eliminate child labour. It would also cover several important questions including night work of children and young persons and medical examinations of young persons, linking them to the issue of hazardous work, which should be tackled as a priority in the combat against child labour, and on which further international guidance might be sought.

## Appendix

### Protection of children and young persons

#### 1. Elimination of child labour

Instruments	Number of ratifications (as at 18/09/02)	Status
<b>Up-to-date instruments</b> (Conventions whose ratification is encouraged and Recommendations to which member States are invited to give effect.)		
Minimum Age Convention, 1973 (No. 138)	117	<b>Fundamental Convention.</b>
Minimum Age Recommendation, 1973 (No. 146)	–	This Recommendation is related to a fundamental Convention and is considered up to date.
Worst Forms of Child Labour Convention, 1999 (No. 182)	129	<b>Fundamental Convention.</b>
Worst Forms of Child Labour Recommendation, 1999 (No. 190)	–	This Recommendation is related to a fundamental Convention and is considered up to date.
<b>Instruments with interim status</b> (This category comprises instruments which are no longer fully up to date but remain relevant in certain aspects.)		
Minimum Age (Non-Industrial Employment) Recommendation, 1932 (No. 41)	–	The Governing Body decided the maintenance of the status quo with regard to Recommendations Nos. 41 and 52.
Minimum Age (Family Undertakings) Recommendation, 1937 (No. 52)	–	
<b>Outdated instruments</b> (Instruments which are no longer up to date; this category includes the Conventions that member States are no longer invited to ratify and the Recommendations whose implementation is no longer encouraged.)		
Minimum Age (Industry) Convention, 1919 (No. 5)	20	The Governing Body invited the States parties to Convention No. 5 to contemplate ratifying the Minimum Age Convention, 1973 (No. 138), and denouncing Convention No. 5 at the same time, with a recourse to technical assistance as required.
Minimum Age (Agriculture) Convention, 1921 (No. 10)	13	The Governing Body invited States parties to Convention No. 10 to contemplate ratifying the Minimum Age Convention, 1973 (No. 138), the ratification of which would involve the denunciation of Convention No. 10 on the condition stated in Article 10(5)(b) of Convention No. 138, with a recourse to technical assistance as required.
Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 33)	8	The Governing Body invited States parties to Convention No. 33 to contemplate ratifying the Minimum Age Convention, 1973 (No. 138), the ratification of which would ipso jure, involve the immediate denunciation of Convention No. 33 on the condition stated in Article 10(4)(b) of Convention No. 138, with a recourse to technical assistance as required.

Instruments	Number of ratifications (as at 18/09/02)	Status
Minimum Age (Industry) Convention (Revised), 1937 (No. 59)	15	The Governing Body invited States parties to Convention No. 59 to contemplate ratifying the Minimum Age Convention, 1973 (No. 138), the ratification of which would ipso jure, involve the immediate denunciation of Convention No. 59 on the condition stated in Article 10(4)(a) of Convention No. 138, with a recourse to technical assistance as required.
Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60)	0	The Governing Body decided that the status of Convention No. 60 would be re-examined in due course with a view to its possible abrogation by the Conference.
Minimum Age (Underground Work) Convention, 1965 (No. 123)	25	The Governing Body invited States parties to Convention No. 123 to contemplate ratifying the Minimum Age Convention, 1973 (No. 138), the ratification of which would ipso jure, involve the immediate denunciation of Convention No. 123 on the condition stated in Article 10(4)(f) of Convention No. 138, with a recourse to technical assistance as required.
Minimum Age (Underground Work) Recommendation, 1965 (No. 124)	–	The Governing Body noted that Recommendation No. 124 was obsolete and that this Recommendation should be withdrawn, while deferring the proposal to withdraw this instrument to the Conference until the situation had been re-examined at a later date.
Minimum Age (Coal Mines) Recommendation, 1953 (No. 96)	–	The question of the withdrawal of this Recommendation is on the agenda of the 92nd Session (2004) of the International Labour Conference.

## 2. *Employment of children and young persons*

Instruments	Number of ratifications (as at 18/09/02)	Status
<b>Up-to-date instruments</b> (Conventions whose ratification is encouraged and Recommendations to which member States are invited to give effect.)		
Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77)	43	The Governing Body invited member States to contemplate: (i) ratifying Conventions Nos. 77, 78 and 124 and to inform the Office of any obstacles or difficulties encountered that might prevent or delay the ratification of these Conventions; and (ii) the need for a full or partial revision of these Conventions, including their possible consolidation.
Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78)	39	
Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124)	41	
Medical Examination of Young Persons Recommendation, 1946 (No. 79)	–	The Governing Body invited member States to give effect to Recommendations Nos. 79 and 125 and to inform the Office of any obstacles or difficulties encountered in the implementation of these Recommendations.
Conditions of Employment of Young Persons (Underground Work) Recommendation, 1965 (No. 125)	–	
<b>Instruments to be revised</b> (Instruments whose revision was decided by the Governing Body.)		
Night Work of Young Persons (Industry) Convention, 1919 (No. 6)	51	The Governing Body decided the revision of Conventions Nos. 6, 79 and 90 and Recommendations Nos. 14 and 80.
Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79)	20	

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<b>Instruments</b>	<b>Number of ratifications (as at 18/09/02)</b>	<b>Status</b>
Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)	50	
Night Work of Children and Young Persons (Agriculture) Recommendation, 1921 (No. 14)	–	
Night Work of Young Persons (Non-Industrial Occupations) Recommendation, 1946 (No. 80)	–	

## Employment

### 3. *Decent jobs and productivity (general discussion based on an integrated approach)*

#### Summary

The forces fuelling globalization, such as rapid advance in information and communication technology, are transforming production systems, work organization and the labour markets. At the same time, with the increasing liberalization of domestic and international markets, enterprises are faced with increased competition. Already there are fears expressed that these changes could lead to degradation of quality of jobs. On the other hand, there is recognition of the intimate links between productivity and decent work. This is central to the ILO Global Employment Agenda.

In the light of these, there is need to re-examine the notion of productivity and its link to decent jobs. The ILO, with its tripartite structure and with its instruments and other means of action, could play very important roles in ensuring that strategies and approaches adopted by member countries and enterprises meet the goals of productivity improvement and the promotion of decent jobs. While many of the existing international labour standards and the Declaration on Fundamental Principles and Rights at Work have direct bearing and relevance to pursuing the “high road” to productivity and competitiveness, there is need to make explicit the guiding principles and basic approaches that would guide the ILO and the social partners in pursuing productivity strategies that would lead to enterprise viability and decent jobs. It is proposed to hold a general discussion based on an integrated approach to develop an efficient plan of action covering ILO instruments, programmes and other means of action that would contribute to promoting policies, strategies and approaches that will achieve both productivity improvement and decent jobs objectives.

#### Background

- 53.** With the rapid pace of economic globalization and the increasing liberalization of domestic and international markets, enterprises are faced with increased competition. This pressure, brought about by the increased market liberalization in a globalized economy, could easily lead to enterprises trying to achieve short-term competitiveness through low wages, poor working conditions, precarious employment conditions and employment of child labour. While not widespread yet, this “race to the bottom” competitive strategy can be a looming reality. Already, the potential high social cost of this heightened competition is becoming a major concern to the social partners.
- 54.** The forces fuelling globalization, such as the rapid advance in information and production technologies, are transforming production systems and the labour markets. The need for flexibility, speed and adaptability is resulting in new forms of production structures and work organizations based on networks, globalized manufacturing and on value chains that transcend enterprise and national boundaries. Unless firms and workers are able to adapt and acquire new capabilities and develop new approaches towards achieving the goal of productive work, the new production structure could create the conditions detrimental to the achievement of decent work for all. The World Commission on the Social Dimension of Globalization has indeed highlighted the need for countries and enterprises to adopt conscious and deliberate policies and strategies in order to maximize the benefits that globalization brings while at the same time minimizing its negative social consequences.
- 55.** Decent work is productive and remunerative work done in conditions of freedom, equity, security and human dignity. Productivity improvement when pursued through participation and consultation, development of the national and enterprise human and social capital, innovation and better work organization, and sharing of productivity gains among others, is a powerful means for creating and sustaining decent work. Through these “high road” approaches involving consultation and participation of the social partners through tripartite and bipartite productivity improvement institutions at national and enterprise levels, social

dialogue is strengthened and freedom of association re-enforced. Productivity improvement through better work design and improved working conditions leads to better workers' safety and health. Improved productivity means viable enterprises that create and sustain job opportunities for women and men as well as being able to contribute to social security schemes.

- 56.** Studies have shown that long-term competitiveness can only be achieved through continuous total productivity improvement. Sustainable and long-term real productivity gains in turn are achieved through "high road" approaches which emphasize good human resources management and development, enterprise and industry upgrading, labour-management cooperation and consultation, and equitable sharing of productivity gains among stakeholders. These approaches build the human and social capital of the enterprise, which are the key factors for long-term productivity, competitiveness and viability.
- 57.** While the benefits of such high road approaches [to productivity and competitiveness] have been achieved by many enlightened and progressive enterprises, both domestic and multinational alike, there is need to encourage further the spread of such practices and to propagate "best practices" that highlight the complementarities of economic and social objectives.
- 58.** Clearly, in the face of increased competitive pressures and of the changing nature of production, there is a need to develop new concepts and modalities that will be consistent with the principles of the Declaration of Philadelphia, calling for the cooperation of management and labour in the continuous improvement of productive efficiency and the collaboration of workers and employers in the preparation of social and economic measures. Competitiveness when achieved through approaches that meet both economic and social objectives would enable countries and enterprises to take advantage of opportunities arising from globalization while minimizing the potential negative social impacts.
- 59.** The need to place productive employment at the centre of economic and social policies has been highlighted in the ILO Global Employment Agenda. It places great emphasis on people's productivity, recognizing that improving productivity of working men and women serves the end of promoting decent work. Conversely, efforts to promote productivity are enhanced by the promotion of decent work, as decent work itself is a productive factor. Improving productivity is thus the cornerstone of the Global Employment Agenda, and one of the economic foundations of decent work.
- 60.** Among the ILO's different means of action, existing international labour standards provide valuable guidance and reference points. There is, however, a need to organize and synthesize them in a coherent and explicit set of principles and recommended basic approaches that would guide the social partners in pursuing the productivity improvement strategies that meet enterprise viability and decent work objectives.

#### ILO means of action

- 61.** The ILO response to these modern economic realities is based on the underlying principles and goals of the Declaration of Philadelphia as well as the Declaration on Fundamental Principles and Rights at Work. The 1984 resolution on the contribution of the ILO to production and productivity improvement noted the necessity of productivity improvement in order to assure economic growth, and underlined the close interrelationship between quantity and quality of employment and other labour issues and productivity improvement.
- 62.** Among the ILO's means of action, international labour standards are key. The subject matter relevant in the present context touches on a series of different instruments such as

Recommendations Nos. 94, 113 and 129 which call for cooperation, consultation and communication at the national, industrial and undertaking levels, Convention No. 154 and Recommendation No. 163 on collective bargaining, Convention No. 142 and Recommendation No. 150 on human resource development, Conventions Nos. 155 and 174 and Recommendation No. 164 on safeguarding the health and safety of workers, Recommendation No. 189 concerning job creation in small and medium-sized enterprises, Conventions Nos. 26, 94, 95, 99 and 131 and Recommendations Nos. 84, 85 and 135 concerning wages and remuneration, as well as Conventions Nos. 138 and 182 and Recommendations Nos. 146 and 190 relating to the employment of minors and child labour. Research on the links between international labour standards and productivity and competitiveness are ongoing. Note should also be taken of the General Survey on the Employment Policy Convention, 1964 (No. 122), the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), the Human Resources Development Convention, 1975 (No. 142), and the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), that will be submitted to the 92nd Session (2004) of the International Labour Conference.

- 63.** Technical cooperation activities have been undertaken aimed at building the capacities of member countries, the tripartite constituencies and the enterprises to promote decent work through the high road approach to productivity and competitiveness. Along this line, ILO activities related to productivity improvement, competitiveness and quality jobs were the subject of an action programme implemented in the 1998-99 biennium. Studies undertaken under this action programme underlined the changing nature of competition under changed market conditions brought about by globalization and trade liberalization. Guides and manuals on how to improve productivity and competitiveness at national and enterprise levels following the “high road” that achieves both economic and social goals were also developed. Current work includes the development of socially responsible approaches when undertaking enterprise restructuring aimed at improving productivity and competitiveness, and expanding the notion of human resource management and development in the context of the changing nature of the structure of production, work organization and increasing knowledge content of work. Technical cooperation projects on developing local managerial and labour capabilities to integrate the fundamental principles and rights at work in productivity and competitiveness enhancement efforts are being implemented.

#### Proposed solution

- 64.** The present subject matter has previously been submitted for a general discussion. It should be noted, however, that the Governing Body has recently adopted a new practice to place items on the agenda of the International Labour Conference for general discussions based on an “integrated approach”. Such discussions are aimed at examining a specific subject area, assessing the coherence, relevance and impact of current ILO responses to the problems and challenges in that area and developing a plan of action, taking into account all the ILO’s different means of action. Such a plan of action would aim at directing the ILO’s future response to the problems and challenges in that area.
- 65.** Given the importance and broad scope of the subject matter of decent jobs and productivity and the need to develop a comprehensive ILO response, it would seem appropriate to hold such a general discussion based on an “integrated” approach in the International Labour Conference on this subject.
- 66.** Such a discussion would provide an opportunity further to examine the benefits that can be achieved through these high road approaches as well as the most efficient means to implement them. It could also look at widening the framework of the notion of productivity beyond economics to examine such emerging concepts as social productivity

and the integration of productivity with the notion of social stability and equity. On such a basis the general discussion could examine how the ILO could further promote policies, strategies and approaches that will achieve both productivity improvement and decent jobs objectives and draw up a plan of action (for the furtherance of these objectives) covering all different means of action [of the ILO] including standard setting and the development of other instruments, technical cooperation, knowledge-management and dissemination of information. Such general discussion would further the aims of the ILO Declaration on Fundamental Principles and Rights at Work to ensure that social progress goes hand in hand with economic progress.

67. The discussion could take note of and put into current context the various Conventions and Recommendations that bear on the promotion of productive, remunerative and quality jobs; clarify the meaning of productivity particularly in the context of the new production structure, new forms of work organization, changing nature of work and employment and increased competition brought about by rapid globalization; highlight the key factors that are now critical to improving productivity for sustainable economic and social development and identify key roles for the social partners in creating the necessary conditions, at enterprise, national, regional and international level, for continuous improvement of efficiency and effectiveness of work with the recognition of the fundamental workers' rights and responsibilities. The general discussion could also review the appropriateness of considering further standard-setting activities including the possibility to adopt an instrument, which could provide guidance to constituents on policy and practice in the area of productivity upgrading.
68. A discussion could draw on experiences from ongoing sectoral studies on how social performance is managed across global supply chains and on how enterprises manage the various aspects of their corporate social responsibility. Case studies are being undertaken to show the positive links between good management practices reflecting the fundamental principles underlying international labour standards and the enterprise's triple bottom lines. The use of modular training packages on integrating the fundamental principles and rights at work in enterprises' values, systems and processes is being developed.
69. A key element in discussion will be the experiences gathered through the *World Employment Report 2003*, which has as its theme the relationship between productivity, employment and poverty reduction. Various studies will be undertaken with the aim of understanding better and building on the experiences of several countries where gains in productivity, output and employment have formed the virtuous circle of growth and development. In addition, information will be accessible in collaboration with the global network of national productivity centres that is being maintained.

## Conclusion

70. Against this background it is proposed to hold a general discussion on the subject of "Decent jobs and productivity". Should the Governing Body decide to include such an item on the agenda, the Conference may wish to examine the problems, challenges and opportunities related to productivity in the era of globalization in the context of decent work; the strategies and approaches, consistent with ILO principles and fundamental rights at work and reflecting the principles behind core labour standards and other related international labour standards, that would be likely to achieve both the goals of productivity improvement and the creation and sustenance of decent jobs, in an era of rapidly changing structure of production and distribution, new forms of work organizations and rapid technological advance; how the benefits and gains from productivity improvement could be fairly shared among the stakeholders; the skills and competencies required for continuing productivity improvement; the policy and legal environment will be supportive of the achievement of the productivity and decent jobs objectives; the roles

of the social partners. The aim of such a discussion would be to develop an efficient plan of action covering ILO instruments, programmes and other means of action that would contribute to promoting policies, strategies and approaches that will achieve both productivity improvement and decent jobs objectives.

#### 4. **Promoting decent work in reconstruction of conflict-affected countries (standard setting)**

##### Summary

The current exponential increase in armed conflicts poses serious challenges to the implementation of the Decent Work Agenda in terms of massive unemployment and poverty and, by the destruction of social and economic infrastructure, making job creation and the promotion of democracy, human rights and labour standards more difficult. A comprehensive framework is needed for addressing the issues relating to reconstruction in the context of decent work and encompassing poverty reduction and employment promotion, social and economic reintegration, relief and reconstruction, social protection, social dialogue for peace and reconciliation, and early warning systems.

The ILO has a role to prevent war and social conflict, to support the process of reintegration and reconstruction, and to build durable peace. The ILO lacks a current and appropriate policy framework including up-to-date instruments to respond not only to immediate but also longer term needs of conflict-affected countries and the roles of the constituents in this sphere. At tripartite consultative meetings, constituents have repeatedly stressed the urgent need for a policy framework and for intensified ILO action in this area. An earlier proposal for a discussion at the International Labour Conference in 2004 had been submitted to the Governing Body as part of the portfolio.

In recent years, through the work of its InFocus Programme on Crisis Response and Reconstruction, the ILO has gained more valuable experience on how to develop an appropriate response to the issues that may occur in the context of the most prevalent types of armed conflict. It is thus proposed to place the item of promoting decent work in the reconstruction of conflict-affected countries on the agenda of the International Labour Conference in 2005 with a view to developing an ILO instrument, most probably in the form of a Recommendation, to serve as a policy framework for ILO and constituents' activities in this area.

#### The problem

- 71.** The Organization has a long history of involvement in post-conflict issues, starting from its origins under the Treaty of Versailles at the end of the First World War. In 1944, towards the end of the Second World War, the ILO adopted the Declaration of Philadelphia as well as a set of four Recommendations: the Employment Organization (Transition from War to Peace) Recommendation (No. 71), along with the Social Security (Armed Forces) Recommendation (No. 68), the Employment Service Recommendation (No. 72), and the Public Works (National Planning) Recommendation (No. 73). Two of these instruments (Recommendations Nos. 72 and 73) were withdrawn by the International Labour Conference at its 90th Session (2002) on the ground that they no longer contributed to the furtherance of the objectives of the Organization. The remaining two instruments also cover issues which were particularly relevant in the immediate aftermath of the Second World War broadly relating to employment, income security and medical care in respect of persons being discharged from the armed forces, and other war-affected groups. These measures were to be planned and implemented by governments in cooperation with employers' and workers' organizations. They underline the mission of the ILO to prevent war and social conflict, to support the process of reintegration and reconstruction, and to build sustainable peace. Lasting peace, as the Declaration of Philadelphia asserted, can only be built on the foundation of social justice.
- 72.** The last decade has witnessed an alarming increase in the frequency and intensity of armed conflicts around the world. Currently, about a third of ILO member States are in conflict, emerging from conflict, re-entering into conflict or affected by conflict in a neighbouring

country. These conflicts result in massive unemployment, underemployment and poverty. Further, as job opportunities shrink, young persons entering the labour force find that there are no jobs available, and this in turn can lead to further violence, conflict and social instability. The destruction of economic and social infrastructure and the deterioration in the law and order situation, often accompanied by the flight of capital, make it even more difficult to create new opportunities for productive work.

- 73.** Armed conflicts often result in threats to democracy, to the rights of trade unions and employers' organizations and to the observance of human rights and labour standards. At the same time, labour standards provide built-in mechanisms for early warnings of likely conflict, mitigation of the impact of conflict, dialogue for reconciliation and peace, and a framework for reconstruction and a return to development. The tripartite ILO structure makes it possible for the ILO to be in touch with a spectrum of actors at the country level and elsewhere and to obtain up-to-date information on indicators of potential conflict and triggers which may set it off.
- 74.** Decent employment which cements peace and social dialogue is a major instrument for peace and reconciliation. The ILO's strategic objectives relating to fundamental rights and principles at work, the promotion of employment, social protection, tripartism and social dialogue need, therefore, to be pursued resolutely in such conflict-related and unstable situations. Furthermore, the possibilities to achieve the UN Millennium Development Goal of reducing poverty by half by 2015 in conflict-affected countries will to a significant extent depend on a rapid recovery and a return to peace and development.
- 75.** The ILO and its constituents thus have a critical role to play in this context, in particular in relation to post-conflict reconstruction. The ILO can help member States and the social partners to tackle the major challenges of reconstruction and reintegration of different groups in the population, including ex-combatants, refugees, internally displaced persons, women, the disabled, children, youth and poor and disadvantaged groups. Working together, they can help to strengthen existing institutions or create new institutions, re-establish social cohesion, and redress gender inequalities, taking advantage of the opportunities offered by the process of reconstruction.
- 76.** In the past 60 years since the adoption by the ILO of Recommendations Nos. 68 and 71, the nature, origins and impacts of armed conflicts have changed in important ways. In the context of the twenty-first century, several different features of conflict and post-conflict situations need to be addressed, including the fact that most conflicts are within States; their origins vary; they can last a long time; conflict situations tend to recur; civilians are involved as perpetrators and victims; the technology of war is changing; and that internal migration flows increase. None of these instruments appear to be a relevant response to current needs.
- 77.** At the same time, since 1944 the ILO has adopted several other ILO instruments including instruments concerning training and employment promotion, labour market reform, enterprise promotion, labour-based infrastructure development, local economic development, strengthening of social security systems and social safety nets, promotion of safe work principles, institutional reform, labour legislation and strengthening of tripartism and social dialogue. Although these instruments are not specifically targeted at conflict-affected countries, they have proven to be particularly relevant in these contexts. Furthermore, when these instruments are used alongside and in harmony with the work of other national and international actors, their impact is further enhanced.
- 78.** Current relevant Recommendations do not adequately address the new features of conflicts outlined above nor provide governments, employers and workers with the kind of comprehensive guidance that they may need in addressing the problems of conflict-

affected countries. There is thus a need to formulate a contemporary policy or standard for the promotion of decent work concerns in post-conflict reconstruction and the path to peace and development. The lack of such a framework limits the ILO's capacity at the national level and constitutes an impediment for the ILO to play an effective role within the United Nations system in this field.

#### Relation to previously adopted instruments

- 79.** As noted above, the subject matter of the two remaining Recommendations adopted in 1944 are relevant to consider in this context. The Governing Body has examined these instruments in the light of recommendations from the Working Party on Policy regarding Revision of Standards 1995-2002. Against that background the Governing Body decided that Recommendations Nos. 72 and 73 had lost their purpose "in furtherance of the objectives of the Organization" and on that ground the International Labour Conference withdrew them at its 90th Session (2002). As regards Recommendation No. 68 the Working Party noted that its objective still seemed to be relevant although the context was no longer the same. With reference to the proposal to place an item on this subject matter on the agenda of the Conference, the Working Party remarked that it would be interesting to take up the question of this Recommendation within the context of a discussion on the fight against social exclusion and poverty.<sup>15</sup> The Governing Body decided on the maintenance of the status quo with respect to this instrument. As regards Recommendation No. 71 the Working Party noted that while it had long been considered to be of no further interest, the present proposal seemed to indicate that there was renewed interest in the issues it covered.<sup>16</sup> Pending any decision to place this subject matter on the agenda of the Conference, the Governing Body decided to invite member States to communicate to the Office any additional information on the possible need to replace this Recommendation.<sup>17</sup>
- 80.** In addition to the fundamental and priority instruments as well as the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, which are relevant for all countries in all circumstances, a number of other international labour standards are particularly relevant in this context. They include the Labour Administration Convention (No. 150) and Recommendation (No. 158), 1978; the Human Resources Development Convention, 1975 (No. 142) (including Recommendation No. 150), the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Equality of Treatment (Social Security) Convention, 1962 (No. 118), and the Maintenance of Social Security Rights Convention, 1982 (No. 157). Two relatively recent, very important and relevant Conventions are the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and the Worst Forms of Child Labour Convention, 1999 (No. 182). The former has immediate relevance for indigenous and tribal populations who today are often the victims in armed conflicts and need support to ensure that their rights are recognized and that they have a voice in post-conflict reconstruction. The latter provides a clear instrument and a mandate for action on the issue of child soldiers who are increasingly being used in conflicts.

#### Proposed solution

- 81.** The role of the Organization and of its constituents has evolved over time in response to the challenge of meeting the needs and aspirations of people in countries affected by conflict. There is a need to take stock of the work being done in this field, to firm up a

<sup>15</sup> GB.277/LILS/WP/PRS/4, p. 16.

<sup>16</sup> GB.274/LILS/WP/PRS/3, p. 8.

<sup>17</sup> The Office not yet undertaken any specific follow-up action with respect to this decision.

comprehensive and visible policy framework, and to develop a revitalized standard to guide the work of the Organization and its constituents in conflict-affected countries. The constituents have already expressed, during a tripartite seminar on the subject in November 1997, and at several annual consultative meetings (such as in June 1999, 2000, 2001 and 2002), the need for a framework to guide their actions in tackling crises, including armed conflicts.

- 82.** ILO efforts in this area have been spearheaded since 1996 by the ILO Action Programme on Skills and Entrepreneurship Training for Countries Emerging from Armed Conflict, and currently form part of the activities of the InFocus Programme on Crisis Response and Reconstruction set up in late 1999 to deal with armed conflicts, natural disasters, financial and economic crises and abrupt social and political transitions. Furthermore, experience has been gained through technical assistance activities carried out by the ILO in a number of conflict-affected member States and has promoted knowledge and tools development, advocacy and capacity building of ILO staff and constituents. The considerable experience gained by the ILO in recent years in tackling the problems of conflict-affected countries now makes it possible to identify strengths, determine good practices, and build upon the lessons learned.
- 83.** Developing such a framework would provide an opportunity to identify what principles embodied in Recommendation No. 71 remain relevant, what may need to be re-examined, and what new considerations are relevant and need to be considered. Such a framework would also address how best to use the ILO's areas of competence for promoting the Organization's institutional and rapid-response capacity to the employment and related social and economic needs of conflict-affected countries. The framework should also spell out operational support modalities and provide guidance on strategic partnerships of the ILO with its constituents, with agencies and organizations within the United Nations system and with NGOs and civil society. [The issues to address include reconstruction in the context of decent work, poverty reduction and employment promotion, social and economic reintegration, relief and reconstruction, social protection, social dialogue for peace and reconciliation, and the development of early warning systems.] Specific issues to be addressed include:
- social and economic reintegration of refugees/returnees, internally displaced persons, demobilized soldiers and young combatants, the disabled and female heads of households.
  - employment-friendly physical reconstruction;
  - poverty reduction and employment promotion;
  - social dialogue and reconciliation;
  - social protection and safety nets; and
  - rebuilding of national institutions.

#### Progress made in research and preparatory work

- 84.** Under the Special Allocation for Peace and Democracy in Central America, 1993, authorized by the Governing Body, the ILO participated directly in the Guatemalan peace negotiations at the request of the United Nations Secretary-General. ILO was the only United Nations specialized agency to play a key role in the final agreement, which included several labour standards and provided the principal elements of the country's final peace settlement signed in December 1996. Of the various bodies promoted under

different peace agreements, those supported by the ILO have been the most effective, in Panama, El Salvador and Guatemala.

- 85.** The ILO has gained insights from the research activities and seminars carried out under the ILO Action Programme on Skills and Entrepreneurship Training from Countries Emerging from Armed Conflict (1996-97), its earlier work on ex-combatants and its attempts to develop rapid and comprehensive responses to conflict situations in Kosovo, Liberia, Democratic Republic of Congo and Guinea-Bissau. It has continued this work, under the InFocus Programme, in East Timor, South Lebanon, Palestine, Somalia, South Serbia, Sierra Leone and the Solomon Islands.
- 86.** The ILO has also implemented technical assistance activities in several conflict-affected countries. It contributed to the PRODERE programme (one of the largest post-conflict programmes in Central America), and actively participated in the UNOPS-managed trust fund created by the UNDP during the World Summit for Social Development. This fund was utilized to assist more than 20 countries afflicted by conflicts and natural disasters. Local economic development has been promoted as a process to promote peace and reconciliation through economic recovery in Albania, Angola, Bosnia and Herzegovina, Cambodia, Croatia, El Salvador, Guatemala, Haiti, Mozambique, Nicaragua, Somalia, Tajikistan etc.
- 87.** The InFocus Programme on Crisis Response and Reconstruction (IFP/CRISIS) has built upon the achievements of earlier programmes and activities in developing the capacity of the Organization and the constituents to tackle conflict-related situations. Technical cooperation programmes and projects, including several on reintegrating vulnerable conflict-affected groups, have been developed and are being implemented. IFP/CRISIS has not only focused on the development of rapid-response capacity, but, equally importantly, on strengthening the knowledge base, tools development, capacity building and advocacy within and outside the Organization on crisis issues. A major feature has been to promote crisis sensitivity within the Organization and among the constituents, that tackling crises is not “business as usual,” that gender issues are particularly important in crisis situations, and that there is an opportunity to provide countries in crisis with the best that the ILO can offer in terms of products and services.
- 88.** Since the creation of IFP/CRISIS, this effort has continued with the launching of technical assistance programmes and projects relating to such areas of ILO expertise as vocational training, economic and social reintegration, employment promotion and employment-intensive reconstruction in a number of countries and territories, including East Timor, Somalia, Democratic Republic of the Congo, Solomon Islands, Sierra Leone, Afghanistan and Sri Lanka.
- 89.** A paper was presented to the Governing Body Employment and Social Policy Committee in March 2000 on “ILO strategy and activities on employment and social concerns in crisis situations”.<sup>18</sup> The ensuing discussion provided support and guidance for the work of the Programme.
- 90.** IFP/CRISIS has held a research consultation on crises, set up a network of external researchers, conducted training and capacity-building programmes, and produced several research studies and manuals on crises, which cover armed conflict. An annual meeting with ILO constituents has been started and these meetings have proved very useful in terms of exchange of information and sharing of ideas. The Programme has also been

<sup>18</sup> GB.277/ESP/2.

actively participating in key United Nations and non-United Nations meetings and other networks on conflict issues. During the 2002-03 biennium, further strengthening of the knowledge base, development and revision of tools, capacity building and training and advocacy within and beyond the Organization are envisaged.

## Conclusion

- 91.** The ILO has a mission to prevent social conflict which contributes to preventing war, to support the process of reintegration and reconstruction, and to build sustainable peace. The ILO lacks a current and appropriate policy framework including up-to-date instruments to respond not only to immediate but also longer term needs of conflict-affected countries and the roles of the constituents in this sphere. Many constituents have expressed views on the urgent need for intensified ILO action in this area. Through its InFocus Programme on Crisis Response and Reconstruction, the ILO has gained valuable experience on how to develop an appropriate response to the issues that may occur in the context of the most prevalent types of conflict. It is thus proposed to place the item of “Promoting decent work in the reconstruction of conflict-affected countries” on the agenda of the International Labour Conference in 2005 with a view to developing an ILO instrument, which could be in the form of a Recommendation, to serve as a policy framework for ILO and constituents’ activities in this area.

## Gender

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

#### Summary

It is timely to review the progress made in promoting gender equality through decent work in the context of a general discussion based on the integrated approach to ILO means of action. In 2005, it will be 20 years since the International Labour Conference undertook a comprehensive review of gender equality issues in the world of work. In 1985, a general discussion was held at the International Labour Conference on equal opportunities and equal treatment for men and women in employment. Since then significant yet important gender equality issues have been addressed by the ILC, including through standard setting such as, for example, the adoption of the Maternity Protection Convention, 2000 (No. 183). It will also take place ten years after the Social Summit and the Fourth World Conference on Women.

Over the last two decades, the increasing participation of women in paid work has been driving employment trends, the gender gaps in labour force participation rates have been shrinking and women’s entrepreneurship development has been impressive. But significant obstacles and challenges remain to utilize fully the human potential of both women and men and to promote decent employment for all and reduce poverty. The feminization of poverty, growing unemployment and underemployment, the burgeoning informal economy, the HIV/AIDS epidemic, practices such as child labour, sexual harassment and trafficking for prostitution, the persistent gender pay gap, occupational segregation, the gender division of paid and unpaid labour, and the considerably weaker position of women in decision-making in the public and private spheres, threaten to erode gains made towards gender equality.

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

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## Introduction

- 92.** During its 71st Session (1985), the International Labour Conference examined the question of equal opportunities and equal treatment for men and women in employment in the context of a general discussion. This was the most recent occasion for a comprehensive ILO review of progress on gender equality in the world of work and ILO action in the context of global economic and labour market trends. During the considerable period of time that has elapsed since then, tremendous changes have taken place in the global labour market with uneven progress in achieving gender equality, different forms of gender inequality developing and new challenges emerging with the rapid expansion of the global economy.<sup>19</sup> These challenges include growing unemployment and poverty,<sup>20</sup> the feminization of international migration, trafficking for prostitution and forced labour,<sup>21</sup> and the emerging gender digital divide as new information and communication technologies shape the world of work.<sup>22</sup>
- 93.** Over the past two decades, significant policy development initiatives have been taken at the global level, such as the Beijing Platform for Action. The ILO has contributed to these initiatives. It also has taken action through programme, policy and normative developments and technical assistance to mainstream gender concerns and promote decent and productive work for women and men in conditions of freedom, equity, security and human dignity. A decade after Beijing and Copenhagen and taking into account the Millennium Development Goals, a comprehensive review would be timely and relevant and enable the ILO to chart a strategic course for its future work.
- 94.** The ILO needs to take stock of global developments, in order to update ILO policy and to determine priority areas for its work in promoting gender equality goals. A Conference discussion on these issues would provide the ILO and its constituents with an opportunity to conduct a comprehensive up-to-date review of progress on gender equality in the world of work and ILO action in light of the social dimensions of globalization and changing labour markets. Against this background and the experiences and possibilities of the ILO in standard setting, research, technical assistance and advocacy, the Conference could provide guidance on how better to integrate all the ILO means of action, the promotion of

<sup>19</sup> The Beijing Platform for Action and the Copenhagen Programme of Action addressed some of the problems of globalization; “however, the solutions proposed for women in these documents were largely microeconomic, with a particular focus on enabling poor women to obtain access to credit ... if a wider range of women are to gain, globalization must be reshaped so that it is people-centered instead of profit-centered and made more accountable to women ... there are new opportunities for women to intervene and renegotiate globalization in order to enable information and communication technology to be used in equitable ways and markets to be used to serve human ends”, United Nations Development Fund for Women: Progress of the World’s Women 2000, UNIFEM Biennial Report, New York, 2000, p. 130.

<sup>20</sup> Some 1 billion workers or one-third of the world’s labour force are either unemployed or underemployed. The global economy has been creating about 40 million jobs a year compared to about 48 million new jobseekers. Of the 40 million new jobs, as many as 10 million are in the ranks of the working poor or otherwise underemployed. The widely quoted estimate is that women constitute 70 per cent of the world’s 1.3 billion poor living on less than US\$1 per day.

<sup>21</sup> “In the past decade, the international trade in human beings, particularly women and children, has reached epidemic proportions ... Each year, an estimated 700,000 to 1 million women and children are shipped across national boundaries and sold into modern-day slavery. The trade in human beings is a worldwide scourge”, in the *International Herald Tribune*, 1 June 2000.

<sup>22</sup> ILO: *World Employment Report 2001*, p. 319.

the Decent Work Agenda and the strengthening of the gender mainstreaming strategy to enhance the ILO's efforts and impact on eliminating gender discrimination.

#### Background: Progress and gaps

**95.** Since the Fourth World Conference on Women in Beijing in 1995, the United Nations has noted the gain in the economic autonomy of women as a consequence of their increased participation in the labour market. Measures have also been introduced by governments to address women's economic and social rights. International labour Conventions have been ratified as well as legislation enacted or strengthened to make it compatible with these Conventions.<sup>23</sup>

**96.** At the same time, however, the United Nations has recognized that significant obstacles impede the achievement of gender equality in employment:

The importance of a gender perspective in the development of macroeconomic policy is still not widely recognized. Many women still work in rural areas and the informal economy as subsistence producers, and in the service sector with low levels of income and little job and social security. Many women with comparable skills and experience are confronted with a gender wage gap and lag behind men in income and career mobility in the formal sector. Equal pay for women and men for equal work, or work of equal value, has not yet been fully realized. Gender discrimination in hiring and promotion related to pregnancy (including through pregnancy testing) and sexual harassment in the workplace persist. In some countries, women's full and equal rights to own land and other property, including through the right to inheritance, is not recognized yet in national legislation. Progression in the professions, in most cases, is still more difficult for women, due to the lack of structures and measures that take into account maternity and family responsibilities.<sup>24</sup>

**97.** The causal links between gender discrimination and poverty throughout the life cycle have become increasingly evident. Globalization is exacerbating the plight of the working poor in the informal economy, in particular agricultural workers, domestic helpers, street vendors and home workers, the majority of whom are often women. Addressing gender issues in the context of the HIV/AIDS epidemic is a key concern. Sexual harassment and trafficking for prostitution are increasingly subjects for legislation and campaigns. The persistent lack of adequate representation of women and their concerns in business, and in political and labour institutions, continues to hamper genuine progress in achieving gender equality in the world of work. For both men and women, ensuring a balance between work and family responsibilities and between paid and unpaid work remains a critical challenge. Assisting men and boys to play a positive role in changing gender relations within the home and in the labour market is a new and crucial avenue for advancing gender equality.

**98.** Some figures derived from existing ILO statistics illustrate persistent gender disparities: there are only 54 per cent of working-age women in the labour force as compared to over 80 per cent male participation. Worldwide, women hold only 1 per cent of chief executive positions. About half the world's labour remains in gender-stereotyped occupations, with women dominating in clerical and secretarial jobs and low-end service occupations. Despite the increasing adoption of equal pay legislation, women continue to earn 20-30 per cent less than men. In paid employment, men are normally in core or regular and better remunerated positions, while women are in peripheral, insecure, less valued jobs, often as

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

<sup>24</sup> *ibid.*, para. 21.

homeworkers, casual workers and temporary workers. Close to two-thirds of all part-time workers are female and part-time work for women is increasingly involuntary. In self-employment, men are much more likely to be employers and women to be own-account workers and in the informal economy, in the category of unpaid family work, women predominate.<sup>25</sup> Where data are available, it indicates that in practically all Asian and African countries, the urban informal economy is a larger source of employment for women than for men.<sup>26</sup> Open unemployment rates are almost always higher for women than for men. Young women in particular have the greatest difficulty entering the labour market and retaining their jobs in periods of economic downturn.<sup>27</sup> Women are also much more likely than men to be underemployed or unemployed.<sup>28</sup> Women spend less time on paid work but considerably more time on unpaid work than men.<sup>29</sup>

- 99.** A critical input for assessing progress in gender equality, both quantitatively and qualitatively, is up-to-date and reliable data and analyses of labour market trends disaggregated by sex. However, the nature of women's and men's jobs and occupations is not adequately captured by conventional statistics. For example, they are deficient in analysing the roles of women and men in both the informal economy and the unpaid care economy. A combination of data on sex and on other factors such as race and age could enhance the identification of specific vulnerable groups. A more comprehensive measurement of all forms of "work" including unpaid care work is also needed. Improved data collection could provide a better delineation of different types of labour market work and a detailed description of the characteristics of such work (including in the informal economy) and other relevant information such as family composition, and the division of labour and decision-making within households (which would be helpful for identifying factors behind gender inequalities in the labour market).
- 100.** Beijing+5 also identified new areas which have gained importance since 1995, among them the persistent and increasing burden of poverty on women, the vulnerability of migrant women to exploitation and trafficking, the formulation of strategies to enable women and men to reconcile and share equally work and family responsibilities, and the HIV/AIDS pandemic. Many of the actions identified specific groups of women as their

<sup>25</sup> Contributing family workers among economically active women are over 77 per cent in Bangladesh, 54 per cent in Pakistan, 44 per cent in Indonesia and Thailand, 65 per cent in Ethiopia and 54 per cent in Uganda.

<sup>26</sup> In India and Indonesia, the informal economy accounts for nine out of every ten working outside agriculture, while in Benin, Chad and Mali more than 95 per cent of the female non-agricultural labour force is in the informal economy. Even then, there is likely to be underestimation of the gender bias, since women are more likely to be in those informal economy activities that are invisible or undercounted.

<sup>27</sup> Youth unemployment rates for both sexes are more than twice the corresponding rates for the economically active adult population in all regions of the world and among youth the rate is considerably higher for females.

<sup>28</sup> The proportion of the female labour force underemployed was at least treble the proportion of the male labour force in Belgium, Denmark, France, Germany, Israel, Italy, Norway, Spain and Sweden.

<sup>29</sup> Recent time-use surveys show that women's total time worked daily exceeded men's by two hours or more in Australia, France, Japan, Latvia and the Republic of Korea, and that women spend 50 to 70 per cent of the time men spend on paid work, but almost twice as much or more time as men on unpaid work.

primary target, including older women, young women, migrant women, entrepreneurs/self-employed women, rural women and female household heads.

#### ILO action to date

- 101.** The 71st Session (1985) of the International Labour Conference adopted a resolution on equal opportunities and equal treatment for men and women in employment. The resolution provided for national action in the areas of equal access to employment and training, equality of remuneration, working conditions, maternity protection, workers with family responsibilities, social security, participation, administrative arrangements to promote equality of opportunity and treatment, and improving the database. The resolution also provided for action by the ILO concerning standard setting, including a review of protective measures, cooperation with the United Nations system, inclusion of equal opportunity and treatment for men and women on the agendas of ILO meetings, research on the situation of women, data collection, dissemination of information, technical cooperation, strengthening of institutional arrangements, provision of childcare to enable more women to attend ILO meetings and promotion of the use of non-sexist language.
- 102.** Since 1985, a number of standard-setting and other measures particularly relevant to gender equality and women's employment have been on the Conference agenda. These include the adoption of the Night Work Convention, 1990 (No. 171),<sup>30</sup> the Part-Time Work Convention, 1994 (No. 175),<sup>31</sup> the Home Work Convention 1996 (No. 177)<sup>32</sup> and the Maternity Protection Convention, 2000 (No. 183).<sup>33</sup> A General Survey on the night work of women in industry was submitted to the 89th Session of the International Labour Conference in 2001.<sup>34</sup> One of the challenges, however, is how to promote the ratification and implementation of some of these Conventions, which have attracted few ratifications over the last decade. On the other hand, the adoption by the Conference of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up in 1998 provides added impetus for the promotion of gender equality, with inclusion of the principle of the elimination of discrimination in the Declaration. Within the context of the campaign to promote ratification of the fundamental Conventions, the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Equal Remuneration Convention, 1951, (No. 100), have received a large number of new ratifications and now figure as two of the most highly ratified international conventions. Numerous advisory and technical cooperation projects have been undertaken to promote and secure gender equality through improved application of these two fundamental Conventions.
- 103.** In 1991, the International Labour Conference adopted a resolution concerning ILO action for women workers. It reaffirmed the provisions of the 1985 resolution, many of which remained valid but unimplemented. It called on the ILO constituents and the Office to undertake a range of measures to promote equality for women, including the ratification and implementation of standards, improving the participation of women in the International Labour Conference and ILO meetings, and attention to issues such as methods of job evaluation free of sex bias and sexual harassment. Furthermore, ministerial

<sup>30</sup> Six ratifications.

<sup>31</sup> Eight ratifications.

<sup>32</sup> Two ratifications.

<sup>33</sup> Three ratifications.

<sup>34</sup> ILO: *Night work of women in industry*, Report III (Part 1B), ILC, 89th Session, Geneva, 2001.

meetings were held on “More and better jobs for women” at the International Labour Conference in 1998 and on “Let’s make gender equality at work a reality” at the International Labour Conference in 1999.

- 104.** In addition, a number of tripartite meetings have been held on gender equality issues, as for example in the areas of protective measures for women, equal opportunity and treatment for men and women in social security and women in management positions. The Governing Body has addressed gender equality issues on a number of occasions and, in particular, held a one-day symposium in March 2000 on decent work for women as a contribution to the Beijing+5 Special Session of the United Nations General Assembly held in June 2000.
- 105.** A number of technical cooperation projects have addressed gender equality in various fields. They have promoted women workers’ rights and supported income generation and empowerment for women through awareness raising, skills training, entrepreneurship development, social finance and organization of women, particularly in the informal economy. Other projects have addressed the growing problem of trafficking in women and children and the situation of homeworkers. Practical tools, such as an equal employment opportunities information base and a resource kit for trade unions on promoting gender equality, have been very useful for awareness raising and training. The programme on gender, poverty and employment aims to build capacity of the constituents to fully integrate employment and gender concerns in the formulation and implementation of poverty reduction strategies.
- 106.** Through these actions over the last two decades, the ILO has increasingly focused on promoting equality between men and women. It has emphasized a rights-based development approach in its employment generation work and consistently linked economic progress with social justice. The promotion of the economic and social rights of women on an equal footing with men is an essential building block of this approach. A significant shift also has been made away from a protectionist approach only towards women workers just because they are women, although protection of maternity remains essential to promoting equal opportunities. Furthermore, the need for the protection of the rights of vulnerable categories of workers, a great proportion of whom are women, has been affirmed in the adoption of Conventions, such as those on part-time work and homework. Furthermore, since 1995, increasing attention has been given to mainstreaming gender concerns in ILO programmes and building the capacity of the Office and the constituents to ensure that gender is integrated into mainstream activities. This strategy was formally adopted by the Member States at the Fourth United Nations Conference on Women in Beijing in 1995, and has been endorsed as the most effective way to address the persistence of gender inequalities throughout the world. However, the ILO has yet to formally adopt the gender mainstreaming strategy as an integral part of its own gender equality policy.
- 107.** The ILO’s first strategic programme and budget adopted for 2000-01 and the strategic policy framework established gender as a cross-cutting concern in all the activities of the ILO. The goal is to ensure that work on gender equality does not remain on the margins, but becomes a key objective systematically included in all areas of ILO action. In March 2000, the Office’s Action Plan on Gender Equality and Mainstreaming was submitted to the Governing Body. The aim of this Office Plan is to ensure that gender concerns are integrated into all ILO programmes. As part of the implementation of this Plan, the Office conducted its first Office-wide gender audit of programmes to assess the extent to which institutional mechanisms have been established and are operational to ensure that gender is

systematically addressed through all ILO activities. The report to this Governing Body<sup>35</sup> on the gender audit highlights best practices; indicators and tools used by the ILO for gender mainstreaming; and identifies ways to improve the ILO's performance on promoting gender equality in the world of work. During 2002-03, the Office is implementing a Netherlands-funded project on capacity building on gender mainstreaming for constituents in China, Nepal, United Republic of Tanzania and Uganda. Further funds from the 2000-01 surplus will strengthen this effort to assist constituents in the development and implementation of their gender strategy and enhance their capacity to provide support to women entrepreneurs and workers in the informal economy.

#### ILO future policy development

- 108.** In light of the above, it would be appropriate and extremely useful that, in 2005, the International Labour Conference undertake a global review of gender equality in the world of work. Such a discussion could provide a critical space for ILO policy development in relation to these issues. It would also be timely, as it will be ten years after the Fourth World Conference on Women held in Beijing in 1995.
- 109.** An item on the International Labour Conference agenda in 2005 would provide an important opportunity to analyse and take stock of the labour market and global economic trends and the consequences for gender equality in the world of work, as well as to assess the changing status of different categories of men and women workers in the labour force in both the formal and informal sectors. Perhaps the most basic challenge is to *ensure not only that productive employment is placed at the centre stage of macroeconomic and social policies but also that these policies are "engendered"*. In this regard, the Conference may wish to focus on how the ILO's Global Employment Agenda is helping to promote productive, inclusive and equitable change so that women's work as well as men's is fully acknowledged and rewarded, and economic efficiency is balanced with gender justice. Furthermore, the identification of priority gender issues for the ILO and discussion of new areas of work such as the care economy, HIV/AIDS, the life cycle approach, work and family issues, the changing role of men in the labour market could also be addressed.
- 110.** In addition to ensuring a gender perspective in the ILO's Global Employment Agenda, the other strategic and interrelated objectives of the Decent Work Agenda are also critical. The Conference might also wish to discuss the following points:
- (a) Translating the greater political will and commitment into more effective and sustainable *promotion and realization of the human rights of women and girls* as an integral part of basic human rights. There has certainly been an increase in signatures and ratifications of the human rights instruments since 1995 but implementation in terms of effective policies and programmes is still a challenge.
  - (b) Ensuring *secure and safe work for both women and men*. Even in the formal economy, women's lower earnings and irregular employment patterns undermine their capacity to participate in and benefit from contributory social insurance schemes. For the vast majority of women in the informal economy, innovative schemes for shared support services and safety nets would improve their protection.
  - (c) *Strengthening the representation and voice of women in social dialogue structures*. There cannot be gender equality at work without freedom of association and it is only through freedom of association that advocacy, voice and partnerships can promote

<sup>35</sup> See GB.285/ESP/7/1.

gender equality. The Conference may wish to review especially the experiences of the social partners in reaching out to unorganized women and improving the representation of women at all levels of decision-making, also on how they have been forging alliances and partnerships with new social actors – importantly, women’s organizations – in the common cause of promoting gender equality.

- 111.** A Conference discussion report to the International Labour Conference could take stock of ILO action to respond to these issues and to promote gender equality, in particular in the context of the ILO’s Decent Work Agenda. It would provide for an opportunity to examine the extent to which ILO standards – specific to gender equality – as well as specific provisions on equality in other standards are translated into the range of ILO means of action, identifying gaps and obstacles, as well as highlighting best practices in this regard. An assessment of possible means of strengthening the knowledge base of the ILO on gender equality issues could contribute to improved data collection. This in turn could support and stimulate the advocacy and awareness-raising work of the ILO, the promotion of standards and the implementation of technical cooperation.
- 112.** An item on gender equality for women and men in the world of work on the agenda of the Conference in 2005 would thus represent a significant opportunity to update the overall policy of the ILO as an Organization on gender equality and gender mainstreaming in relation to the Platform for Action adopted in Beijing, the Social Summit commitments included in the Copenhagen Declaration of 1995, and ECOSOC’s adoption in 1997 of a gender mainstreaming strategy. Moreover, a global discussion on gender equality at the 2005 International Labour Conference would provide an important impetus for sustained follow-up and linkages to the outcomes of the 2002 general discussion on the informal economy, the 2003 discussion on the integrated approach to occupational safety and health, as well as of the discussion of the Global Report on discrimination under the Declaration at the 2003 International Labour Conference. It would also reaffirm the ILO’s commitment to the promotion of gender equality as being at the core of the Decent Work Agenda. An item on the 2005 International Labour Conference agenda would give constituents the opportunity to identify the way forward based on an assessment of the results of the Office’s strategy to mainstream gender in all its activities: standard setting, research, technical cooperation, advocacy and advisory services.

## Technical cooperation

### 6. *The role of the ILO in technical cooperation* (general discussion)

#### Summary

Following a resolution adopted at the 73rd Session (1987) of the Conference to review the technical cooperation programme regularly, at least every five years, the subject was an agenda item in 1993 when the Conference undertook a comprehensive review of the programme, and again in 1999. In the course of the March 2002 Governing Body discussion on the date, place and agenda of future sessions of the International Labour Conference (see GB./283/2/1), the Employers’ group, with the support of the Workers’ group, proposed for consideration by the Conference in 2005, a general discussion of ILO technical cooperation activities.

The Conclusions concerning the role of the ILO in technical cooperation, adopted by the International Labour Conference at its 87th Session in 1999, set out a broad framework for the ILO’s work in technical cooperation, including the future orientation of ILO technical cooperation policy.

Since then, significant changes have taken place and are in progress within the ILO in the approach and modalities for development and implementation of ILO programmes and activities including renewed efforts to increase the synergy between technical cooperation and international labour standards. External developments in the world of development cooperation, such as the United Nations Development Group, Millennium Development Goals and sustainable development and globalization, have had their influence in bringing about some of these changes and calls for continued dynamism.

June 2005 would be an opportune time to have a Conference general discussion on the subject, review the programme, assess how it has responded to the changing environment to make it more relevant in today's world of development cooperation, and seek guidance from the Conference on the way forward.

## Background

- 113.** A resolution adopted at the 73rd Session (1987) of the Conference concluded that it would be desirable for the International Labour Conference to review the technical cooperation programme regularly, at least every five years. The Conference reiterated its stance again in 1993 when it undertook a comprehensive review of the programme. The last discussion at the International Labour Conference took place in 1999.
- 114.** It will be recalled that in the course of the March 2002 Governing Body discussion on the date, place and agenda of future sessions of the International Labour Conference (see GB/283/2/1), the Employers' group, with the support of the Workers' group, proposed for consideration by the Conference in 2005, a general discussion of ILO technical cooperation activities.

## A new setting for technical cooperation

- 115.** Since 1999, significant changes have taken place and are in progress in the approach and modalities for development and implementation of ILO programmes and activities; a fresh examination of the future role of technical cooperation is warranted.

## Within the Organization

- 116.** Significant organizational and structural changes have been put in place since 1999. The adoption of a strategic programme and budget, later supplemented by a strategic policy framework, internal reorganization of headquarters' units with establishment of International Focus (InFocus) Programmes led to consolidation. This consolidation was reinforced by two developments that have progressed during this time period: first, the integration of the regular programme and budget with planning and designing of programmes financed by extra-budgetary resources; and, second, the strengthening of the partnership arrangements with some members of the donor community, which is based on a programme (or thematic) approach as opposed to an ad hoc project-by-project approach.
- 117.** The overall guidance for technical cooperation has been prompted by the development of the Decent Work Agenda, the strategic programme and budget as well as the discussions and conclusions of the four Regional Meetings that have been held since June 1999. New areas of development action have also come to the fore in the ILO in recent years: HIV/AIDS, crisis response and reconstruction, and the follow-up to the Declaration on Fundamental Principles and Rights at Work. In addition, the "integrated approach" to ILO standards-related activities, i.e. developing plans of action to guide all ILO means of action including technical cooperation in a particular area of ILO activities in the context of general discussions at the Conference – adopted by the Governing Body in November 2000 – is a further element to take into account in developing thematic, structured approaches to technical cooperation. Such structured, thematic approaches appear as key in the efforts to increase the synergy between international labour standards and technical cooperation.

- 118.** Coordination and collaboration between headquarters and the field in the area of technical cooperation were strengthened, and regular and systematic joint programming exercises between headquarters technical units and field offices have become routine. In the regions, steps have been taken to streamline management structures and reporting lines and to delineate more clearly the roles and responsibilities of the different components of the field structure.

#### External developments

- 119.** The recent past has witnessed the emergence of new frameworks on the global scene: the Millennium Summit, the follow-up conferences held in 2000 to the World Social Summit and the Beijing Conference, the establishment of the Global Compact, the World Conference on the Least Development Countries held in Brussels, the New Partnership for Africa's Development, the Third Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the launching of the African Union, as well as the continued reforms within the United Nations system, including the increased use of the United Nations Development Assistance Framework (UNDAF), and the recent development of the poverty reduction strategy papers (PRSPs). There has been setting of Millennium Development Goals and targets. As an active partner in the world of development cooperation, the ILO has had to reorient its work to cater to such new developments and frameworks, with significant implications for planning and programming of its activities.
- 120.** It should be stressed that many of these developments, both internal and external to the ILO, are quite recent. Their impact on the design of technical cooperation programmes and modalities for implementation has yet to be fully felt. The period that remains until the next International Labour Conference discussion on technical cooperation will undoubtedly witness considerable further adjustments in the ILO's programme, including technical cooperation.

#### Issues for discussion: The report to the Conference

- 121.** The Conclusions concerning the role of the ILO in technical cooperation,<sup>36</sup> adopted by the International Labour Conference at its 87th Session in 1999, set out a broad framework for the ILO's work in technical cooperation, including the future orientation of ILO technical cooperation policy and a programme of action with specific directives. The report to the Conference that will serve as the basis for discussions will deal primarily with developments and activities undertaken during the period since the last discussion.
- 122.** The focus will be on:
- enhancing the relevance and effectiveness of the ILO's technical cooperation;
  - improving the quality, visibility, effectiveness and impact of ILO technical cooperation; and
  - strengthening partnerships.
- 123.** The analyses will be in the context of key internal changes, directly linked to the conclusions adopted by the International Labour Conference in 1999 that have affected the technical cooperation programme. It will also consider technical cooperation in the context of external changes and developments that would have taken place in the realm of

<sup>36</sup> International Labour Conference: *Provisional Record* No. 22, 87th Session, Geneva, 1999.

development cooperation, like the United Nations Development Group, Millennium Development Goals, poverty, governance, sustainable development and globalization.

#### Summing up

- 124.** In view of the developments touched upon above, all of which have profound effects on the ILO's technical cooperation programme, June 2005 would be an opportune time to have a Conference general discussion on the subject, review the programme, assess how it has responded to the changing environment to make it relevant in today's world of development cooperation, and seek guidance from the Conference on the way forward.

## Part II. Proposals for the agenda of future Conferences

### Social protection

#### 7. Working time

The problem: Divergence and convergence in working time patterns

- 125.** The eight-hour day and 48-hour week, which underlie the Hours of Work Convention, 1919 (No. 1), are still the main reference point in most countries, especially in the developing world, while limits to maximum hours of work and guaranteed weekly rest to protect workers' safety and health remain topical issues in many countries and sectors. On the other hand, both statutory and actual working hours have fallen considerably, especially in Western European countries. Over the years, there has been a growing diversification of hours of work and working time arrangements away from traditional models of the organization of working time. At the same time, hours of work and the arrangement of working time are becoming increasingly interlinked. As noted in the Director-General's Report on *Decent work*:

New work schedules are emerging with changes in the economy and society. There are new production systems, new combinations of family, community and market work, new employment relationships based on information and new technologies, new needs for continuous learning. Changes in working time are widely seen as promoting employment or raising its quality, but this relationship is far from straightforward, and in many situations working time is lengthening. There appears to be a trend towards greater diversity in working time patterns ...<sup>37</sup>

- 126.** Working time remains a central issue in industrial relations. The diversity in regulatory methods often reflects national disparities in the nature of industrial relations, bargaining systems and also different strategies by the social partners with regard to the duration and adaptation of working time. The role of the social partners in negotiating working time has also become a focus of much interest in recent years, with particular interest in developments within enterprises. The European Union Working Time Directive (1993), for example, clearly specifies a number of benchmarks while allowing considerable space for the negotiation of agreements which derogate from or expand upon its provisions.<sup>38</sup> Hence, a cross-country analysis restricted to the statutory regulation of working time may give a misleading view of the diversity in working time patterns.

#### Changes in hours of work

- 127.** Today, the normal hours of work in countries around the world range from 35 to 54 hours a week. However, the traditional legal limit on hours of work – eight hours a day and 48 hours a week – is still the most widespread.<sup>39</sup> Another large group of countries have

<sup>37</sup> ILO: Report of the Director-General: *Decent work*, Geneva, 1999.

<sup>38</sup> Council Directive 93/104/EC of 23 Nov. 1993 concerning certain aspects of the organization of working time.

<sup>39</sup> Fifty-three countries of the 151 countries surveyed; ILO: *Conditions of Work Digest*, op. cit.

adopted a normal working week of 40 hours.<sup>40</sup> In general, whether normal weekly hours are 48 or 40, they still imply an eight-hour working day. Some countries provide shorter hours for some sectors, for individuals working in hazardous or arduous work or in severe climatic conditions and, in some cases, for young and older workers. Normal hours of work are not an absolute maximum, however, because overtime may be permitted under certain conditions.<sup>41</sup> Limits on total hours, including overtime, are usually specified as maximum daily or weekly hours. However, reference periods (i.e. the period over which hours of work are calculated) may vary. The European Union Working Time Directive adopted in 1993, for example, specifies that the average working time for each seven-day period, including overtime, should not exceed 48 hours, calculated over a reference period of four months.

**128.** Actual hours of work may vary from normal (statutory) hours. A century ago, typical working hours totalled over 3,000 a year – 60 hours or more per week. Since then there has been an overall decline. In terms of average annual hours worked (which takes into account public holidays and paid leave), there is a trend towards short and decreasing hours of work in most industrialized countries, particularly in Western Europe. In the European Union, annual hours typically range between 1,500 and 2,000 per year; in Japan, annual working hours declined from 2,052 in 1990 to 1,879 in 1998.<sup>42</sup> The general trend towards shorter hours is not uniform, however. In the United States, for example, annual working hours actually increased from 1,883 in 1980 to 1,976 in 1999.<sup>43</sup> Moreover, long hours of work are still a major concern in many developing countries.<sup>44</sup> Although accurate data on actual hours of work in developing countries is not easy to obtain, actual annual hours generally range between 2,000 and 2,500.<sup>45</sup> It has been noted that long actual hours of work are prevalent because of frequent recourse to overtime.

**129.** Within countries, there is a tendency towards a bifurcation of working time, with increasing proportions of workers working either very long or very short hours. For example, a study of 16 European countries reveals that more than 17.5 million workers work more than 60 hours per week.<sup>46</sup> On the other hand, there has also been an increase in part-time work, especially in the European Union. These figures highlight growing differences in the number of hours worked between workers within industrialized countries, in addition to the disparities between industrialized and developing countries.

<sup>40</sup> Forty-two countries of the 151 countries surveyed; ILO: *Conditions of Work Digest*, op. cit.

<sup>41</sup> In a survey of 151 countries, around 60 countries stipulate daily limits on the amount of overtime which may be performed. The number increases to 100 countries taking into account the difference between normal hours of work and maximum hours permitted; ILO: *Conditions of Work Digest*, op. cit., pp. 301-317.

<sup>42</sup> Japan Institute of Labour: *Japanese working life profile 2000 – Labour statistics*, Tokyo, 2000.

<sup>43</sup> ILO: *Key Indicators of the Labour Market* (Geneva, ILO, 1999), table 6b.

<sup>44</sup> ILO: Proceedings of the Asian Tripartite Workshop on Working Time Arrangements (Bangkok, 18-22 July 1994), PIACT/1994/2; ILO, *Yearbook of labour statistics 2000*, Geneva, ILO, 2001.

<sup>45</sup> ILO: *Key Indicators of the Labour Market*, op. cit.

<sup>46</sup> P. Paoli: *Second European survey on working conditions* (Dublin, European Foundation for the Improvement of Living and Working Conditions, 1997), cited in Anne Spurgeon: *Working time: The impact on safety and health*, ILO, 2002, pp. 8-9.

- 130.** A primary focus of working time reductions in a number of countries has been to safeguard or create jobs. However, the evidence from countries where working time reductions have been adopted with the aim of encouraging or safeguarding employment (i.e. work sharing) is mixed, including, for example, in Germany and France. Employment effects of working time reductions vary according to the circumstances and the manner in which the reduction of working hours is carried out.<sup>47</sup>

#### Diversification of working time arrangements

- 131.** Together with these changes in hours, the organization of working time has changed to meet the needs of enterprises and workers. These changes are reflected in a variety of working time arrangements, including flexitime schemes, different shift-work patterns, annual hours and hours averaging schemes, compressed work-weeks, part-time work, phased retirement, time banking and new patterns of combining education, training and work. In OECD countries, for example, around 16 per cent of workers were part-time workers in 1999 and the figure was much higher at 30 per cent in the Netherlands.<sup>48</sup> In the United States, the proportion of workers with flexible schedules increased from 13 per cent in 1985 to 28 per cent in 1997<sup>49</sup> and Japan witnessed a significant increase in annualized hours schemes in the 1990s.<sup>50</sup> The decoupling of plant operating times and shop opening hours from individual working time has often resulted in increases in shift work and variations in shift work patterns.<sup>51</sup>
- 132.** Arranging working time to allow workers to realize a satisfactory balance between their work and other facets of their lives has been an important criterion in many countries.<sup>52</sup> The needs of women workers in particular, because of their caring role, are of particular concern.<sup>53</sup> There is also the recognition that working times should be viewed from the perspective of the life cycle of the worker, understanding that workers' needs vary across their lives, from leaving education through their child-rearing years until retirement and that their preferred working hours and working time patterns are likely to vary as a consequence.

<sup>47</sup> See, for example, Gerhard Bosch: "Working time: From redistribution to modernization", op. cit., pp. 97-98.

<sup>48</sup> J. Evans; D. Lippoldt; P. Marianna: "Trends in working hours in OECD countries", Labour market and social policy Occasional Paper No. 45, Paris, OECD, 2001, p. 31.

<sup>49</sup> Thomas M. Beers: "Flexible schedules and shift work: Replacing the '9-to-5' work days?", in *Monthly Labor Review*, Washington, DC, June 2000.

<sup>50</sup> In 1999, 21 per cent of Japanese workers were entitled to take part in annualized hours schemes, Japan, Ministry of Labour: *General survey on wages and working hours systems*, Tokyo, 1999.

<sup>51</sup> Commission of European Communities: *Green paper: Partnership for a new organization of work*, Brussels, 1997.

<sup>52</sup> In the Netherlands, for example, recent working time legislation was designed to reconcile employers' needs for greater flexibility with workers' expressed desire for a better work-life balance, "Working Time Act: Five years on", in *European Industrial Relations Review*, No. 331, Aug. 2001, pp. 23-25.

<sup>53</sup> See, for example, ILO: Proceedings of the Asian Tripartite Workshop on Working Time Arrangements, op. cit.; and Anne Spurgeon, *Working time: The impact on safety and health*, op. cit.

## Status and relevance of existing standards

- 133.** The ILO has adopted 22 Conventions and 17 Recommendations in the area of working time since the adoption of the Hours of Work (Industry) Convention in 1919. These can be classified as related to hours of work, night work, weekly rest, paid leave and part-time work. Standards in other areas are also relevant, perhaps most notably the Workers with Family Responsibilities Convention, 1981 (No. 156), and its accompanying Recommendation, which suggests that particular attention be paid to the progressive reduction of daily hours of work and overtime and the introduction of more flexible arrangements as regards working schedules, rest periods and holidays.
- 134.** The Working Party on Policy regarding the Revision of Standards summarized the status of existing working time standards in its report of March 2001.<sup>54</sup> It has declared eight of the working time standards to be up to date, two to be in need of revision and 20 to be outdated. The Working Party has also recommended that the Sheet-Glass Works Convention, 1934 (No. 43), and the Reduction of Hours of Work (Glass-Bottle Works) Convention, 1935 (No. 49), be included among those which might be revised should it recommend a revision of other Conventions dealing with hours of work and the working conditions of shiftworkers. In addition, the Governing Body invited the member States to provide reports under article 19 of the Constitution and requested the Committee of Experts to carry out a General Survey based on these reports in respect of three instruments on night work of women which were discussed by the Committee on the Application of Conventions and Recommendations in June 2001. A General Survey is also to be conducted on the Hours of Work (Industry) Convention, 1919 (No. 1), and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), in 2004 for discussion at the 93rd Session (June 2005) of the Conference. With respect to the Forty-Hour Week Convention, 1935 (No. 47), the Holidays with Pay Convention (Revised), 1970 (No. 132), and the Holidays with Pay Recommendation, 1954 (No. 98), the Governing Body has decided to maintain the status quo.<sup>55</sup>
- 135.** In considering the relevance of Conventions Nos. 1 and 30, the ILO Meeting of Experts on Working Time, convened in 1993, reached the following conclusion:
- The experts agreed that certain provisions of Conventions Nos. 1 and 30 on hours of work in industry and commerce and offices with respect to the limitations on maximum hours of work over different periods did not adequately reflect some recent developments in working time arrangements. They recognized that, with these exceptions, Conventions Nos. 1 and 30 are still relevant.<sup>56</sup>
- 136.** As the Meeting of Experts pointed out, despite changing circumstances, many of the provisions contained in ILO standards on working time remain relevant. Some of the

<sup>54</sup> See table 1 in Appendix 2 in Working Party on Policy regarding the Revision of Standards, "Follow-up to the recommendations of the Working Party" (GB.280/LILS/WP/PRS/1/2), 280th Session, Geneva, Mar. 2001.

<sup>55</sup> GB.280/LILS/WP/PRS/1/2, 280th Session, Geneva, Mar. 2001.

<sup>56</sup> ILO: Report of the Meeting of Experts on Working Time (Geneva, 11-19 Oct. 1993), MEWT/1993/8, p. 35; Prof. Gerhard Bosch, a recognized expert on working time, has also concluded that "[B]ecause of the long hours still worked in many parts of the world and because they have grown even longer in recent years, the classic ILO Conventions on the scheduling and duration of working time (Nos. 1, 14, 30, 47 and 106) continue to be pertinent today", Gerhard Bosch: "Working time: Tendencies and emerging issues" (1999), 138, in *International Labour Review*, 131, p. 147.

Conventions, for example, include provisions which provide the flexibility to introduce certain working time arrangements which do not reflect the standard work week. Convention No. 1, for instance, contains specific provisions on shift work. It provides that where persons are employed in shifts, it shall be permissible to employ them in excess of eight hours per day and 48 hours per week if their average hours over a period of three weeks or less does not exceed these daily and weekly limits.<sup>57</sup> Thus, maximum limits on working hours and minimum entitlements to hours of rest<sup>58</sup> remain highly relevant benchmarks today. Moreover, 42 of the countries surveyed also meet the 40-hour goal of Convention No. 47.

### Progress made in research and preparatory work

- 137.** The ILO has carried out several studies on working time issues over the years.<sup>59</sup> In 1995, it published “Working time around the world”, Volume 14 of the *Conditions of Work Digest*, which reviewed working time legislation in around 150 countries. A new publication will be issued soon which reviews new evidence on the effects of working time on health and safety, taking into account recent changes in the organization of working time.<sup>60</sup> The Office also has two forthcoming working papers, prepared with the aim of improving the current statistical methods to better capture the development of working time patterns. It has also commented on and responded to numerous pieces of draft legislation and requests from the constituents and provided technical advisory services.
- 138.** Nevertheless, substantial gaps remain in our knowledge of recent working time developments around the world. It is recognized that the current knowledge base regarding working time is oriented primarily to industrialized countries and, therefore, country studies on working time were launched in the 2000-01 biennium, primarily in developing countries and countries in transition. Even in the industrialized countries, however, the Office is exploring issues related to the implications of technological advances, new forms of work organization and the increasing link between working hours and working time. The programme on work and family also has implications for working time arrangements through its investigation of how working time can be organized in ways that benefit workers with family responsibilities. Finally, ongoing efforts to improve statistical information will provide an important input to the analysis of working time trends, thereby nurturing policy discussions concerning working time in ILO member countries.

### Future directions

- 139.** In the light of all of the working time trends discussed above, a wider conception of working time would need to look beyond just hours of work. It is necessary to take into account the various other aspects of working time as well, such as weekly rest and paid annual leave. It is also necessary to take into account the reference period for calculating

<sup>57</sup> Article 2(c).

<sup>58</sup> Conventions Nos. 1 and 30 have been ratified by 52 and 30 countries, respectively. In addition, 117 member States have ratified the Weekly Rest (Industry) Convention, 1921 (No. 14), and 62 countries have ratified the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106).

<sup>59</sup> Some of the results have been published in the series of reports known as the *Conditions of Work Digest*, which include “Flexibility in working time” (Vol. 5, No. 2, 1986), “Part-time work” (Vol. 8, No. 1, 1989) and “The hours we work: New work schedules in policy and practice” (Vol. 9, No. 2, 1990).

<sup>60</sup> Anne Spurgeon: *Working time: The impact on safety and health*, op. cit.

working time as, for example, when hours of work are calculated on an annual basis. Measures which allow for trading off working hours against annual paid leave should also be examined.

- 140.** In view of the divergence and convergence of working time patterns, reviewing working time standards has become increasingly complex. The Office continues to carry out further research in this field. This research is designed to improve and update the knowledge base regarding working time issues in member States, including relevant standards and the relationship between working time, productivity and the quality of working life, as recommended by the Meeting of Experts on Working Time in 1993.<sup>61</sup> In seeking to close the gaps in the existing knowledge base, the new issues regarding the definition and measurement of working time present problems for existing definitions and the collection of comparable data. Furthermore, there is a need to gather additional information on working time trends in developing and transition countries. More importantly, analysis of enterprise experiences in introducing and adapting working time patterns in response to competitive demands and workers' needs is necessary. It has become apparent that much of the innovation in working time and work organization is taking place at that level.
- 141.** This research will enable the ILO to be in a better position to provide technical advisory services and technical assistance to its constituents. It will also be useful in developing practical training materials, such as a module on working time as part of the work improvement in small enterprises (WISE) methodology. In addition, other practical awareness-raising materials such as information sheets on specific working time issues and experiences will be developed and disseminated. Workshops on working time will also be organized at the regional level to provide a forum for constituents to exchange experiences on working time developments. Such discussions might assist the Office in framing working time debates so as to identify possible areas of consensus.

## **8. Prevention of sexual harassment in the workplace**

### The problem

- 142.** It is increasingly clear that sexual harassment at work is a serious problem, especially for women workers, and a barrier to equality in the workplace. In recent years, there has been a growing worldwide awareness of the nature and seriousness of sexual harassment in the workplace. A range of measures has been designed to prevent it. For example, a growing number of countries in all regions of the world have enacted national-level legislative provisions which explicitly prohibit this form of workplace mistreatment.<sup>62</sup> Several different approaches are used, but the most common method is the inclusion of harassment provisions in equality or sex discrimination measures.<sup>63</sup> Laws entirely devoted to sexual

<sup>61</sup> ILO: Report of the Meeting of Experts on Working Time (Geneva, 11-19 Oct. 1993), MEWT/1993/8.

<sup>62</sup> According to an incomplete list: *Argentina, Australia, Austria, Bahamas, Bangladesh, Belgium, Belize, Canada, Costa Rica, Dominican Republic, Fiji, Finland, France, Germany, Guyana, Honduras, Hong Kong (China), Iceland, Ireland, Israel, Japan, Republic of Korea, Lesotho, Luxembourg, Mauritius, Namibia, Netherlands, New Zealand, Panama, Paraguay, Philippines, Portugal, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, United Republic of Tanzania, Uruguay, Venezuela.*

<sup>63</sup> *Australia, Austria, Finland, Guyana, Ireland, Japan, South Africa, Sweden, Switzerland, Uruguay.*

harassment have also been enacted in a number of countries.<sup>64</sup> In conjunction with these trends, in a number of countries where sexual harassment is not specifically addressed in legislation, equality, discrimination and labour law provisions have been interpreted to cover it.<sup>65</sup> In many cases, the legislation is recent. More than half the countries which have enacted legislation dealing specifically with sexual harassment have done so for the first time in the period since 1995.<sup>66</sup>

- 143.** The number of employers who have introduced policies on sexual harassment has also increased over the last decade; more information is available on industrialized countries, but there are examples also in developing countries. During this period, it has become widely accepted that the primary preventive role belongs to workplace measures. In addition, a range of other tools has been used by governments, employers' and workers' organizations and NGOs both to reinforce national legal prohibitions and in countries where none exists. These include codes of practice, guidelines, training initiatives and awareness campaigns.
- 144.** At the international level, sexual harassment is not yet the explicit subject of any binding international convention, and the only international convention that explicitly prohibits this practice is the ILO's Indigenous and Tribal Peoples Convention, 1989 (No. 169). Article 20 specifically prohibits sexual harassment of indigenous and tribal women and men. However, this lack of explicit attention in international treaties does not mean that sexual harassment is not addressed at the international level. International forums and supervisory bodies of the ILO and the United Nations have highlighted and condemned sexual harassment and considered it to be covered by existing international instruments on human rights, sex-based discrimination, violence against women, and occupational safety and health. Within the United Nations, for example, it has been addressed as both a manifestation of sex discrimination and a form of violence against women, by the Committee on the Elimination of Discrimination against Women<sup>67</sup> and in the Platform for Action adopted at the Fourth World Conference on Women held in Beijing in 1995.<sup>68</sup> It has also been dealt with as a human rights violation.<sup>69</sup> At the regional level, sexual harassment has been treated as both sex-based violence and discrimination by the European Union,<sup>70</sup> while it has been conceptualized primarily as a manifestation of

<sup>64</sup> *Belgium, Belize, Costa Rica, Israel, Luxembourg, Philippines.*

<sup>65</sup> *Greece, India, United Kingdom, United States.*

<sup>66</sup> *Costa Rica, Finland, Paraguay, Philippines, Sri Lanka and Switzerland (1995); Belize (1996); Guyana and Uruguay (1997); Ireland, Israel, Mauritius, Portugal, South Africa, United Republic of Tanzania and Thailand (1998); Fiji, Japan and Venezuela (1999); Luxembourg (2000).*

<sup>67</sup> General Recommendation No. 19 on violence against women. Sexual harassment is also within the mandate of the United Nations Special Rapporteur on Violence against Women.

<sup>68</sup> Report of the Fourth World Conference on Women (Beijing, 4-15 Sep. 1995) (UN doc. A/CONF.177/20, 17 Oct. 1995, New York, 1995), para. 13 and strategic objective F6.

<sup>69</sup> For example, at the World Conference on Human Rights held in Vienna in 1993 (UN doc. A/CONF.157/23 (1993)).

<sup>70</sup> European Parliament, resolution of 11 June 1986 on violence against women (OJC176, 14.7.1986), p. 79; 92/131/EEC, Commission Recommendation of 27 Nov. 1991 on the protection of the dignity of women and men at work.

violence against women within the Organization of American States.<sup>71</sup> The ILO Committee of Experts on the Application of Conventions and Recommendations has identified sexual harassment as a form of discrimination based on sex under Convention No. 111. Over the last decade, only a few ILO meetings have been entirely devoted to this subject, but a large number of events include it among the subjects discussed.

- 145.** A significant number of the countries in which it is directly prohibited do not include a definition in their legislation, allowing decision-making bodies to clarify the kinds of actions covered and the circumstances in which they are prohibited. However, definitions used in laws, codes, policies, court decisions and collective agreements throughout the world may differ, but, generally speaking, contain the following key elements:
- conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men, which is unwelcome, unreasonable, and offensive to the recipient;
  - a person’s rejection of, or submission to, sexual harassment is used explicitly or implicitly as a basis for a decision which affects that person’s job; or
  - conduct that creates an intimidating, hostile or humiliating working environment for the recipient.
- 146.** Among those countries which do define sexual harassment, the tendency is to describe it as behaviour which is both unreasonable and unwelcome to its recipient. The meaning of reasonableness can then be elaborated on in accordance with prevailing cultural norms and differing perceptions of what constitutes sexual harassment. In many cases prohibition covers not only sexual behaviour (inappropriate touching, sexual comments, sexual violence, etc.) but some also covers sex-based behaviour (harassing behaviour which is based on the fact that the victim is a woman or, less often, a man).
- 147.** There are different approaches to defining potential victims and perpetrators of sexual harassment. Under some measures, only individuals in a supervisory relationship with the victim can be held responsible for sexual harassment. In others, harassing behaviour perpetrated by co-workers and even subordinates is prohibited. Some definitions of sexual harassment recognize that it can be perpetrated against men. Others confine it to conduct directed at women. There are also variations in whether same-sex harassment and harassment of homosexuals is recognized.
- 148.** There are also differences concerning the liability and duties of employers. Legal measures tend to provide that employers should be held responsible for the actions of supervisory employees. But, the extent to which the employer will be liable for the behaviour of co-workers and subordinates of the victim, as well as for the actions of non-employees present on their premises (including clients, contractors and customers) varies considerably. Moreover, the obligations imposed on employers under sexual harassment laws range from the obligation to respond to incidents and to the duty to introduce a specific policy or maintain a workplace free of sexual harassment. The degree to which workers and their representatives are involved in designing and implementing workplace measures also varies.
- 149.** As regards remedies and sanctions, the legal sanctions are available according to the branch of the law under which sexual harassment is prohibited. Under most criminal law regimes, for example, imprisonment and fines can be imposed, but the victim cannot be

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<sup>71</sup> Intra-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, “Convention of Belem do Para”, Article 2(b).

awarded compensation, nor can the employer be required to introduce preventive workplace measures. However, in some countries where specific provisions have been enacted, remedies and sanctions have been fashioned specifically to address sexual harassment in the workplace, for example, by requiring that the harasser compensates the victim in ways which take into account job-related losses or the employer introduces and effectively implements a preventive policy.

### Proposed solution

**150.** It is proposed that the subject of sexual harassment be further developed and preparatory work undertaken. The aim would be to assess what strategies and measures could be adopted by governments, employers and workers to combat sexual harassment and how the ILO might support these measures, including the development of practical tools that could be used by its constituents. This would require, in addition to continuing research, opportunities for dialogue among constituents. A Regional Tripartite Seminar on Action against Sexual Harassment at Work in Asia and the Pacific, held in Malaysia in October 2001, was the Office's first regionwide opportunity in recent years to discuss the rapid evolutions in this area with constituents. The seminar brought out the diversity of views in the region on the desirability of standard setting, with Worker members calling for the adoption of an international standard, Employer members considering that a new standard was unnecessary and Government members calling for a more encouraging role by the Office "in educating the member countries and providing assistance towards the enhancement of awareness on the issue of sexual harassment until such time before any ILO Convention on sexual harassment is introduced".<sup>72</sup> It would be advisable to conduct further national or regional-level tripartite consultations, or possibly a meeting of experts on preventing sexual harassment. On the basis of such preparatory work, it would be possible to assess whether sexual harassment might be suitable for standard setting.

### Origin of the proposal

**151.** Sexual harassment was discussed by the Committee of Experts in the 1988 General Survey on equality in employment and occupation and was included in the 1996 Special Survey on equality and employment.<sup>73</sup> A number of meetings of experts have also included this issue in their discussions. The 1989 Meeting of Experts on Special Protective Measures for Women and Equality of Opportunity and Treatment, for instance, viewed personal security, including sexual harassment, as a health and safety problem affecting women more than men. The 1990 Tripartite Symposium on Equality of Opportunity and Treatment for Men and Women in Employment in Industrialized Countries emphasized the role of enterprise-level policies. The 1997 Tripartite Meeting on Breaking through the Glass Ceiling: Women in Management also emphasized the important roles of governments and the social partners in promoting policies on the prevention of sexual harassment and other forms of discrimination. The subject has also been addressed at sectoral meetings,<sup>74</sup> at judges' meetings<sup>75</sup> and, at a regional level, a tripartite seminar on sexual harassment was

<sup>72</sup> Report of the Regional Tripartite Seminar on Action against Sexual Harassment at Work in Asia and the Pacific (Penang, 2-4 Oct. 2001).

<sup>73</sup> See especially paras. 39, 40, 179 and 180 of the Special Survey.

<sup>74</sup> See, for example, the 1992 report of the Standing Technical Committee for Health and Medical Service (STC/HMS/1/1992/13, *Note on the Proceedings*), paras. 17 and 18.

<sup>75</sup> Equality issues in employment: Judges' and assessors' subregional seminars held in Zimbabwe, 1999; Trinidad and Tobago, 2000; and Uganda, 2001.

held in Manila in 1993,<sup>76</sup> and at national and regional-level seminars held in Malaysia in 2001.

#### Relation to existing instruments

**152.** As indicated above, the only international convention adopted by any organization that specifically prohibits sexual harassment at work is the ILO's Indigenous and Tribal Peoples Convention, 1989 (No. 169). However, the Committee of Experts on the Application of Conventions and Recommendations has confirmed that it views sexual harassment as a form of sex discrimination under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).<sup>77</sup> Action to combat sexual harassment has therefore been taken up and promoted within the context of the promotion of Convention No. 111 and, more generally, within the Declaration on Fundamental Principles and Rights at Work.

#### Progress in research and preparatory work

**153.** The ILO has conducted research on the dynamics of sexual harassment at work and methods of addressing it. The 1992 edition of the *Conditions of Work Digest* reviewed legal measures and enterprise policies on sexual harassment across 23 industrialized countries, action taken by international organizations and measures recommended by governments, employers' and workers' organizations and NGOs. More recently, in 1999, an annotated bibliography was published which extensively reviews the literature in this area. A new report has been prepared, analysing developments in legislation and practice on sexual harassment in the Asian region, and a further report covering all regions is being prepared.<sup>78</sup> A number of other publications have specifically examined sexual harassment or included it as part of more wide-ranging discussions.<sup>79</sup> In preparation for the Regional Tripartite Seminar on Action against Sexual Harassment at Work in Asia and the Pacific (Penang, 2-4 October 2001), the ILO commissioned a number of studies from the region which reviewed national developments in this field.<sup>80</sup>

#### Future prospects

**154.** In conjunction with the growing awareness of sexual harassment as a problem at the workplace, experience is growing on the most effective ways of defining and tackling the

<sup>76</sup> ILO: Regional Office for Asia and the Pacific, *Towards gender equality in the world of work in Asia and the Pacific* (Technical report for discussion at the Asian Regional Consultation on the follow-up to the Fourth World Conference on Women, Manila, 6-8 Oct. 1999 (Geneva, ILO, 1999).

<sup>77</sup> ILO: *Equality in employment and occupation* (Special Survey on Equality in Employment and Occupation in respect of Convention No. 111) (Geneva, ILO, 1996).

<sup>78</sup> ILO: Technical report for discussion, Action against sexual harassment at work in Asia and the Pacific (Geneva/Bangkok, 2001).

<sup>79</sup> See, for example, Ariane Reinhart: *Sexual harassment: Addressing sexual harassment in the workplace – A management information booklet* (Geneva, ILO, 1999); and Naina Kapur: "Sexual harassment at the workplace – A guide to sexual harassment law in India" in Aanchal Kapur, ed.: *Women workers' rights in India: Issues and strategies – A defence guide* (New Delhi, ILO, 1999) p. 119.

<sup>80</sup> ILO East-Asia Multidisciplinary Advisory Team and Bangkok Area Office, *Technical report for discussion at the ILO/Japan Regional Tripartite Seminar on Action against Sexual Harassment at Work in Asia and the Pacific*, Penang, Malaysia, 2-4 Oct. 2001 (Bangkok, ILO, 2001).

problem. However, at this stage most countries still do not have specific legislation on sexual harassment. Where it exists, national legislation is so recent that member States have very limited experience of efforts to combat the problem or opportunities to assess the effectiveness of different approaches in their own contexts. Moreover, some questions still remain concerning awareness of the problem, as distinguished from the importance of the topic. Although there is a growing body of experience and expertise at the enterprise level, it is confined to relatively few enterprises. Even from these experiences, little is known outside the enterprises concerned. There is therefore a pressing need to document workplace experience and to draw lessons from the success or otherwise of legislative and other approaches to tackling sexual harassment. Most importantly, there is a need for tripartite dialogue at national and regional levels in order to develop an understanding of the potential nature of eventual ILO standard setting on this subject.

- 155.** The Office is preparing a report covering the nature and extent of the problem, trends in law and jurisprudence, and enterprise policies and programmes. This will update the information in the 1992 *Conditions of Work Digest* on selected industrialized countries and, in particular, extend the knowledge base to cover developing countries. On the basis of this report, and of focused country-level preparatory research, the Office will propose holding further regional meetings on sexual harassment at the workplace in the next biennium, following on from the Regional Tripartite Seminar [on Action against Sexual Harassment at Work in Asia and the Pacific, October 2001]. The Office will subsequently propose a meeting of experts. This meeting would contribute not only to raising the profile of sexual harassment as an issue of concern but also to providing an opportunity to interact with ILO constituents and experts, to determine areas of common concern and agreement that might eventually form a basis for standard setting in this area if the Governing Body so decided.

## Specific categories of workers

### 9. *An integrated approach to work in ports*

- 156.** During the past few decades, mechanization and particularly containerization have affected the handling of all types of cargo. In recent years, ports have also been faced with a process of structural adjustment with the introduction of varying degrees of commercialization, privatization or other forms of structural change. Ports play an important role as a link in the seamless transport chain. Globalization of trade and fierce competition in the shipping industry have also resulted in the merger of a number of container shipping lines and the formation of shipping alliances. Furthermore, container terminals are now being owned and managed by global container terminal operators. A Tripartite Meeting on Social and Labour Problems resulting from Structural Adjustments in the port industry was held in Geneva, 20-24 May 1996. The Meeting adopted a set of conclusions as well as two resolutions. In undertaking activities concerning structural adjustment issues in the port sector, the Meeting concluded that the ILO should:
- (a) continue to promote the ratification and application of relevant international labour standards;
  - (b) provide technical advisory services to ports undergoing structural adjustment, including examining broader issues (within its competence) that affect port performance;
  - (c) undertake technical cooperation to assist, as requested: (i) employers' and workers' representatives to develop effective systems for resolving industrial disputes; (ii) governments and ports with the drafting and revision of port regulations and legislation; and (iii) member States having difficulties in ratifying or applying the relevant instruments;
  - (d) prepare a glossary of port terms to facilitate a consistent approach to port-related issues;
  - (e) assist, on request, in the identification of training needs in the transport sector and the implementation of training programmes; and
  - (f) expand the portworker development programme.

- 157.** The ILO has adopted seven instruments relating to dock work,<sup>81</sup> four of which were adopted after 1970 (two Conventions and two Recommendations) specifically concerning dock work. The Dock Work Convention, 1973 (No. 137), and the Dock Work Recommendation, 1973 (No. 145), concern conditions of work of dock workers/port workers. The Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152), and the Occupational Safety and Health (Dock Work) Recommendation, 1979 (No. 160), concern safety and health of dock workers/port workers. Of relevance is also an older Convention, the Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27).
- 158.** On the basis of recommendations of the Working Party on Policy regarding the Revision of Standards, the Governing Body decided to promote the ratification of the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152), requested information concerning the Dock Work Convention, 1973 (No. 137), and the Dock Work Recommendation, 1973 (No. 145), and invited member States to give effect to the Occupational Safety and Health (Dock Work) Recommendation, 1979 (No. 160).<sup>82</sup> As regards Convention No. 27, which was adopted at a time when shipping operations were markedly different from those of today, the Governing Body decided, following consultations with the member States on this issue, that it should be revised. In a proposal, submitted to the Governing Body in 1999,<sup>83</sup> alternative ways to revise this Convention were contemplated including “to adapt it to container traffic” to ensure the “safe handling of containers” and to introduce a more modern risk-assessment approach to the subject.<sup>84</sup>
- 159.** The abovementioned tripartite meeting on the port industry in 1996 adopted a resolution requesting the Office to prepare a report, following an examination of the difficulties encountered by member States in the ratification and application of Convention No. 137 and Recommendation No. 145, and to take appropriate action. In response to this request, the Governing Body decided at its 273rd Session (November 1998) to invite member

<sup>81</sup> Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27); the Protection against Accidents (Dockers) Convention, 1929 (No. 28); the Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32); the Dock Work Convention, 1973 (No. 137), and Dock Work Recommendation, 1973 (No. 145); the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152), and the Occupational Safety and Health (Dock Work) Recommendation, 1979 (No. 160).

<sup>82</sup> The Governing Body on the recommendation of the Working Party decided on the revision of the Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27), and the inclusion of this item in the portfolio of proposals for the agenda of the International Labour Conference. It also decided: (a) to shelve the Protection against Accidents (Dockers) Convention, 1929 (No. 28), with immediate effect; (b) to invite the State party to Convention No. 28 to contemplate ratifying the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152), if appropriate, and denounce Convention No. 28 at the same time; and (c) that the Working Party (or the LILS Committee) re-examine the status of Convention No. 28 in due course, with a view to its possible abrogation by the Conference. The Governing Body also decided: (a) to invite States parties to the Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32), to contemplate ratifying the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152), which ipso jure would entail the immediate denunciation of Convention No. 32; and (b) that the Working Party (or the LILS Committee) re-examine the status of Convention No. 32 in due course, in the light of information received pursuant to the Governing Body’s request concerning Convention No. 152, including the possibility of shelving Convention No. 32.

<sup>83</sup> GB.276/2, paras. 259-270.

<sup>84</sup> *ibid.*, paras. 262-263.

States to provide reports under article 19 of the Constitution with respect to Convention No. 137 and Recommendation No. 145 and requested the Committee of Experts to carry out a General Survey based on these reports. This General Survey was examined by the Committee of Experts on the Application of Conventions and Recommendations at its meeting in November 2001 and by the International Labour Conference at its 90th Session in June 2002.

- 160.** In addition to the above Conventions and Recommendations, the ILO has also adopted a code of practice on safety and health in dock work and a guide on safety and health in dock work. Ports worldwide have continued to evolve with more specialized terminals matching advanced cargo transfer methods. Safety considerations and equipment have also evolved. In many ports, the gap between cargo handling methods in developing and developed countries has narrowed due to automation and the use of identical handling systems. The code and guide were however developed before the adoption of Convention No. 152 and Recommendation No. 160. As a result of the rapid technological and structural changes which the industry has undergone, the Office has undertaken a review of the code and guide to take into account those changes and requested that the Programme and Budget proposals for 2002-03 include a provision for a meeting of experts to examine a revised and consolidated code and guide. The Governing Body in March 2002 approved the holding of such a meeting provided that adequate resources were available.
- 161.** Another major development concerns port security. The ILO is being requested by the International Maritime Organization (IMO) to complement its work on ship security. The Maritime Safety Committee (MSC) of the IMO in its 75th Session established a Working Group on Maritime Security (MSWG). The MSWG's terms of reference included developing mandatory requirements for port security to be included in the International Convention for the Safety of Life at Sea (SOLAS), Chapter XI, and in a new International and Port Security Code (ISPS). The ISPS only covers the security of the ship and the immediate ship/port interface. The MSC agreed that the remainder should be addressed by the IMO in cooperation with the ILO. The submissions of the MSC will be considered at a Diplomatic Conference on Maritime Security that will be held at the IMO in December 2002. Taking advantage of the proposed revision of the ILO code of practice on safety and health in ports and the guide to safety and health in dock work, it is proposed to adopt a code of practice to address security, safety and health issues including security of port workers comprehensively.
- 162.** Another development relating to Convention No. 152 is a request recently received by the Director-General from the Secretary-General of the IMO concerning the implementation of the International Maritime Dangerous Goods Code (IMDG Code) which is to be made mandatory under the International Convention for the Safety of Life at Sea as from January 2004 and which has governed the safe transport of dangerous goods by sea since 1965. A number of issues covered by that Code are under the control of shore-side cargo interests in the transport chain. The IMO is thus seeking the assistance of the ILO to build the necessary linkages between ILO Convention No. 152 and the IMDG Code.
- 163.** The ILO is also using technical advisory services and technical cooperation as a means of improving conditions of work in the port industry. There is an increasing demand from constituents, in particular from developing countries, for guidance on port restructuring and privatization. A number of workshops have been held on the subject of privatization of port services. However, it will be necessary to develop guidelines on the implementation of structural adjustments in ports and in particular the process of social dialogue. This could serve to complement Convention No. 137.
- 164.** Following a new strategy to promote port training, the Office has introduced the Portworker Development Programme (PDP). The PDP was inspired by a recent ILO

publication on new cargo-handling techniques and their implications for employment and skills.<sup>85</sup> A major issue to emerge from this publication was the scale and extent of the training needs of port workers in developing countries. It concluded that insufficient attention was being given to human resource development and estimated that, worldwide, well over 1 million port workers require some form of training; this need for training is felt primarily in ports in developing countries. In the initial stage, the ILO has developed 30 training units related to the training of personnel in container handling. Due to rapid changes in container-handling systems and the introduction of new varieties of hazardous cargoes some of these units need updating. Furthermore, PDP training materials in the operations, safety and health in bulk handling, port security and the implementation of port safety and environment management systems would have to be developed. The PDP has been acquired and is being used by more than 50 institutions worldwide. The PDP is available in four languages and it is anticipated that by the end of 2004 it would be available in nine languages. The PDP fulfils specific requirements contained in both Conventions Nos. 137 and 152.

- 165.** The promotion of relevant ILO Conventions and Recommendations, the development of a revised guide to safety and health in dock work, the provision of advisory services in the process of port privatization, the development of a guide on structural adjustments in the port industry, developing linkages between Convention No. 152 and the IMO's IMDG Code and expanding the implementation of the PDP, would suggest the potential benefits of pursuing the integrated approach.
- 166.** For the above reasons, it is suggested that an "integrated approach to addressing decent work in the port sector" be explored. This would permit an examination of all the various means of action for these workers: the relevant standards, codes of practice and guidelines, technical cooperation activities and advisory services in order to assess whether they adequately respond to the needs of the sector and ILO objectives, permit identification of gaps if any as well as the best means to address them.

Geneva, 17 October 2002.

*Point for decision:* Paragraph 21.

<sup>85</sup> A.D. Couper: *New cargo-handling techniques and their implications for employment and skills*, ILO, Geneva, 1986.