



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

Report of the Committee on the Application of Standards

Contents

	<i>Page</i>
PART ONE: GENERAL REPORT	3
A. Introduction.....	3
B. General questions relating to international labour standards.....	14
C. Report of the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel	30
D. Reports requested under article 19 of the Constitution: Convention No. 122 and Recommendation No. 169 on employment policy and aspects relating to Convention No. 142 on human resource development and Recommendation No. 189 on job creation in small and medium-sized enterprises	34
E. Compliance with specific obligations.....	49
PART TWO: <i>Observations and information concerning particular countries</i>	1
I. <i>Observations and information concerning Reports on Ratified Conventions (article 22 of the Constitution)</i>	1
A. General observations and information concerning certain countries.....	1
B. Observations and information on the application of Conventions	4
II. <i>Observations and information concerning the application of Conventions in non-metropolitan territories (articles 22 and 35 of the Constitution)</i>	72
Information concerning certain territories	72
Appendix I. <i>Table of reports received on ratified Conventions (articles 22 and 35 of the Constitution)</i>	73
Appendix II. <i>Statistical table of reports on ratified Conventions (article 22 of the Constitution)</i>	76
III. <i>Submission to the competent authorities of the Conventions and Recommendations adopted by the International Labour Conference (article 19 of the Constitution)</i>	78

IV. <i>Reports on unratified Conventions, Recommendations and Protocols (article 19 of the Constitution)</i>	79
<i>Index by countries to observations and information contained in the report</i>	80
PART THREE: <i>Special sitting to examine developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)</i>	
A. Record of the discussion in the Committee on the Application of Standards.....	2
B. Observation of the Committee of Experts on the Application of Conventions and Recommendations on the observance of the Forced Labour Convention, 1930 (No. 29) by Myanmar	9
Documents D.5, D.5(Add.) and D.5(Add.2)	14
C. Brief summary of developments since June 2003	14
D. Latest developments since the 289th Session of the Governing Body (March 2004) ..	16
Appendices:	
Letter dated 25 May 2004 from the Liaison Office a.i. to the Myanmar Minister for Labour	22
Letter dated 2 June 2004 from the Director-General to the Myanmar Minister for Labour	25
Letter dated 3 June 2004 from the Permanent Representative of Myanmar to the Director-General	26
Document D.6	28
E. Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29).....	28
1. Document GB.288/5	28
2. Document GB.288/5/1	37
3. Document GB.289/8	46
4. Document GB.289/8/1 and GB.289/8/2	53

PART ONE

GENERAL REPORT

A. Introduction

1. In accordance with article 7 of the Standing Orders, the Conference set up a Committee to consider and report on item III on the agenda: “Information and reports on the application of Conventions and Recommendations”. The Committee was composed of 241 members (130 Government members, 30 Employer members and 81 Worker members). It also included 7 Government deputy members, 55 Employer deputy members, and 152 Worker deputy members. In addition, 26 international non-governmental organizations were represented by observers.¹

2. The Committee elected its Officers as follows:

Chairperson: Ms. Noemí Rial (Government member, Argentina)

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

Reporter: Ms. Maria Helena Robert Lopes (Government member, Portugal)

Several members of the Committee recognized the fact that for the first time ever in the history of the Committee, both the Chairperson and the Reporter were women.

3. The Committee held 20 sittings.

4. In accordance with its terms of reference, the Committee considered the following: (i) information supplied under article 19 of the Constitution on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference; (ii) reports supplied under articles 22 and 35 of the Constitution on the application of ratified Conventions; and (iii) reports requested by the Governing Body under article 19 of the Constitution on the Employment Policy Convention, 1964 (No. 122), and the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), and aspects relating to the promotion of full, productive and freely chosen employment of the Human Resources Development Convention, 1975 (No. 142), and the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189).² By decision of the Governing Body and the Conference, the Committee was called on to examine the report of the Eighth Special Session (September 2003) of the Joint ILO/UNESCO

¹ For changes in the composition of the Committee, refer to reports of the Selection Committee, *Provisional Records* Nos. 5A to 5J. For the list of international non-governmental organizations, see *Provisional Record* No. 4-1.

² Report III to the International Labour Conference – Part 1AI: Report of the Committee of Experts on the Application of Conventions and Recommendations; Part 1AII: Information document on ratifications and standards-related activities; Part 1B: Promoting employment: Policies, skills and enterprises.

Committee of Experts on the Application of the Recommendations concerning Teaching Personnel. The Committee was also called on by the Governing Body to hold a special sitting concerning the application by Myanmar of the Forced Labour Convention, 1930 (No. 29), in application of the resolution adopted by the Conference in 2000.³

Tribute to the memory of Sir William Douglas and Mr. Nicolas Valticos

5. The Committee paid tribute to the memory of Sir William Douglas and Mr. Nicolas Valticos, who passed away in August and November 2003, respectively. The Employer members recalled that Sir William Douglas, as former Chairperson of the Committee of Experts on the Application of Conventions and Recommendations, contributed to the positive development of the relationship between this Committee and the Committee of Experts. Referring to the many achievements of Mr. Nicolas Valticos, who was a former Assistant Director-General of the ILO and Director of the International Labour Standards Department, they regretted the loss to the ILO of this great personality. In their tribute, the Worker members recognized the important role that both of these eminent persons had played in upholding the cause of international labour standards, a subject to which they both dedicated much of their lives' work.

Work of the Committee

6. In accordance with its usual practice, the Committee began its work with a discussion of general aspects of the application of Conventions and Recommendations and the discharge by member States of standards-related obligations under the ILO Constitution. In this part of the general discussion, reference was made to Part One of the report of the Committee of Experts on the Application of Conventions and Recommendations and to the information document on ratifications and standards-related information. This year, as in the past few years, the Committee paid considerable attention to its working methods during the first part of the general discussion. In this regard, reference was made to the Committee's document D.1 concerning the work of the Committee.⁴ A summary of this part of the general discussion is found under relevant headings in sections A and B of Part One of this report.
7. The second part of the general discussion dealt with the General Survey on *Promoting employment: Policies, skills and enterprises* carried out by the Committee of Experts. It is summarized in section D of Part One of this report. The final part of the general discussion considered the report on Teaching Personnel of the Joint ILO-UNESCO Committee of Experts. This discussion is summarized in section C of Part One of this report.
8. Following the general discussion, the Committee began its examination of individual cases by considering compliance by member States with their reporting obligations under or relating to international labour standards. Details on these individual cases are contained in section E of Part One of this report.

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

⁴ ILC, 92nd Session, Committee on the Application of Standards, C. App/D.1

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9. The Committee held a special sitting to consider the application of the Forced Labour Convention, 1930 (No. 29), by Myanmar. A summary of the information submitted by the Government, the discussion and conclusion is contained in Part Three of this report.
 10. During its second week the Committee considered 24 individual cases relating to the application of various Conventions. The examination of the individual cases was based principally on the observations contained in the Committee of Experts' report and the oral and written explanations provided by the governments concerned. As usual, the Committee also referred to its discussions in previous years, comments received from employers' and workers' organizations and, where appropriate, reports of other supervisory bodies of the ILO and other international organizations. Time restrictions once again required the Committee to select a limited number of individual cases among the Committee of Experts' observations. With reference to its examination of these cases, the Committee reiterates the importance it places on the role of the tripartite dialogue in its work and trusts that the governments of all those countries selected will make every effort to take the measures necessary to fulfil the obligations they have undertaken by ratifying Conventions. A summary of the information submitted by Governments, the discussions, and conclusions of the examination of individual cases is contained in Part Two of this report.
 11. To select the cases to be discussed in the second week, the Worker and Employer members submitted a draft list of the individual cases to be examined.⁵ The Committee adopted this list.
 12. Following adoption of the list by the Committee, the Worker members pointed out that numerous observations formulated this year by the Experts could serve as a basis for a serious and useful dialogue concerning the application of Conventions. In selecting the cases to be discussed the Worker members referred to the discussion last year in this Committee concerning the criteria of selection that could serve to establish a balanced and relevant list and thus enable the Committee to accomplish its mission. Besides the criteria relating to the geographical balance, balance among the types of Conventions discussed and the urgency and seriousness of cases, the Worker members referred to the list of criteria submitted by the Office in last year's document on Working methods of the Committee on the Application of Standards⁶ – criteria which were taken into account in the choice of cases for the list this year. The Worker members hoped that the adopted list would promote a global dialogue. The 24 cases on the agenda did not diminish the importance of the other observations formulated by the Committee of Experts, since dialogue was needed concerning all the cases in different States and urgent action was required with regard to all the observations.

⁵ International Labour Conference, 92nd Session, Committee on the Application of Standards, C. App./D.4.

⁶ International Labour Conference, 91st Session, Committee on the Application of Standards, C. App./D.1. Paragraph 17 states that "the following short list of criteria for selection could include the following elements: nature of the comments of the Committee of Experts, in particular the existence of a footnote; the scope and persistence of shortcomings in the application of the Convention; the urgency of a specific situation; earlier discussions on the same case (providing arguments either for or against inclusion in the present session); the nature of a specific situation (if it raises a hitherto undiscussed question, or if the case presents an interesting approach to solving questions of application); and the likelihood that discussing the case would have a tangible impact".

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13. Referring to reactions on the list, the Worker members pointed out that for more than 80 years, the supervisory system had proved itself. This system aimed at ensuring a dialogue with the constituents on the basis of the obligations assumed and information furnished. Its aim was not to promote political debate or arbitrary judgements. In their view the list should not provoke surprise or indignation. The Experts' observations had been known in advance of the Committee's first sitting, and the list existed only because there were cases of non-compliance with the obligations undertaken. As for member States that were complaining that the situation described in the report did not correspond to the reality or had evolved, it was the Worker members' view that these governments should have sent complete information in their reports in due time so that such information could be taken into account at the moment of the adoption of the list. It was clear that information which was not supplied to the Experts could not be taken into consideration. The Worker members stressed the importance of the tripartite functioning of the Committee, which meant that, on the basis of the impartial analysis made by the Experts, the Worker and the Employer members took part in the decision-making on an equal footing with the governments. Tripartism reflected the present perception of democracy. The tripartism of the Committee was not a matter of coincidence, but an essential element of a democratic system; governments could not be both a judge and a party in the process of supervision. It was also essential for the democratic functioning of this Committee, which was based on respect for the distinct but mutually complementary roles of social partners and governments. To confound these roles meant allowing an arbitrary approach.
14. With respect to the cases selected, 11 observations had been chosen concerning the application of the freedom of association Conventions and collective bargaining. The Worker members stated that these Conventions must be given particular and priority attention, since they were the very foundation of social and democratic development of countries and a cornerstone of the functioning of the standard-setting system. As regards forced labour, five observations had been selected. Concerning equality of opportunity and treatment, three observations had been selected. Two important cases relating to child labour had been selected. The Worker members pointed out that so-called technical Conventions equally attracted their attention, and they wished to enter into dialogue this year on the application of Conventions concerning maternity protection, workers with family responsibilities, protection of wages, labour inspection and employment policy.
15. The Worker members drew attention to a certain number of cases which had not been mentioned in the list: in the area of freedom of association, the case of Cuba, in which, in spite of the conclusions adopted last year by this Committee, trade unionists were still imprisoned for their wish to exercise their right to organize freely; the case of Denmark, in which seafarers who were non-residents could not be represented by trade unions of their own choice; the case of Argentina, where the absence of progress was disturbing; the case of Germany, in the tone and the contents of the Government's report containing information on the state of freedom of association in public service, which was of particular concern; the case of Cameroon, which was still deaf to appeals to bring its legislation into compliance, a case which was however mentioned in a special paragraph of this Committee's report last year; and the cases of Ecuador and Burundi, where the persistence and the seriousness of the problems of application of Conventions Nos. 87 and 98 were very worrying. In the area of forced labour, the Worker members pointed out that the question of slavery in Mauritania remained open, in spite of the inclusion of this case in a special paragraph of this Committee's report last year. They also expressed their disappointment concerning the observation on Japan. It would be desirable that next year the Committee of Experts could allow this Committee to assess in an exhaustive way the evolution of this case, with the full and frank cooperation of the Japanese Government. The case of Swaziland also merited particular attention. Concerning equality of treatment, the Worker members regretted that there was no observation on the application by Libya of

the Equality of Treatment (Social Security) Convention, 1962 (No. 118), a case which had been included in a special paragraph last year. The Worker members could but hope that the Committee of Experts would receive from the Government relevant information in this regard for examination next year. In the area of child labour, the Worker members regretted that, despite the express request in this regard, the Experts had not formulated a coordinated observation on the interdependent problems of application of fundamental Conventions in countries affected by child trafficking in Western Africa.

16. The Employer members referred to their comments on the establishment of the list of cases within the framework of the discussions on the working methods of this Committee (see *infra* under Working methods of the Committee). They stated that the system itself was in order, but the results were not always satisfactory. The Employer members regretted, for example, that Panama did not appear on the list with regard to violations of employers' rights in relation to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Committee of Experts had not made a comment on it this year and they hoped there would be one next year. They also observed that the list was too focused on countries from Central America. However, it was inherent in the system that the selection of cases needed to take into consideration various factors and that not all parties would be pleased with the outcome. It was up to this Committee to strive to improve the system's functioning.
17. The Employer members noted that the member States concerned were also not always pleased with the examination of individual cases. However, criticism based on inadequate application of voluntarily accepted obligations could not be avoided. The Employer members endeavoured to stay fair and to act in the spirit of social dialogue. They were, however, of the opinion that the importance of social dialogue could not be overestimated in this area. Social dialogue was not the objective itself, but a tool to achieve important results. A functioning social dialogue acted as a vehicle to initiate and accelerate a process. Successful social dialogue was first and foremost a sign of a mature democratic society and corresponded to the ideal of self-determination and subsidiarity – furthermore it required confidence in all partners at the outset. They hoped that the Committee could conduct its discussions in this spirit.

Working methods of the Committee

18. The Worker members recalled that last year, a certain number of governments had been opposed to the working methods of the Committee, and more particularly to the establishment of the list of individual cases. In fact the Worker members were shocked by the attacks made last year by certain governments. Behind these attacks there was a dangerous evolution of ideas and attitudes that might prejudice the credibility and efficiency of the supervisory system of the Organization. In their view the position of these governments reflected a hidden opposition to the ILO supervisory system. If governments no longer accepted the supervisory system, the ILO activities risked losing their value. The Worker members did not want to be responsible for that and would continue to defend the crucial role of this Committee.
19. Referring to the establishment of the list of cases, the Worker members pointed out that mention of a country on the list of individual cases did not make such a list unbalanced or based on western selective criteria, or protectionism, or neo-colonialism. They recalled that, in order to establish the list of individual cases, this Conference Committee based its work first and foremost on the Committee of Experts' report. It then sought a certain geographical balance, a balance between industrialized countries and developing countries, and finally a balance between core Conventions and other Conventions. As far as the

Worker members were concerned, the current criteria for establishing the list of individual cases were relatively objective, even if they could be improved.⁷

20. The substance of the cases to be discussed lay in the impartial legal analysis done by the Committee of Experts. In discussing these cases, this Conference Committee had no desire or intention to set itself up as a court. On the contrary, the Worker members wished to see these discussions based more on the content of legal texts, on reliable statistics, etc., rather than on criticism directed against the supervisory system or the working methods of this Committee. The ultimate aim was respect for international labour standards, and the Workers welcomed everything that could contribute to this end.
21. The Employer members believed that discussions on the working methods of this Committee were becoming repetitive. They observed that criticism, mainly focused on selection of the list of individual cases to be discussed in the Committee, had come mostly from governments of those countries which had again and again violated important Conventions.
22. With respect to the list of cases, the Employer members reaffirmed that the aim of the Committee was to establish a just list, but in reality this was difficult to arrive at with perfection. The ILO had adopted 184 Conventions and, in 2003, governments had submitted 1,500 reports on which the Committee of Experts had formulated 750 comments. In the Employers' view there were only two possible ways to establish the list of cases: (1) according to a mathematical system, such as alphabetical order, or purely random; this however would not be desirable; and (2) based on a system of assessments that could not guarantee a scientifically correct outcome. In this regard, the Employer members were also not always fully satisfied with the list – for instance they had wished to discuss a case concerning violations of employers' rights in relation to Convention No. 87. They could not do so – but this did not mean that the system was faulty.
23. The Employer members associated themselves with the IMEC's statement that there were no major problems as regards the working methods of this Committee (see *infra* paragraph 25). Nevertheless, they felt that the Conference Committee needed to be attentive to possible improvements. The Employer members recalled that the Committee of Experts had put footnotes at the end of some observations, by which they invited the governments concerned to give further explanations to the Conference Committee on the application of the respective Convention. Although the Conference Committee was not obliged to follow the suggestion of the Committee of Experts, it usually invited those governments to report to the Committee. However, for the sake of transparency the Committee of Experts should provide a brief explanation of why it had put a footnote.
24. Many Government members welcomed the continued discussion on the working methods of the Conference Committee and the efforts towards improve its functioning (Brazil, Cuba, speaking on behalf of 18 countries (see list of countries *infra*, paragraph 27), Kenya, Lebanon, Mexico, Namibia, Russian Federation, South Africa, United Arab Emirates speaking on behalf of the Government members of the Gulf Cooperation Council, and the United States speaking on behalf of the Government members of the Industrialized Market Economy Countries (IMEC)). Along with many other speakers, the Government member of Namibia stressed that the ultimate aim of the review of working methods should be

⁷ See paras. 12-13 in section A of Part One of this report for reference to criteria used to select this year's list of individual cases.

improving transparency, objectivity and the functioning of the Conference Committee with a special focus on the method of selecting the list of cases and the drafting of conclusions.

- 25.** The Government member of the United States, speaking on behalf of the Government members of IMEC, recalled that over the last two years, the Conference Committee had debated at length its methods of work. Although some adjustments had been made as a consequence, IMEC believed that the discussions had revealed that, in general, the Committee functioned well. They continued to believe that there were no major problems with the working methods of this Committee, but that it was advisable to keep a constant eye on possible minor adjustments that would further improve this Committee's efficiency, transparency and objectivity, and thereby enhance its credibility as the "conscience" of the International Labour Organization. Noting that some members of this Committee had called into question the selection of cases for discussion and the development of the Committee's conclusions in those cases, she expressed the hope that the list of cases this year would be balanced and reasonable both in terms of countries and Conventions. Following the discussions and consultations regarding criteria for establishing the list of cases, it had become apparent that it was unlikely that a set of automatic, purely scientific criteria would emerge that would fit every situation. In the view of IMEC, the best solution would be a good faith effort, based on general criteria aimed at ensuring balance and fairness, to establish a list of cases for which there was a compelling reason to engage in tripartite dialogue. These would include serious cases of non-implementation of ratified Conventions, as well as significant issues of principle. The number of cases on the list should be limited to allow for ample discussion and efficient time management. She added that the Committee's conclusions should constitute a balanced and accurate reflection of the Committee's deliberations in each case. To that end, all cases should be handled in the same manner, and she suggested that a brief pause be taken after every case to allow time for the Chair to formulate the conclusion with, as necessary, the Employer and Worker spokespersons and the Committee's Reporter. The pause should be short enough so that the Committee's work would not be disrupted and there would be no perception of inappropriate negotiations; but it should be long enough to ensure that the conclusion clearly and accurately portrayed the discussion and position of this Committee.
- 26.** The Government members of Canada, Italy, Japan, and Norway (speaking on behalf of the Nordic Government members of Denmark, Finland, Iceland, Norway and Sweden) expressed their support for the statement made by the Government member of the United States on behalf of the IMEC group. The Government member of Italy, while supporting all points raised in the statement, wished to highlight in particular those statements relating to the criteria for the selection of individual cases.
- 27.** The Government member of Cuba, speaking on behalf of 18 countries (Algeria, Belarus, Burundi, China, Cuba, Egypt, Ethiopia, India, Indonesia, Libyan Arab Jamahiriya, Malaysia, Myanmar, Pakistan, Syrian Arab Republic, Sudan, Venezuela, Viet Nam and Zimbabwe), recalled that at the 91st Session of the International Labour Conference, the movement of non-aligned countries had drawn up a declaration stating its concern over the working methods of the Committee on the Application of Standards and had requested a new examination of these methods. He recalled that during the course of that session various regional government groups had also expressed concern at the working methods of this Committee and that the Chairperson of the Committee had invited members to prepare new proposals for the current session of the Conference. Consequently, the group of non-aligned countries had developed ideas that had been presented officially to the secretariat as a contribution to the process of improving the working methods of the Committee and which, in substantial part, he read before the Committee. He urged other members to forward their ideas to the secretariat in order to be able to agree on concrete action that would improve the efficiency, transparency and objectivity of the Committee's work. The

International Labour Office was requested to take due account of the following proposals in the preparation of a new working paper on methods of work and the question of the revision of the methods of work maintained on the Conference Committee's agenda of work. The information session at the beginning of the Conference Committee and the provisional Records of Procedure must be maintained. The Officers of the Conference Committee must continue to be chaired by a Government member. However, a third deputy chairperson must be appointed from the Government group, in order to be consistent with the proportions of representation of the three groups at the Conference and the Governing Body. Thus the Officers would have five members; and those five seats shall rotate annually, in a geographically equitable fashion, among the representatives of the four geographical regions acknowledged by the ILO. The Workers', Employers' and Government groups must bear in mind this geographical rotation when submitting candidates.

- 28.** The Government member of Cuba (on behalf of the 18 Government members) further proposed that the selection criteria for the adoption of the list of countries for individual examination, shall be made upon the basis of a set of permanent criteria which should be drafted by the Committee of Experts and submitted for adoption by the Conference Committee at the 93rd Session. The list of countries (around 25) shall be proposed by the Committee of Experts. This proposal has to be approved by the Conference Committee at its first working session every year. In proposing these individual cases the Committee of Experts should take into account relative geographical balance. It shall bear in mind the need to treat fairly, equally, and on the same footing, cases from all regions of the world. The Conventions whose application is to be examined must be selected upon the basis of an adequate proportion between fundamental and technical ones (50/50). Since the reports of the Committee of Experts must be examined by the Governing Body every year in its session held in March, all member States will be able to know at least three months in advance which countries will be summoned by the Conference Committee in its forthcoming session, as well as the Convention whose application will be discussed. Governments must have enough time to make a thorough presentation of their case and to respond to different allegations and questions raised in their case. The Conference Committee should not be approached as an inquisitorial tribunal nor a body for condemnation or confrontation. The conclusions on each individual case may only be drafted after the debate on the case has finished by the Chairperson, the three deputies and the Rapporteur. They should not be adopted automatically and should reflect all the views on the situation of each country expressed in the debates, plus the content of the report of the Committee of Experts. The concerned country shall be appraised of the content of the conclusions on its case, before they are submitted to adoption by the Committee. The members of the Committee must have the opportunity to democratically express their position regarding those conclusions before adoption. Failure to attain consensus regarding the proposed conclusions for a certain country must be duly logged in the record of proceedings of the Committee.
- 29.** A number of Government members (Belarus, China, Egypt, Sudan, the Syrian Arab Republic and Zimbabwe) reiterated their support for the proposals made by the Government member of Cuba on behalf of 18 Government members. The Government member of Zimbabwe warned that mischief occurred when systems operated in an opaque environment and he questioned the fact that there were always many developing countries on the list of individual cases for consideration by this Conference Committee. He suspected that, in practice, it was not the violation of ratified Conventions, but political reasons that led to their inclusion on the list. This Committee should ensure that it never gave any reason for accusations of bias in its work. The secretariat should be as amenable to the grievances of weak nations as of strong nations. The implementation of international

labour standards should be the paramount focus of the work of this Committee, and it should avoid heaping criticism solely upon developing countries.

- 30.** In endorsing the proposal made by the Government of Cuba on behalf of 18 member States, the Government member of Sudan stated that it would be reassuring for governments selected on the list of individual cases to know that a legal body such as the Committee of Experts compiled the list. Consequently, bias and targeting could be avoided by those organizations that currently proposed the list of individual cases. When the Committee of Experts proposed the list of cases, the government in question should be made aware of the requirement to appear before the Conference Committee within a sufficient period of time to enable the necessary preparation to be made. He proposed that there be a deputy to the Chairperson to ensure an equitable balance in the work of the Committee. Indicating that the aim of improving the working methods of the Committee was to achieve the objectives of the International Labour Organization through international labour standards, he stressed the necessity of dealing with individual cases without political motives or bias, and in all transparency. The conclusions reached by this Conference Committee in individual cases must be balanced and take into account the progress achieved in the country concerned, which at the present time they often failed to do.
- 31.** Feeling that the work of the Conference Committee was becoming increasingly politicized, the Government member of Belarus noted that the list of cases included an increasing number of developing and transition countries. He emphasized that these countries were coming under much criticism, but were being given little help in practice. He felt that the proposal submitted by the Government of Cuba, and supported by his own Government, constituted a compromise proposal so that countries from all the regions of the world could play a greater role in the work of the Conference Committee, and particularly in drawing up the list of individual cases. It was now time to conclude the discussions on this subject and to take the necessary specific steps.
- 32.** The Government member of Egypt, also one of the 18 countries, indicated that the proposals were aimed at increased objectivity and transparency in the work of the Conference Committee. She suggested that the Officers of the Conference Committee be distributed on an equitable geographical basis among the four regions and that this should be taken into account by the tripartite constituents when nominating the Officers of the Committee. She underlined the importance of using objective criteria and there being an equitable treatment of all regions when selecting individual cases. As to the number of cases, she felt that 24 or 25 cases were too many and such a large number could dissuade governments from ratifying. Governments needed sufficient time to prepare for each case and to provide replies to the various allegations and queries.
- 33.** As one of the 18 countries represented by the statement read by Cuba, the Government member of China noted that suggestions in the proposal had been made with a view to improving the transparency of this Committee's procedures and taking more fully into account the views of Government members. In the case of countries that failed to comply with standards, he called for greater efforts to be made to understand the reasons for such non-compliance and to provide technical assistance with a view to improving capacities at the national level.
- 34.** Calling for the Conference Committee's conclusions to be more promotional and advisory, the Government member of Japan suggested that the conclusions be linked to individual technical cooperation programmes. This would support the work of this Conference Committee, which was an important mechanism for ensuring the implementation of international labour standards together with the other means of action at the disposal of the

ILO. He agreed with other speakers, that it should be ensured that the work of this Committee was transparent and fair.

- 35.** Referring to document D.1, section V(B), concerning individual cases, the Government member of Brazil considered it important to establish more clear and transparent criteria in the selection of such cases, not with the intention of creating stricter requirements, but rather to make the motives for the selection of individual cases clearer. He also considered it fundamental to attain both a “geographical” and a “standards-subject-matter” equilibrium in the selection of cases.
- 36.** Referring to the selection criteria and notification of the list, the Government member of the United Arab Emirates, speaking on behalf of the Government members of the Gulf Cooperation Council, underscored the importance of establishing clear criteria for the selection of cases to be discussed by the Conference Committee. The list of cases should be announced at the outset of the Committee so as to allow countries time to prepare and to submit relevant documents.
- 37.** Also addressing these points as well as the Conference Committee’s conclusions, the Government member of the Russian Federation re-emphasized the uniqueness of the ILO’s supervisory machinery. Therefore, in any review of the working methods of the Conference Committee, account must be taken of the points of view of the Government members, as well as those of Employer and Worker members. In his view, the transparency of the current procedures could be improved, with particular reference to the methods for the selection of individual cases. On the timing of the establishment of the list of individual cases to be discussed, he thought it would be preferable for this to be done as early as possible in the work of the Conference. To accomplish this, he proposed that the social partners could be called upon to indicate, prior to the Conference, those cases which they found most problematical. This proposal of cases could be of an informal and non-binding nature, and could be changed subsequently. With regard to the drawing up of the conclusions of the Conference Committee on individual cases, he emphasized the need for them to reflect the discussion that had been held. He therefore suggested that, for individual cases discussed on a specific day, the conclusions could be submitted to the Conference Committee the next morning.
- 38.** Emphasizing the need to find solutions acceptable to all, the Government member of South Africa stated that his Government shared some of the concerns raised with regard to the working methods of the Committee and it supported greater clarity and transparency concerning the criteria used for the selection of cases. The conclusions should fully take into account and include statements made by governments during the discussion of cases. In his view more than minor adjustments were needed. If the integrity of the supervisory machinery were to be maintained the concerns raised in the discussions of this Conference Committee needed to be addressed seriously and as soon as possible.
- 39.** Proposing the preparation of a follow-up document by the Office that included the comments made in this Conference Committee, the Government member of Mexico commended the numerous and constructive interventions which would help provide greater objectivity, transparency and credibility to the work of the Committee. She welcomed the ideas put forward on the need for the list of individual cases to retain a thematic and geographical balance and that the Committee’s conclusions reflect precisely the deliberations carried out during the examination of each individual case. These issues had already been taken up by the Latin American and Caribbean Group (GRULAC) and presented to the Conference Committee in previous sessions.

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40. With respect to holding an information session at the beginning of the Committee's work, a number of countries indicated that it was helpful and should continue (Brazil, Cuba (speaking on behalf of the 18 countries) and Namibia).
 41. A Worker member of Brazil felt that the fact that developing countries were questioning ILO procedures was not imperilling the supervisory machinery, as some had claimed. In her view, the raising of questions and discussions gave life to the ILO. Trade union pluralism, the diversity of ideas and a balance between developing countries and developed countries were an integral part of the democratic process. What was indeed imperilling ILO mechanisms was political pressure against countries, for example as occurred in the case of Venezuela. Also endangering institutions such as the ILO was the failure to respect international decisions, compounded by lies, humiliation and the torturing of prisoners, as in the case of Iraq. Finally, she urged the Conference Committee to review its criteria for the selection of cases and to examine the very serious cases relating to developed countries that had been raised for years. This would ensure a better balance and transparency.
 42. The Employer members observed that the proposals introduced by the Government member of Cuba, on behalf of 18 countries, would not bring any improvements to the working methods of the Committee. On the contrary, the proposals contained rules that would go against the well-established principles of the Organization. The Employer members wholly disagreed with the proposal to request the Committee of Experts to establish the list of cases itself or at least the criteria for the establishment of this list, since such an arrangement would fail to recognize the distinct mandates of the Committee of Experts and the Conference Committee. The proposal to elect an additional vice-president from the Government group would constitute a clear violation of the principle of tripartism and the principle of "group autonomy", both important principles of the ILO.
 43. It was the Worker members' position that it was completely unthinkable to change the rules on individual cases and other procedures during the Conference. In their view some of the proposals made during the discussion on the working methods of the Committee demonstrated a clear misunderstanding of certain basic legal principles. They felt that calling these basic principles into question would compromise the entire system.
 44. The Chairperson of the Committee noted the high level of consensus concerning the current methodology of the methods of work which guaranteed transparency, objectivity and appropriate balance in the selection of individual cases, taking into account the diversity of standards, the various geographical regions and their development characteristics. She observed that there had also been agreement that the list of cases needed to be made known in due time so as to facilitate the intervention of the countries concerned. With regard to the adoption of conclusions, in the same way as the previous year, emphasis had been placed on the need for the Chairperson to have sufficient time for reflection to draw up the Committee's conclusions in each case and to carry out prior consultations with the Vice-Chairpersons and the Reporter. With regard to the proposals submitted by some Government members there was currently no consensus for the moment on the need to change working methods. She emphasized that it was always possible to change working methods on the basis of social dialogue.
 45. The representative of the Secretary-General of the Conference gave his assurance to the Conference Committee that the secretariat would do all in its power to facilitate the exchange of ideas and the examination of all proposals that would help improve its working methods.

B. General questions relating to international labour standards

General aspects of the supervisory procedure

46. The Committee expressed regret that the Chairperson of the Committee of Experts had not been able to attend the Conference due to health reasons. Both the Employer and Worker members trusted that this would not impact the good working relationship that had developed over the years between the two Committees. They hoped that the tradition of the participation of the Chairperson of the Committee of Experts in the general discussion of the Conference Committee would continue.
47. The representative of the Secretary-General introduced the various items before the Committee and related developments concerning standards policy, constitutional and other procedures, special procedures for freedom of association, promotion of standards and technical assistance. He reported that as of 1 June 2004, 7,230 ratifications had been registered, which constituted 77 new ratifications over the past year. On the obligation to submit reports, governments had submitted 65.9 per cent of reports due at the end of the Committee of Experts – a slight increase over last year. However, only 25 per cent of the reports requested had reached the Office by 1 September when they were due. He pointed out that 103 countries had ratified all eight ILO fundamental Conventions. In concluding, he referred to the important references to international labour standards in the “Fair globalization” report of the World Commission on the Social Dimension of Globalization and the follow-up Report of the Director-General to the Conference. Within this context, the ILO supervisory system, including the work of this Committee, had an urgent and important role to play in ensuring that international labour standards remain an indispensable tool to the promotion of social justice.
48. At the request of the Chairperson of the Committee of Experts, the representative of the Secretary-General provided information on the changes in the presentation of the Committee of Experts’ report. These changes were aimed at making the report more readable and more accessible to non-specialists, and to improving coherence of comments by subject matter so as to provide a better overview of the situation of a country with regard to a specific subject. Information regarding standards-related activities of the Standards Department had been included in a reformulated Part II of the Committee of Experts’ report.
49. On the changes in the presentation of the report of the Committee of Experts, the Employer members did not wish to focus on the format, although they thought the change made it difficult to determine if the report had grown in size. Referring to the substantive innovations, the Employer members recalled their previous criticism over the inclusion of subjects that went beyond the mandate of the Committee of Experts. Such information included changes in the membership of the ILO, the adoption and amendments of standards or the abrogation of old standards, denunciations and ratifications, standards policy, various measures and procedures under the ILO’s Constitution as well as commentary concerning measures taken by other bodies. It was the Employers’ view that the inclusion of such information gave the impression that the Committee of Experts considered itself as the highest judge and censor of the whole Organization. They therefore expressly welcomed the new report format that now separated the report of the Committee of Experts and information provided by the Office. However, they doubted whether the two parts to the report should both carry the main title “Application of international labour standards 2004”. This title did not apply to the Office information document, which contained information concerning standards but unrelated to their application.

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50. An additional concern of the Employer members over the new report was the use of the scale of justice which appeared on the cover of both publications. They doubted whether this symbol was appropriate, since it represented courts of justice. As the Committee of Experts was neither a standard-setting body nor responsible for adjudicating between parties, and its observations were not legal decisions, the use of the symbol gave rise to wrong expectations. Moreover, they doubted that a global organization like the ILO should use such a European symbol. They requested the Office to re-examine the cover graphics and the titles of the publications.
 51. Focusing on Volume I, the Employer members indicated their appreciation of the “Reader’s note” at the beginning of the report of the Committee of Experts, which contained a brief technical explanation of the Committee of Experts’ report.
 52. With regard to the section on the collaboration with other international organizations and functions relating to other international instruments, the Employer members questioned the appropriateness of this section in the Committee of Experts’ report since this did not involve duties of the Experts, but of departments in the Office. Similarly, the supervision of standards adopted by the United Nations or other organizations was usually assigned to special bodies in these organizations. The Committee of Experts was called to act only in one area, namely in relation to the European Code of Social Security and its Protocol. This activity, however, was not based on the ILO’s supervisory mechanism, but on an agreement between the ILO and the Council of Europe, in conformity with article 74 of the Code. The Employer members had considerable doubts whether a preferential place should be given to European social agreements in the Committee’s report.
 53. The Employer members noted changes as regards the presentation of individual observations, which followed a decision by the Governing Body establishing thematic groupings of Conventions. The first four groups referred to the core Conventions covering the subjects of freedom of association, forced labour, child labour and equality. They noted that not all Conventions examined under these headings belonged to the core Conventions or priority Conventions, but were examined in these groups for thematic reasons. They were of the view that users would get used to the new arrangement.
 54. The Worker members thought it worthwhile once again to recall that the working relationship between the two Committees was complementary and marked by mutual respect and a sense of a shared responsibility. While the tasks of the Committees differed in nature, the ultimate objective remained the same and their operations contributed to the success of the ILO’s supervisory mechanism.
 55. Concerning the new form of the report, the Worker members noted that the changes modernized the report but also made the report more difficult to read and less accessible. They found it difficult to determine whether the Committee of Experts had made a comment on a particular Convention. A non-specialized reader would not be able to identify specific Conventions relating to certain subjects. It was therefore suggested that the report should first specify the Conventions under the relevant topics addressed.
 56. The Worker members regretted that footnotes were no longer taken up in a special paragraph but appeared with requests for detailed and early reports. They also regretted that developments relating to standards policy were moved to the second volume of the report without alerting the reader to this fact. However, they found that the development of country profiles inviting member States to ratify up-to-date Conventions was a good initiative in the framework of promoting standards and the Office should support this initiative. For the second time, a Conference Committee was examining an item within the framework of the integrated approach, which this year concerned migrant workers. The

Worker members were watching closely to ensure that this new approach did not undermine existing standards on the subject.

57. The Worker members expressed their regret that the Committee of Experts' report did not take into account their proposal to make more room for cases where progress was made. It was further noted that the Committee's report should not aim at targeting only a specialized audience but should address itself to the interested public as well.
58. Finally, the Worker members pointed out that cooperation with the regional organizations had given fruitful results in the field. This cooperation should be enlarged. It would also be appropriate if the ILO would continue to promote social issues, and particularly fundamental standards, in other international organizations. The knowledge acquired by the ILO in this field could bring some added value to the work of other international organizations, while respecting their autonomy and mandate.
59. Several speakers commended the excellent quality of work of the Committee of Experts, which reflected adherence to the principles of independence, impartiality and objectivity (Government members of Egypt, Kenya; the Worker member of Senegal). The Government members of Belarus and India emphasized the importance of these principles to the functioning of the supervisory machinery. The Government member of Belarus also recalled that his Government highly valued the role of the ILO and its supervisory machinery. The Government member of India also reiterated the importance of the Committee functioning with the transparency and fair objectivity required to maintain its credibility.
60. On the new format of the Committee of Experts' report, a number of speakers (Canada, Cuba, Italy, Mexico, Namibia, the United States, speaking on behalf of the Government members of IMEC; and a Worker member from Brazil) welcomed the new presentation and format of the report, which they found to be more user-friendly and provided easier access to information. The Government member of Lebanon indicated her appreciation for Volume II of the report (Information document on ratifications and standards-related activities). However, she did not find the new format of Volume I user-friendly. The Worker member of the Netherlands supported the view expressed by the Worker members that the new style of the Committee of Experts' report was not convincing or user-friendly. The Worker member of Senegal noted the intention of providing a user-friendly document. However, the speaker expressed concern that information which had previously appeared in the General Report of the Committee of Experts would appear from now on in the information document on ratifications, and that the footnotes no longer served their initial purpose and had therefore lost their usefulness. A Worker member from Brazil felt that the image of the scales on the cover of the report suggested justice and equality, which was perfectly compatible with the objectives of the Committee.
61. The Government member of the United States, speaking on behalf of the Government members of IMEC, recalled that the quality of the report of the Committee of Experts had a direct impact on the quality of the work of the Conference Committee. She commended the continuing review of the Committee of Experts' methods of work and looked forward to learning more about this ongoing aspect of their deliberations. Recalling that the Office played a key role in the efficient and effective operation of the supervisory system, she also looked forward to receiving information on steps taken by the Office to review its own procedures and methods of work. She called on the Director-General to support fully the work of the Standards Department by ensuring that it was provided with the necessary resources and by coordinating and integrating its activities with the other programmes of the Office.

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62. The Government member of Norway, speaking on behalf of the Nordic Governments (Denmark, Finland, Iceland, Norway and Sweden), supported the IMEC statement. He recalled that during the last year, the ILO had emphasized the supervisory system as a positive global mechanism. This system entailed promotion, ratification and support to practical application of international labour standards, as well as effective and modern methods of supervision. The special focus on the fundamental Conventions had helped the ILO to expand awareness of the relevance of standards to the development process. The importance of standards was underlined in the report of the World Commission on the Social Dimension of Globalization. As the Commission recommends, the ILO must remain vigilant regarding cases of grave and persistent abuse of fundamental principles and rights at work. The ILO Constitution gave the means to place considerable pressure on governments that systematically failed to live up to their international obligations or disregarded the ILO's supervisory mechanisms. While the ILO was frequently mentioned in debates and articles about globalization, many of those references were not based on solid knowledge of international labour standards nor of the supervisory system. The ILO should determine how it could better address these questions. The Nordic countries welcomed the action of the World Bank and several regional development banks to integrate fundamental principles and rights into their policies. During this Conference, the importance of the ILO supervisory mechanisms also had been underlined in the Report of the Director-General, *A fair globalization: The role of the ILO*. The Committee on Freedom of Association had designated a certain number of cases as serious and urgent, especially those involving murder, death threats and physical assault, and the Nordic Governments supported this focus.
63. The Government member of the United Arab Emirates, speaking on behalf of the member Governments of the Gulf Cooperation Council, stated that the adoption of the Declaration on Fundamental Principles and Rights at Work in 1998 had led all Gulf Cooperation Council States to ratify fundamental ILO Conventions. These States had also agreed to make efforts to ratify further Conventions and to widen political participation in the decision-making process. Such efforts would enable civil society to operate in a climate of independence and would lead to wider freedoms. While commending the ILO for its ongoing campaign for the ratification of the eight internationally recognized core labour standards, the Government member of Kenya maintained that the ILO should also intensify efforts to promote the ratification and implementation of all of its standards as the only sure way of achieving the Decent Work Agenda. His Government remained fully committed to the ILO's standards as a sure means of enhancing basic workers' rights in his country.
64. The Government member of Cuba expressed support for the practice followed by the Committee of Experts of indicating the cases of governments which had adopted measures to contribute to an improvement in the application of ratified Conventions, both when it noted such cases with satisfaction and with interest. This practice should be maintained as it provided an incentive for governments and balanced the content of observations which only referred to shortcomings in law and practice.
65. The Government member of Angola suggested that the comments of the Committee of Experts should not only observe facts, but should include proposals on improvements for implementation of the standards in law and practice. He noted, for example, that his country had ratified various maritime Conventions, but the relevant laws were in some cases outdated due to the modernization of the sector. Now there were many private enterprises in the sector, but labour inspectors were not prepared to ensure the application of the laws because they were out of date. He suggested that the Committee of Experts should study the manner in which observations could be used as a basis for coherent planning with a view to providing technical assistance to the countries that required it.

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- 66.** The Government member of Lebanon welcomed the Committee of Experts' efforts in improving its working methods. However, she would have liked to see an evaluation on how the recommendation made by the Committee of Experts in 2003, aimed at decreasing the workload of its members, had been applied. In 2004, there were 17 members of the Committee of Experts, in comparison to 19 in 2003, whilst the rate of reports submitted by virtue of article 22 had increased to 70.11 per cent in 2004 versus 64.57 per cent in 2003. She proposed that the number of experts serving on the Committee of Experts be increased to meet the increased work overload and requested an increased participation of Arab experts in particular. She asked that a corrigendum be issued on the Arabic version of article 24 of the ILO Constitution to replace the word "complaints" by the word "representation" so as to distinguish it from the substance of article 26.
- 67.** Regarding section IV of Part One of the Committee of Experts' report on cooperation with other international organizations and functions relating to other international instruments, the Government member of Mexico expressed her concern regarding the absence of an evaluation by the Committee of Experts on the benefits and advantages that had resulted from dialogue with other specialized organizations of the United Nations system. She repeated the need to consider the possibility of distributing a copy of the relevant government statements to other specialized organizations of the United Nations system or to institutions mentioned in paragraph 102 of the report. In addition it would be opportune to inform interested governments of the comments from other organizations so that those who wanted to could make a response. She was of the opinion that the involvement of other social actors in the application of ILO Conventions, through a process of information exchange, could give the erroneous impression that the tripartite mechanism of the ILO was no longer efficient and no longer achieved its aims. The work of the Committee of Experts and of the Committee on the Application of Standards could be affected if the Experts no longer respected the mandate given to them. In her view, this mandate consisted of examining information submitted in government reports.
- 68.** The Government member of India welcomed the ILO's collaboration with other international organizations and its functions relating to other international instruments. However, he emphasized that such collaboration should be unconditional and should not go against the just aspirations of developing countries.
- 69.** The Government member of Canada supported the measures taken to follow up on the work of the Working Party on Policy regarding the revision of standards and called on member States to ratify the constitutional amendment that would permit the abrogation of obsolete Conventions.
- 70.** Several Government members (Kenya, Lebanon and the Syrian Arab Republic) provided detailed information on the legislative developments recently undertaken or completed in their countries in the area of labour law. The Government member of the Syrian Arab Republic indicated that the new legislative measures took into account the comments of the Committee of Experts. In this regard he detailed the trade union rights, freedom of association and right to strike provisions.
- 71.** The Worker member of Colombia stated that what was now at stake was the very life of the ILO, particularly taking into account the agenda of the WTO, the directives of financial institutions and, in general, the application of the neo-liberal model, which was giving rise to increasingly critical situations. For this reason, there was a great responsibility for the Committee of Experts and the Conference Committee to improve their effectiveness.
- 72.** A Worker member from France stated that the world of work and business along with the international community had changed over the last 30 years. In contrast, the reaction of the

Employer members to the General Report was more consistent. He found their reaction was somewhat outdated with respect to the context of globalization in which, as explained by the report of the World Commission on the Social Dimension of Globalization, the organization of work had become international. Globalization required universal standards in order to avoid competition between social systems and social dumping.

73. The Worker member of Senegal highlighted the fact that the interplay between the technical examination of the application of standards by the Committee of Experts, which is impartial and independent, and this Committee's examination, had the sole purpose of ensuring the efficient operation of the ILO's supervisory machinery. A Worker member of Brazil noted that the objective of the Committee of Experts had always been the effective application of international labour standards, which was not easy to achieve, and it was logical that not everyone would be satisfied. In his view, it was necessary to highlight the positive aspects of the work of the Committee of Experts, such as the impartiality of its legal work. The supervisory system promoted the application of standards through the strengthening of dialogue and through establishment of mechanisms such as direct contacts. The work of application involved interpretation, while at the same time strengthening the pillars of the ILO, such as multilateralism and tripartism, which were the framework in which social dialogue took place and which were indispensable to achieving good governance.
74. The Worker member of the Netherlands also emphasized that one should recognize the merits and qualities of the ILO supervisory system which was superior to that of the United Nations due to its two main features: (1) the role of the Committee of Experts and its interplay with the Conference Committee; and (2) its tripartite nature. In addition, the system was functioning due to the quality of the International Labour Standards Department, which did not always receive the recognition it deserved within the Organization. It was not possible to maintain this quality while at the same time cutting resources. The supervisory system, and its two main pillars, were precious and needed to be preserved from vicious attacks as had been the case over the last 40 years. However, this need to defend the system did not belong to the past. As long as regimes existed that gave low priority or attached no importance at all to the values of the ILO, such attacks would continue. In his view, the fact that such attacks continued was proof that the system functioned.

***Application of international labour standards:
Discussion on highlights and major trends
in certain areas***

75. Referring to paragraphs 12 to 43 of the report of the Committee of Experts on highlights and general trends in the application of labour standards in certain areas, the Employer members would have liked to have seen an explanation as to why the subjects of labour inspection, indigenous peoples and maternity protection had been chosen. They also wondered whether such a general analysis belonged in the report. In their view, the value of such highlights and trends based on the results of the examination of some individual cases had to be questioned – particularly in light of the possibility to carry out the general surveys under article 19 of the ILO Constitution. General surveys were based on information provided from ratifying and non-ratifying countries and the latter often represented the majority of countries examined. This being the case, the general surveys did not attempt to examine the extent of implementation. Instead, they provided a general assessment of the situation in countries in relation to the instruments and above all they dealt with obstacles to the ratification of particular Conventions.

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76. The Employer members did not believe that this part of the report could provide a basis for determining whether Conventions needed to be amended or abolished since this was a political decision that had to be taken exclusively by other responsible bodies of the International Labour Organization. They also considered whether the purpose of this section could be to establish a general interpretation or philosophy on Conventions and hence to establish a kind of textbook on interpretation. In this regard they recalled that in 2001, the Committee of Experts had dedicated more than one-third of its General Report to the Forced Labour Convention, 1930 (No. 29), and in particular to the issue of prison labour. However, at the beginning of its considerations the Committee of Experts had indicated that it had only a small number of reports submitted by member States at its disposal. Therefore, these textbook-style considerations were of a purely theoretical nature containing sometimes bizarre and exaggerated results. The Employer members thought that such textbook-style considerations were not within the mandate of the Committee of Experts.
77. The Worker members welcomed the inclusion of this part of the report. With regard to subjects dealt with, the Worker members regretted that in spite of their previous request made last year, the Experts had not examined the issue of trafficking and exploitation of children in West Africa.
78. Several speakers (Government members of Cuba, Mexico and Senegal) indicated their appreciation for the Experts' inclusion of selected topics on which to provide highlights and identify trends.

Labour inspection (Conventions Nos. 81 and 129)

79. The Employer members drew attention to paragraph 18, which identified “appropriate penalties” to be taken in application of Article 18 of the Labour Inspection Convention, 1947 (No. 81), as sufficiently high fines imposed on employers for violating labour laws. This statement made them recall that the yardstick for interpretation of ILO Conventions was the Vienna Convention on the Law of Treaties of 1969, which was confirmed by all bodies of the ILO, including the Conference. According to the Vienna Convention and according to international law in general, the wording of a provision of international law determined its meaning, unless the parties to the treaty had decided otherwise. Given the fact that interpretation rules differed in the national legal systems, international law had developed independent rules for interpretation. The Employer members also referred to the well-known Swiss jurist Emer de Vattel, who had stated that nothing should be interpreted which was not to be interpreted. The International Court of Justice had also found that the Vienna Convention upheld this principle. The basis of interpretation was the text itself, i.e. the wording of a Convention according to its usual and natural meaning under the so-called “ordinary meaning rule”. The preparatory materials (*travaux préparatoires*) to a Convention were only of importance if the wording of a text remained unclear. They also could be used to confirm a clear interpretation of the wording of a text. The Employer members had raised this issue a number of times in the past and once again recalled that this was their position on other points, for example, the right to strike which was clearly not regulated pursuant to the wording of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).
80. The Employer members also recalled that the Committee of Experts had explicitly indicated in 1998 that only some Conventions contained requirements specifying the kind of sanctions to be imposed in the event of violation of provisions contained therein. Otherwise, it was up to the member States to determine appropriate sanctions, according to their national practice.

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- 81.** The Worker members noted that the Committee of Experts reported progress in the functioning of labour inspection in the commerce and industry sectors. In their view, however, this progress was not evident in practice in the Latin America region where there were increasingly limited means for inspection services. They believed that labour inspection was of capital importance in the informal sector and in combating child labour, but the report did not clarify the added value of inspection services in these areas. In the Worker members' view, labour inspection remained the principal means of ensuring practical application of Conventions. However, its proper functioning required a real political will, which translated into sufficient resources and an adequate level of training for officials. Governments must take responsibility for ensuring the proper functioning of labour inspection, the independence of labour inspectors and the provision of reliable statistics.
- 82.** As concerns labour inspection in the agriculture sector where the most vulnerable workers were found, the Worker members noted that it remained in an embryonic state. The low number of ratifications of the Labour Inspection (Agriculture) Convention, 1969 (No. 129), as compared to the Labour Inspection Convention, 1947 (No. 81), which was widely ratified, attested to this fact.
- 83.** The Worker members were also concerned about the status and the conditions of work of labour inspectors in certain countries where the criteria of independence and stability of employment required by the relevant Conventions were not respected. Moreover, there was a risk of privatizing the inspection services in some countries. The Worker members emphasized that workers should be involved in the implementation and respect for social responsibility in enterprises, to which an increasing number of enterprises were referring. In this context, the ILO could prepare a strategy that would allow multinational enterprises to assume their social responsibilities.
- 84.** Some speakers (Government members of Cuba, Egypt, Peru, Tunisia and Venezuela) who spoke on this topic underscored the fundamental role that labour inspection played in the application of labour standards. The Government member of Peru indicated that this role was in terms of prevention, punishment and dissuasion. The Government member of Egypt emphasized the importance of efficiency.
- 85.** A number of speakers (Government members of Kenya, South Africa and Tunisia; Worker members of Colombia and Senegal) endorsed the importance accorded by the Committee of Experts to the role of labour inspectorates in combating child labour.
- 86.** Several speakers (Government members of Kenya, Peru and Venezuela; the Worker members of Senegal and South Africa) underscored the difficulties facing labour inspectorates and the need to reinforce national systems of labour inspection through increasing financial resources and improving human resources capacity. The Government member of Venezuela emphasized the importance of strengthening an inspection system along the lines set out in paragraphs 13 to 23 of the Committee of Experts' report. The Worker member of South Africa called for more resources to be provided by governments to labour inspection services and for human resources to be made available by workers' and employers' organizations to enhance the capacity of labour inspectors.
- 87.** The Government member of Peru stated that it was vital for the ILO to provide technical cooperation to address the existing deficiencies. In this respect, he suggested that the SafeWork InFocus programme should undertake to carry out technical assistance programmes in the field of labour inspection in Latin America. He also referred to the link between freedom of association and the effective application of workers' rights. He emphasized that an organized trade union movement was more effective than an army of

inspectors in ensuring compliance with labour standards. In this regard, he considered it vital for there to be a close link between labour inspection and freedom of association to achieve better results in areas that were difficult for traditional inspection systems to reach, such as agriculture and small enterprises.

- 88.** Concurring with the view of the Committee of Experts concerning the poor situation of labour inspection in many countries, particularly in developing countries, the Government member of Kenya emphasized the need for real awareness of the necessity to protect workers in the performance of their jobs and to allocate appropriate budgets for effective systems of labour inspection.
- 89.** The Government member of Lebanon did not agree that labour inspection could be done without schedules. In her view, this would not hinder in any way the surprise element of the labour inspection process as long as the external partners were unaware of the timing of the inspection. She also emphasized the need for periodic training for inspectors and for specialized inspections and for sector-level inspections.
- 90.** Several Government members (Egypt, South Africa, Syrian Arab Republic, Tunisia and Venezuela) described labour inspection activities in their countries. The Government member of Egypt noted that in her country labour inspection in agriculture was an integral part of a comprehensive system of labour inspection in all agricultural, commercial and industrial activities. Labour inspectors had the necessary powers to carry out their duties, and employers were under the obligation to cooperate with and give all assistance to labour inspectors. The Government member of South Africa stated that his Government had put in place various measures to strengthen labour inspection services in recent years, including training on legislation, the acquisition of tools, and the recruitment of additional inspectors. Enforcement of legislation through labour inspectors included powers to enter, powers to question and inspect, securing an undertaking of compliance and the serving of compliance orders, and to approach the labour courts to obtain court orders.
- 91.** The Government member of the Syrian Arab Republic referred to a number of decisions that had been issued instructing governorates to provide labour inspection services with the necessary human and financial resources to ensure that labour administrations fulfil their duties in inspecting agricultural undertakings and enforce occupational safety and health at the workplace. The Government member of Tunisia indicated that the labour inspection service was composed of agents whose minimum qualification was a degree of science in labour, law or economics and who benefited from training programmes. Tunisia had ratified 57 international labour Conventions, including the eight core Conventions. It always watched to ensure that its national legislation conform with international standards that it had ratified and that application of national legislation was regularly supervised by the labour inspection services. An annual report on activities of labour inspection was established in conformity with Convention No. 81. He pointed out that efficient labour inspection helped prevent individual and collective labour disputes and therefore played an important role in promoting long lasting social stability. Labour inspection had to be provided with the authority to carry out its work and this was why Tunisia had given its labour inspectors the status of law enforcement officials, whose testimony was to be followed unless proven incorrect.
- 92.** The Government member of Venezuela indicated that the Committee of Experts had noted with interest the measures adopted by his country in relation to Convention No. 81. Over the past five years the number of inspectors in his country had doubled, a training policy had been established and the career and status of labour inspectors had been consolidated. Moreover, in 2002 the Occupational Prevention, Safety and Health Institute had begun to operate. Sectors of the economy which had previously been excluded from inspection for

political reasons, such as mining, the oil industry and hydrocarbons in general, were now placed under the supervision of the State in relation to labour and social security. With a view to strengthening the inspection system, dissuasive sanctions had been introduced and the procedures for their application simplified. He emphasized the fundamental role that cooperation by the Office could play in assisting Ministries of Labour.

- 93.** The Worker member of Colombia stated that labour inspection was an institution that was disappearing in various countries in the region, with serious repercussions for the fundamental rights of workers. He expressed concern at the theory that governments should not intervene in conflicts between employers and workers, which should be resolved directly between the parties. He felt this theory was gaining acceptance. Nevertheless, when employers called for inspections, they were carried out with diligence, which did not happen when denunciations were made by workers relating to violations of Conventions and prejudicial acts against freedom of association.
- 94.** The Worker member of Senegal endorsed the comments of the Committee of Experts, particularly with regard to the importance of the training of inspectors and the need to provide adequate resources for inspection. He indicated that his country had recently adopted new provisions to strengthen and rationalize the labour inspection services. The Worker member of South Africa expressed the view that the effectiveness of labour inspection depended primarily on the importance attached to the role of the labour inspectorate by policy-makers. One of the best guarantees of the effective functioning of a system of labour inspection was the involvement of the social partners. It was particularly important for representatives of the social partners to accompany labour inspectors in cases where they might be subject to intimidation or other obstacles of a practical nature in the discharge of their duties.
- 95.** A Worker member of France noted that, in matters of workplace inspection, it was reasonable to foresee sanctions in cases of violations of standards on health, safety and working conditions. The absence of decent work and wages was the dividing line between working in freedom and forced labour. Workplace inspections whose reports were ignored and ridiculed should not exist. He felt that Convention No. 87 was an essential guarantee for workers and for businesses, and that unfair competition and social dumping could thereby be prevented.
- 96.** A Worker member of Germany welcomed the considerations contained in the report of the Committee of Experts concerning labour inspection. Labour inspection had rightly been a focus of the ILO since its foundation and was particularly important with regard to occupational risks. Due to demographic changes, workers were called to work longer, which was however only possible if preventive measures in the field of occupational health were taken. Occupational risks and their prevention were inadequately addressed which would in consequence burden the social security system with additional costs. He therefore suggested the establishment of a survey on the practice and benchmarking of occupational risk prevention in the industrialized countries. He further was of the opinion that the labour inspectors rightly needed to be allocated appropriate powers of injunction and the power to bring proceedings in the event of danger to the health and safety of workers. Sanctions were of crucial importance to ensure the effectiveness of an inspection system.
- 97.** Turning to the Employer members' indications concerning the Vienna Convention on the Law of Treaties of 1969, a Worker member of Germany stated that no general principle existed in international law providing for the compulsory application of the Vienna Convention to standards of international organizations. Article 5 of the Vienna Convention provided that the interpretation rules established by international organizations take precedence over its provisions. Given that the ILO had developed over the decades its own

interpretation rules, the provisions of the Vienna Convention were subsidiary and hence not applicable. However, even if the Vienna Convention would be taken into consideration, Article 31, subparagraph 3 of the latter would impede the application of its interpretation rules, for the subsequent practice of the parties in the application of a treaty had precedence over the provisions of the Vienna Convention. In his view, the ILO should stand by its own supervisory mechanisms which were characterized by objectivity and impartiality. On the same point a Worker member from France noted that, according to some speakers, only States had the capacity to interpret the 1969 Vienna Convention, which codified the international law of treaties. However, the ILO was founded 50 years before, and the Committee of Experts 40 years before the adoption of this treaty. Human rights had been a part of international customary law for 60 years. In fact, the Universal Declaration of Human Rights and the 1966 United Nations treaties guaranteed that these rights were indivisible and imprescriptible. They also guaranteed that fundamental labour standards were integral to these rights and they should likewise be treated as imprescriptible and universal.

98. In reply, the Employer members recalled that the ILO had in fact not established its own interpretation rules. Article 37, subparagraphs 1 and 2 of the ILO Constitution only indicated the responsible body for the interpretation of Conventions, but did not contain substantive interpretation rules. Hence, there existed no ILO rules that had precedence over the interpretation rules of the Vienna Convention. The views presented by the Employer members on this issue were in fact those of the relevant organs of the ILO. He further pointed out that the Committee of Experts had referred to the Vienna Convention in its 1990 General Survey on the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). In addition, the Governing Body in 1993 and the International Labour Conference at its 88th Session in 2000 had confirmed the applicability of the Vienna Convention to international labour Conventions.

Indigenous and tribal peoples (Conventions Nos. 107 and 169)

99. The Employer members noted that these Conventions had been ratified by relatively few States and the Office had received only a part of the reports requested. This was presumably the reason why the Committee of Experts had made only a few very general remarks.
100. The Worker members expressed concern at the low number of ratifications of these Conventions and the small number of reports submitted on their application. They called on governments to take the necessary measures with a view to improving the living conditions as well as the conditions of work of the indigenous and tribal peoples, who constituted one of the poorest and most excluded groups at the national level. The Worker members called upon governments concerned to ratify Convention No. 169.
101. The Government member of Mexico pointed out that this section did not provide indications on trends resulting from the examination of the reports received and analysed, since, as paragraph 25 of the Committee's report had indicated, few reports had been received and examined. In this respect, she stressed that the Committee of Experts should take into account the low number of ratifications received by Convention No. 169, which mainly emanated from a single region. It was consequently difficult to establish facts that were not based on a universal and general examination of the application of Convention No. 169. She also stated that the Committee of Experts should not confuse its mission with that of the Office, especially in connection with the activities carried out in the framework of the United Nations that had no relation whatsoever to the application of Convention No. 169 or with the promotional activities carried out by the ILO through the Office and

the Governing Body. In this regard, she emphasized that the main source of information for the Committee of Experts should be that contained in the reports of States which had ratified the ILO Conventions.

- 102.** The Government member of Peru regretted the unsatisfactory results relating to the application of international labour standards relating to indigenous peoples. The Government member of Venezuela thought it was important to highlight the situation of indigenous peoples and to underscore their poor and excluded status in the world. The commitment of his Government to indigenous peoples had led to the recent ratification of Convention No. 169. The new Constitution set forth indigenous rights. He also referred to the political measures for the recuperation and reintegration of the lands of indigenous peoples, which had been illegally invaded by their owners, as well as the approval of legislation delimiting indigenous lands and access to credit and technology.

Maternity protection (Conventions Nos. 3, 103 and 183)

- 103.** Referring to paragraph 29 on maternity protection, the Employer members noted that the member States had been strongly encouraged to ratify Convention No. 183. However, the Employer members had considerable doubts about whether such recommendations were part of the mandate of the Committee of Experts.
- 104.** The Worker members emphasized that, as a result of the entry into force of Convention No. 103 and, more recently, Convention No. 183, the scope of maternity protection had been extended, and the number of persons protected increased. Unfortunately, the rate of ratification of these Conventions remained low. The Worker members insisted that governments undertake to ratify and apply these Conventions, since the protection of pregnant women workers remained indispensable. Certain solid realities such as compulsory pregnancy tests in certain export processing zones, risk of dismissal and exposure to hazardous work, were perfect examples of the urgent need for action.
- 105.** Referring to the information in the Committee of Experts' report, the Government member of Peru expressed a measured welcome for the results achieved with regard to the protection of maternity.
- 106.** Several Government members (Cuba, Kenya, Lebanon and South Africa) provided information on their national situation. The Government member of Cuba indicated that her Government, in addition to ratifying Convention No. 183, had adopted Legislative Decree No. 234 of 13 August 2003, which reaffirms existing rights such as 34 weeks of pregnancy leave; 18 weeks of paid leave with an optional right to apply for social security benefits at 40 per cent of her salary from the postnatal period until the child reaches the age of one year; and other paid or unpaid child-care leave. This new Decree also resolved problems raised by the Committee of Experts in its comments concerning the right to breaks from work to nurse children. These breaks were considered as working time. Once the 18-week postnatal leave and the nursing period were expired, both parents could decide which of them would benefit from social security benefits and parental leave to care for the children, until the child reaches the age of one year. The Government member of South Africa indicated that discussions with social partners on the possibility of ratifying Convention No. 183 had started recently. The Government member of Kenya agreed with the Committee of Experts that the granting of maternity leave should be as much an obligation as a right and on the need for appropriate maternity benefits and protection. The granting of maternity leave to women in his country was adequately addressed by the recently concluded review of the national labour legislation. The Government member of Lebanon indicated that Convention No. 3 was still in force and therefore wondered how it was possible to observe both Conventions Nos. 3 and 103 given the differences between

them. She made a reference to a draft amendment to Ministerial Order 1/210 dated 21 December 2000 that had been prepared by a tripartite committee and included provisions which were in conformity with some of the principles of Convention No. 183.

- 107.** On the subject of the Committee of Experts' reference to the term "maternity leave", the Government member of Mexico found the wording ambiguous in Spanish, since it could mean that a mother could give notice or be fired as a result of maternity, while Convention No. 183 provided for the possibility of obtaining a leave during which the pregnant woman would not work for a period of at least 14 weeks and could start work again after it.
- 108.** The Worker member of Norway agreed with the Experts that maternity protection was a field which had always received the closest attention from the ILO. Nevertheless she was saddened that all this work had led to few results. The three Conventions on maternity protection had a poor ratification record, which indicated that most member States did not consider standards protecting pregnant women important. The high expectations that had followed the adoption of Convention No. 183 were so far unfulfilled as only a few governments had ratified the instrument. The Nordic workers' organizations were very disappointed that their respective governments had not ratified Convention No. 183, despite the existence of good maternity protection in their national law and collective agreements. The Government of Norway, for example, had indicated that it could not ratify Convention No. 183 because it included the principle that breastfeeding breaks should count as paid working time. While this principle was not contained in Norwegian law, it existed in many collective agreements. Moreover, women and trade unions would welcome the inclusion of this principle in national law, and it would not be costly, especially since maternity leave could be extended to one year (therefore already covering the breastfeeding period for most women). The problem of non-ratification of maternity protection Conventions was often due to lingering prejudices and biased attitudes towards women. This aspect was missing from the analysis by the Committee of Experts. The speaker called for a campaign for the ratification of Convention No. 183 and for this important topic to figure high on the ILO's agenda.
- 109.** The Worker member of Colombia warned that the continued spread of the neo-liberal model was not protecting maternity. The Worker member of Senegal stressed that the situation of female workers should remain a preoccupation of both supervisory committees. In his view, Convention No. 3 should not remain open to ratification in order to provide greater coherence amongst the international legal instruments.

Fulfilment of standards-related obligations

- 110.** The Employer members noted the information in the report of the Committee of Experts regarding the manner in which the member States had fulfilled their reporting obligations and obligations in reply to requests for information. It was shameful that only 24 per cent of the member States had submitted their reports in time. Already ten years ago, the Employer members had suggested listing by name those States which submitted their reports between the end of the session of the Committee of Experts and the opening of the Conference in June. Such a section had now existed for five years in the Committee of Experts' report and it served to indicate cases where the late submission of reports was a systematic practice. They noted that Barbados and Cyprus had been on the list for the last five years, and that Côte d'Ivoire, Denmark, Netherlands Antilles, Niger, Slovenia, Slovakia and the United Republic of Tanzania had been listed for four. The Employer members urged these States to change their behaviour and to stop violating the basic principle of reporting in time. The information concerning the number of years that countries have been on this list should be included in the Committee's report.

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- 111.** The Employer members welcomed the increased emphasis that the Committee of Experts placed in its report on the importance of the constitutional obligations of member States. This was a positive development that underlined the joint efforts of both committees. Noting with satisfaction that the list of cases of progress had grown longer, the Employer members also linked this progress to the increased number of member States and ratifications. With regard to the indicated increase of comments submitted by employers' and workers' organizations, they noted that in reality, compared with last year, the number had decreased.
- 112.** The Worker members also expressed their concern with the high percentage of reports not received or received late. They called on the Office to develop a more personalized approach for the countries that failed to fulfil their obligation for several years in succession. The Worker members regretted that the number of observations communicated by workers' organizations had decreased considerably – passing from 327 to 260 – and requested clarifications on this point. The Worker member of Senegal felt that the Conference Committee should do all it could to ensure that member States met all of their standards-related obligations.
- 113.** The Government member of Kenya drew attention to the worrying trend of the long list of 14 countries mentioned by the Committee of Experts in its report under the heading of “Special problems”. He noted that all of the countries concerned were developing and transition countries which appeared to be in urgent need of technical assistance by the Office to help them overcome their difficulties with regard to their obligations under the ILO Constitution.
- 114.** A number of Government members (Canada, Egypt, India, Italy, Lebanon and South Africa) indicated the importance their governments placed on complying with obligations under articles 19 and 22 of the ILO Constitution. The Government member of Italy also shared the concerns of the Committee of Experts at the number of reports received after the due date and hoped that the new system of grouping Conventions for the submission of reports could alleviate the workload of the Office and constituents and resolve this practice, which prejudiced the proper functioning of the supervisory system. He agreed with the satisfaction expressed by the Committee of Experts with regard to the cases of progress and emphasized the importance of the discussions in the Conference Committee, which also contributed to progress.
- 115.** The Government member of Canada noted the slight increase in the percentage of reports on ratified Conventions received by the ILO. However, even with this increase, only 66 per cent of the reports requested were received. He stressed the importance of timely reporting to the effectiveness of the ILO supervisory mechanism, including the Conference Committee. He therefore encouraged member States to continue their efforts to meet reporting obligations under the ILO Constitution and to seek the assistance of ILO standards specialists to help overcome difficulties in filing reports.
- 116.** Some Government members (Egypt, India and Lebanon) provided clarifications or updates on information provided in this section of the report of the Committee of Experts. For example, the Government of India referred to paragraph 83 of the report. He informed the Committee that his Government had now submitted to the competent authorities the three instruments adopted at the 90th Session of the Conference and the Protocol to Convention No. 81. He also indicated that the necessary information was being sought from all those concerned in order to make an appropriate reply to the comments made on Conventions Nos. 100, 105 and 107. The Government member of Lebanon mentioned that her Government had recently ratified Convention No. 152 on dock work. She also indicated that the Ministry of Labour was currently preparing for submission of the Seafarers'

Identity Documents Convention (Revised), 2003 (No. 185), to the competent authority. The Government of South Africa referred to tripartite consideration of new instruments adopted by the ILO. In this respect he indicated that efforts were under way to consider incorporating the measures identified in the Promotion of Cooperatives Recommendation, 2002 (No. 193), in the country's cooperatives strategy.

- 117.** With respect to paragraph 66 of the report, the Government member of Egypt referred to the Protection of Wages Convention, 1949 (No. 95), ratified by Egypt in 1960. She indicated that the necessary measures to ensure a balance between wages and prices were taken in her country. Legislative texts applied the provisions of the Convention, including a ministerial Order which established a National Council on Wages and which set down the minimum wage at the national level. She recalled that the previous Labour Code had been replaced by the new Labour Code No. 12, which was adopted in 2003 and entered into force in July 2003.

Technical assistance relating to standards

- 118.** Both the Worker and Employer members underlined the importance of the technical advisory services on standards-related issues provided by the Standards Department and the standards specialists in the field offices. This constituted an essential part of the Office's work and contributed to improving the application of standards and the functioning of the supervisory system. In this connection, the Worker members referred to the importance of the Office allocating sufficient resources to enable this work to be carried out effectively.
- 119.** A number of Government members (China, Italy, Lebanon, Norway, speaking on behalf of the five Nordic governments) also affirmed their support for the Office's standards-related technical advisory and cooperation activities and the importance they placed on it. The Government member of Italy emphasized the high quality of this work. He also expressed appreciation of the efforts made by the Standards Department to develop and modernize its legislative information system and the ILOLEX, APPLIS and NATLEX databases. The Government member of Norway, speaking on behalf of the five Nordic governments, supported the Office's increased emphasis on the need to integrate the ILO's standards and principles into technical cooperation programmes. The Government member of Lebanon drew attention to the need to provide adequate financial assistance for the activities of the Standards Department. She also thanked the Regional Office in Beirut for its services extended to the Government and social partners.
- 120.** Several Government members (Angola, China, Egypt and Japan) stressed that, while the supervisory machinery provided necessary information, it could offer more assistance to countries to help overcome the difficulties encountered in application. On this point, the Government of Japan emphasized that the countries under examination by this Conference Committee should benefit from the ILO's strong financial and technical support.
- 121.** The Government member of China appreciated the information provided in the report of the Committee of Experts concerning the progress made in the implementation of international labour standards as a result of technical cooperation. He called upon the ILO and member States to continue to provide assistance to developing countries, including through the publication of information, the provision of advisory services on ILO standards and assistance for the formulation and amendment of labour legislation. In his Government's view, the ILO should continue to carry out these activities as they were effective means of reinforcing the application of international labour standards.

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- 122.** The Government member of the United Arab Emirates, speaking on behalf of the Gulf Cooperation Council, called for the appointment of Arabic-speaking standards specialists in Beirut, Cairo and Geneva. Such experts could provide the necessary technical cooperation and help train government officials to draft better reports on the application of standards. He also called for Committee of Experts' reports to be translated into Arabic at ILO headquarters in order to ensure accuracy. In addition, all documents relevant to the Conference Committee should be translated into Arabic to facilitate communication between headquarters and the Arab region. Finally, he suggested that international labour standards specialists should be invited to attend relevant meetings at the International Labour Conference to ensure that views from all countries and all areas of expertise on matters relating to standards were equally represented. The Government member of Egypt also hoped that the Cairo Office would soon have an Arabic-speaking standards specialist to provide assistance to constituents.
- 123.** A number of Government members (Cambodia, Canada, China, Iraq, Kenya, Lebanon and Malawi) expressed appreciation for the technical assistance they had received or were receiving from the ILO. For example, the Government member of Kenya indicated that labour legislation was being drafted with ILO assistance. The Government member of Iraq explained that his country was in the process of changing the labour legislation in the light of international labour standards and economic and political developments with the assistance of the Office. He hoped that the new Labour Code would be a model for the region. The Government member of Canada thanked the ILO officials who participated in a workshop in Canada in February 2003 and provided advice and assistance to the Canadian Government representatives from all jurisdictions with respect to freedom of association, the Declaration on Fundamental Principles and Rights at Work, as well as the ILO's supervisory mechanisms. The Government member of Lebanon thanked the Regional Office for its recent training session held on child labour inspection in March 2004, and which resulted in a draft inspection form which was currently being finalized by the Office. She added that Lebanon was in the process of defining a number of technical programmes with a view to asking assistance of the ILO Beirut Office. The Government members of Cambodia and Malawi indicated the technical assistance received to strengthen local labour officials' capacity in fulfilling reporting obligations.
- 124.** Other Government members (Central African Republic, Egypt, Iraq, Latvia and Mongolia) indicated they would like to have technical assistance in the future. For example, the Government of Iraq referred to a request for assistance to help prepare for additional ratifications of international labour Conventions. The Government member of Egypt called upon the ILO to organize additional training seminars on the application of standards in accordance with the new approach proposed by the Governing Body in 2002.
- 125.** The representative of the Secretary-General replied to the questions and comments raised by the members of the Committee during the general discussion. With reference to the questions by the Government members from the Gulf and the Middle East concerning the appointment of international labour standards specialists in the Cairo and Beirut Offices, he indicated that a standards specialist had just been selected and would commence work in Cairo in September. With regard to the Beirut Office, the standards specialist had left on 1 May and efforts were under way to find a successor. In response to the remarks by the Government member of Lebanon concerning certain translation problems noted in various documents in Arabic, the necessary corrections would be made, particularly with regard to the translation of article 24 of the ILO Constitution, and special attention would be paid in future to the quality of translations into Arabic. He also referred to the use of Spanish as an official language of the Organization, and indicated it would be included during the informal briefing session on the methods of work of the Conference Committee. In response to the questions by the Worker and Employer members concerning the

information that “[s]ince its last session, the Committee has received 297 observations (compared to 400 last year)”, contained in paragraph 74 of the report of the Committee of Experts, he indicated that the wording was misleading. The number of 297 observations was correct and, although it constituted a reduction in the number of observations compared to the previous year, this should be placed in context; the 400 observations received the previous last year had been an absolute record. This year, the number of observations was closer to that of previous years. In response to the comments, criticisms and suggestions relating to the new presentation of the report of the Committee of Experts, he emphasized that the changes to the format of the report reflected the wishes expressed by the members of the Committee, particularly with regard to the grouping of Conventions by themes. The new structure of the report would therefore be maintained. Before giving their approval, the members of the Committee of Experts had given much thought to the proposed changes to the report. In an effort to make the report more user-friendly, the total number of words had been reduced by 17 per cent. The secretariat, in agreement with the Experts, would attempt, taking into account the suggestions made by the members of the Conference Committee, to make certain changes next year, particularly with regard to the inclusion of an index, the grouping of footnotes to enable easier access to comments on countries, the font used for the presentation of the report and the division of information on standards between the report of the Committee of Experts and the information document on ratifications and standards-related activities. The information on standards policy was contained in Volume II because it was not a part of the Committee of Experts’ work. On this latter point, he indicated that the ILO’s activities on standards policy were very important and that the aim was to facilitate coordination between these subjects. In response to the comments made regarding the symbol of the scales on the front cover of the report of the Committee of Experts, he emphasized that scales did not only represent justice.

C. Report of the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel

126. The Worker members noted that the examination of the report of the Eighth Session of the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART) was an occasion for the Conference Committee to examine more closely the application of the 1966 and 1997 Recommendations on the status of teachers. The importance of education and training was self-evident. The status of teachers was fundamental to education, which in turn prepared the future for life in an increasingly globalized and interdependent world. Nevertheless, the report showed that teaching personnel still faced many obstacles.
127. The report emphasized the importance of a high-quality teaching profession for the quality of education, and as a precondition for structural reforms to teaching. The Worker members noted that the ageing of teaching personnel and the objectives of the “Education For All” (EFA) programme could lead to a shortfall of some 15 million teachers in the near future, leading to consequences which were liable to undermine the quality of teaching and prejudice teachers’ working conditions. The CEART had noted little if any improvement in teachers’ working conditions. The impact of new technologies on teaching was difficult to assess from the report, and it noted very little progress on questions of HIV/AIDS and gender. Moreover, the report was not very conclusive with regard to higher education teaching, particularly at a time when education was becoming increasingly commercialized. Although there was no shortage of political declarations and ambitious objectives regarding these questions, structural adjustment and budget cuts under neo-

liberal policies in a good number of countries resulted in a precarious status for teachers in today's world.

- 128.** For the Worker members, three issues were important and required urgent action. In order to overcome the shortage of teachers and ensure adequate teaching and living conditions for staff, educational financing required urgent attention, giving it the priority that it deserved in the light of the EFA objectives and commitments by teachers and their organizations to EFA. Second, social dialogue was important to finding a lasting solution to the concerns of teaching personnel, as this could be the starting point for progress to overcome identified obstacles. Third, it was important to promote the ILO/UNESCO Recommendations of 1966 and 1997 concerning the status of teaching personnel, especially the latter which deals with higher-education teaching personnel. In any future discussion of the status of teachers, they hoped that substantial progress could be made on conditions of work, combating HIV/AIDS and gender issues. Finally, the ILO should facilitate the implementation of the Recommendations and governments should apply them in practice so as to achieve the objectives of EFA in the interests of dignity at work for future generations and a world of peace.
- 129.** The Employer members recalled that the Conference Committee was examining this matter, as it did every three years, at the request of the Governing Body, and not under the terms of article 7 of the Standing Orders, which provided the mandate for the other matters that it examined. The teaching profession constituted an exceptional occupation from many points of view. Specific Recommendations had been adopted in 1966 and 1997 covering only this profession, and were supervised separately by a joint committee involving the ILO and UNESCO. The Employer members considered that this approach was justified in view of the great importance of teachers in every society. They agreed with the Worker members that, without the best possible education and training, the future would be compromised, now more than ever before in history. Nevertheless, they regretted that the report before the Conference Committee did not place much emphasis on the important role of teachers and that it had been forwarded to the Conference Committee merely for information.
- 130.** The Employer members noted that the Joint Committee set up to monitor and promote the two Recommendations was constituted entirely of members of the teaching profession. This offered intimate knowledge of the profession and of the requirements for the provision of good education, but was not necessarily ideal for an objective discussion based on the principles of impartiality and independence. Nevertheless, the present report was an improvement on the previous one. They noted the Joint Committee's recommendations for a number of studies to be undertaken, within the context of the limited available resources, as well as the calls for an updated version of the 1984 brochure on the status of teachers; perhaps the teachers themselves or their associations could take the initiative of updating this document.
- 131.** Turning to social dialogue, the Employer members agreed that its importance in education could not be overstated. They emphasized the crucial role played by other partners, particularly parents, who had the duty to ensure that their children received good education, as well as the importance of employer involvement in social dialogue on education. Employers could contribute their first-hand knowledge of the qualifications that were needed when students progressed from school to training within the context of a labour relationship. Effective social dialogue in the broad sense involved participation in the decision-making process, but should not be understood to mean that decisions could only be taken when teachers were in full agreement with them. In a democratic State, essential decisions, including those in the field of education, had to be taken by the freely

elected parliamentary body, though social dialogue at a preliminary stage could influence political decisions.

- 132.** In the Employer members' view, the report's analysis of the increasing feminization of the teaching profession, combined with an under-representation of women in managerial positions, should be put into context. It was the Employers' view that women were clearly more interested in the core functions of teaching, namely teaching and providing care for the young, rather than in exercising administrative authority within the profession. They felt women were probably the best teachers from a pedagogical point of view and that growth in numbers of female students would inevitably lead to an increase of women in high-level management positions.
- 133.** The Employer members also addressed teachers' roles and status. It was of great importance that teachers had adequate basic training before they came into contact with students; many teachers had a good knowledge of their subject, without possessing the necessary skills to teach them to students. In the current knowledge society the media and modern technologies played an increasingly important role in education, and teachers should be prepared to deal with new problems such as children's addiction to new technologies. Lifelong learning and training should prepare teachers to take the initiative to engage in further training. They also agreed with the report's assertion that education would not be successful if the pupil/teacher ratio were too high. The report showed that conditions relating to the status of teachers varied greatly from country to country according to national economic and social situations. Adequate terms and conditions of employment for teachers were important, but it was not possible to establish a uniform international standard for these conditions. Each country should nevertheless guarantee that teachers were not on the bottom rung of the ladder according to a country's means and circumstances.
- 134.** Noting that the number of complaints made by teachers' associations since 2000 was not high for an international body, the Employer members thought that the report showed that the Joint Committee took some trouble to investigate the allegations made. In those cases where the conditions were not adequate, policy-makers should take action to resolve the situation in a positive manner. It was to be hoped that vociferous calls by teachers and their associations for changes in this respect would also generate the same level of passion for providing the best possible education for their pupils.
- 135.** The Government member of the Philippines referred to the report's section on information and communication technology (ICT) and teaching. Despite a high rate of outward migration, the population of the Philippines still had a high rate of literacy in modern technologies, including mobile phones and computers. Demand was high in both Philippine and external labour markets for ICT skills and a large number of ICT schools had been established to cater for this demand. However, skills demands were changing and employers were now looking for graduates equipped with industry-specific knowledge and skills. ICT schools faced problems linked to the constant evolution of knowledge and techniques, requiring a constant renewal of facilities and teachers' skills. While the costs of equipment replacement were high and were often passed on to students, if such investments were not made, the schools would be below industry standards. ICT schools therefore needed sources of financing other than fees. For schools to remain relevant, they should maintain strong linkages with employers who, through their insights into market requirements, could make an important contribution to the design of courses and directions in research. However, many ICT schools had not built up the necessary alliances, and there was an alarming decline in the level of English proficiency among both students and teachers. To improve ICT education, it was necessary to engage in open dialogue on ICT,

to promote integration of ICT and other skills, and greater coordination between the public and private sectors to improve the efficiency of ICT training.

- 136.** The Government member of Cuba indicated that the report under consideration was relevant to the ILO's agenda because the right to employment and successful employment policy depended upon the right to education. Cuts in the education budget undermined the right to employment, as well as affecting the employment prospects of many young persons working in the education sector. Education for all was the basis of democracy. Her country had made enormous efforts in this field, eliminating illiteracy 40 years ago and raising the level of qualification of all the population. Despite the lack of resources in Cuba, advanced technology has been introduced such as computers and audio-visual equipment in all schools. In those without electricity, including mountain schools, solar panels have been used for energy. Class sizes had been reduced in many schools to 20 students per teacher where 100 per cent of the children were enrolled. Technologies could never replace teachers, but constituted a support for their work. Concerning educational social dialogue, the National Union of Education, Scientific and Cultural Workers participated in dialogue, but this goes beyond the traditional framework, and includes participation of parents and students which contributes to the development of the educational process.
- 137.** The Government member of Japan commented on the CEART's report concerning the allegation received from the All Japan Teachers and Staff Union (ZENKYO). The CEART was to be commended for its serious examination of this case. Still, his Government was unable to accept the CEART's findings because they were based mainly on ZENKYO's assertions and included misunderstandings about actual conditions in Japan. The personnel management systems set up to deal with teachers with insufficient ability were simply improvements on existing systems and had already been implemented. The new teacher job performance evaluation systems were under examination and the boards of education developed and managed these systems appropriately. Despite disagreement with the CEART's findings in this case, his Government remained willing to provide additional information to the CEART so that its ideas and efforts would be accurately understood.
- 138.** The representative of Education International said that the report of the Joint ILO/UNESCO Committee of Experts showed very clearly the challenges confronting the teaching profession, and that its conclusions and recommendations were entirely appropriate. Nevertheless, matters of particular concern included the need to increase the value of human resources within the teaching profession. There was a serious shortage of teachers due to the large number of retirements and an ever-increasing exodus of individuals from teaching, mainly because of difficult working conditions. Measures were needed to increase teacher retention. Education International believed that two types of policies should be followed, namely, improvements in the working conditions of teachers to render teaching careers more attractive; and improvements in the quality of teacher training. The idea that teachers could be recruited without adequate training should be abandoned. Professional and academic freedoms constituted a second area of concern. These freedoms were not outdated privileges, but were indispensable to the development and transmission of knowledge. The State and society should ensure conditions for academic personnel that permitted them to fulfil their function without fear of repressive measures and without risk to their independence, career or lives. Such conditions could only be achieved within a democratic climate, where schools remained places of peace. A participatory approach through social dialogue should also be developed, as emphasized in the CEART report and mentioned by the Employer members; this was not the situation everywhere at present. Her organization believed it was necessary to further promote the Recommendation concerning the Status of Teachers (1966) and the Recommendation concerning the Status of Higher-Education Teaching Personnel (1997).

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139. Several Worker members spoke about the importance of education for the future, educational investments, teachers' roles and their employment status related to quality education. To respond to changes and challenges of the current world, the Worker member of Colombia emphasized the need to upgrade salaries, working conditions and social security of education workers, to increase the low level of education budgets and to improve the training of teaching personnel – teachers should not have to pay for their further training as occurred in Latin America. With few exceptions, education in Latin America and the Caribbean was marked by low levels of quality, elitism, and increased profit-making by private institutions, all of these a concern for workers. The report's recommendations on social dialogue involving associations of teachers in consultations concerning education policy were endorsed.
140. The Worker member of the United Kingdom welcomed the report's clear endorsement of the value of lifelong learning and education to society and communities. She placed emphasis on security of tenure of teachers and academic staff, essential to freedom of action and thought and therefore at the very heart of a free society. The more widespread use of short-term contracts in higher education meant that teaching staff faced more pressure in terms of academic freedom, compromising levels of freedom in society as indicated in the Joint Committee's comments; the report's recommendations concerning security of employment were fully endorsed. Everything should be done to protect those who provide education, especially as in certain regimes teachers could indeed be in the front line in defending society's freedoms.
141. The Worker member of Senegal emphasized the important role of teachers as mediators of modern times, and in developing awareness in society. The shortage of teachers raised questions as to the willingness of public authorities to provide the necessary resources to the education sector in the context of strict budgetary constraints. Specific challenges that needed to be met included: the training of teachers; the brain drain, which, though it did not depend solely on financial considerations, could only be resolved through meeting certain salary levels and conditions; discrimination towards women teachers; adequate resources for research given its considerable importance in teaching; and security of teachers in exercising their profession. The quality of education constituted a fundamental aspect of the report of the Joint Committee, and had to be fully considered to ensure effective implementation of the recommendations.

D. Reports requested under article 19 of the Constitution

Employment Policy Convention, 1964 (No. 122), and Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), and aspects relating to the promotion of full productive and freely chosen employment of the Human Resources Development Convention, 1975 (No. 142), and of the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189)

142. The Committee devoted part of its general discussion to the examination of the General Survey carried out by the Committee of Experts on the application of the Employment Policy Convention, 1964 (No. 122), and the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), and the aspects of the Human Resources Development Convention, 1975 (No. 142), and of the Job Creation in Small and Medium-

Sized Enterprises Recommendation, 1998 (No. 189), relating to the promotion of full, productive and freely chosen employment. In accordance with the usual practice, this survey took into account information communicated by governments under article 19 of the Constitution, as well as the information communicated by member States which have ratified the instruments in their reports submitted under articles 22 and 35 of the Constitution and the comments received from employers' and workers' organizations to which the government reports were communicated in accordance with article 23, paragraph 2, of the ILO Constitution.

General observations

- 143.** The Employer members, in welcoming the General Survey, observed that, in sharp contrast with the instruments covered by surveys in recent years, the group of Conventions and Recommendations which was the object of the present General Survey, and particularly Convention No. 122, highlighted the intersection and interrelationship of economics and labour standards. They considered that it had been impossible to ignore the fact over the past two decades that the economics and standards sides of the ILO did not always interact. Consequently, the application of standards at times appeared to be divorced from their impact on job creation.
- 144.** They added that Convention No. 122 could be differentiated from the great majority of Conventions addressed by the Conference Committee and the Committee of Experts in that it was not about standards per se, but rather the economics of creating jobs, and that it was not inherently legal in nature. As had been evident for many years in the Conference Committee's examination of cases concerning Convention No. 122, and as acknowledged by the Committee of Experts in paragraph 493 of the General Survey, in contrast with many other ILO Conventions, Convention No. 122 did not dictate a result, but rather set out a policy process for achieving full, productive and freely chosen employment.
- 145.** The Worker members emphasized that the General Survey needed to be viewed in the context of a global situation in which the number of registered unemployed had reached 188 million persons. To this number should be added the mass of unregistered unemployed persons, and all those who were underemployed in both the formal and informal economies. The context was therefore as remote as could be imagined from a situation of full employment. They recalled, however, that the achievement of full employment had been one of the essential missions of the ILO from the very beginning. At the time of its creation in 1919, this mission had been expressed in terms of combating unemployment. With the Declaration of Philadelphia in 1944, the mission had become one of seeking full employment, in conjunction with the assertion of the right to work.
- 146.** The Worker members referred with interest to the link established in the General Survey with the Global Employment Agenda. In this respect, they raised the question of the compatibility with the goal of employment creation of certain policies pursued by national and international authorities, which appeared to be indifferent to rising unemployment, in profound contradiction to the solemn commitments made at the World Summit for Social Development in 1995. A certain trivialization of the issue had led to unemployment being considered as a passing evil, rendered inevitable by the transition to the post-industrial society, the restructuring of planned economies, entry into the knowledge society and the new international division of labour. Policy-makers were more interested in reacting to the consequences of the rise in unemployment than in taking action to promote the right to work.
- 147.** Against this backdrop, the Worker members considered that some of the reasons put forward by countries for not ratifying the Conventions were puzzling: they were deemed

incompatible with current legislation in Kuwait; in India, the ratification of Convention No. 142 was not foreseen as long as the different sectors were not better organized; in Mauritius, their prescriptions were considered too stringent by the employers; in Mexico, there were discrepancies between Convention No. 122 and domestic law; and finally, in the United States the Conventions had not yet undergone the tripartite analysis that would determine the feasibility of ratification. They emphasized in this respect that Convention No. 122 dated from 1964 and Convention No. 142 from 1975, giving ample time for this analysis to have taken place.

- 148.** The Worker members also expressed concern that, as indicated in the Report entitled *A fair globalization*, in practice the international financial institutions sometimes tended to consider employment as a by-product of their main mandate, rather than an objective in itself. The WTO, in favouring the expansion of trade, considered it to be the best source for employment creation. The IMF envisaged sound financial policies as a basis for growth and the creation of employment. The World Bank tended to rely on the principle that what was needed was growth to create employment and generate income. As a result, employment and entrepreneurship were not perceived as major objectives in their own right. This was clearly revealed by the low level of importance accorded to employment in the poverty reduction strategies papers (PRSP). The ILO therefore needed to exert its influence, not only on member States, but also on other international organizations, so as to ensure that the objective of full employment could be pursued effectively in practice.
- 149.** Several Government members, in welcoming the General Survey, also emphasized that the pursuit of full, productive and freely chosen employment was a fundamental goal of the ILO and should be one of the chief policy objectives of all member States. The Government member of Poland highlighted the importance of employment as a focal point of ILO activities and noted the timeliness of the General Survey in the context of globalization. The Government member of Peru, recalling that poverty anywhere was a threat to prosperity everywhere, also commended the various initiatives taken by the ILO to take into account the social dimension of globalization. The Government member of Belgium said that, by taking different viewpoints into account, the General Survey made a valuable contribution to the achievement of international commitments on employment. There was no single policy capable of achieving full employment that was productive and freely chosen, as recognized by the ILO Global Employment Agenda. The Government member of Australia recalled, in this respect, that each country needed to adopt an approach that was tailored to suit its own national conditions. She agreed that, in this regard, the General Survey made an important contribution to the policy debate.
- 150.** The Government member of Italy said that he shared the opinion of the Committee of Experts on the essential role of active policies for the promotion of full, productive and freely chosen employment. It was of fundamental importance to place emphasis on the free choice of employment and equality of opportunity through the prevention of discrimination. No worker should be marginalized by reason of race, ethnic origin, age, colour, sex, sexual orientation or gender identity, physical abilities, philosophy or beliefs, political opinion or social origin. Any such discrimination was bound to lead to a negative impact on the entire economy in terms of the underutilization of human resources, not to mention the infringement of human rights.
- 151.** The Government member of Lebanon recalled that Convention No. 122 had been adopted 40 years ago and that it was now time to look at the results achieved. Although the aim of the Convention was to achieve better employment everywhere based on economic development and social interaction, the meaning of full employment and the methods of its achievement had changed in recent years. It was now necessary to adopt an integrated approach. Moreover, she emphasized that full employment would not be sufficient unless

it was also decent, and that this could be accomplished only through training, education and steps to meet the demands of the market, with emphasis on productivity. She highlighted the importance of incentives for innovations which would promote productivity and thus lead to the creation of new work opportunities.

- 152.** The Worker member of Italy pointed to a number of important factors which hindered employment creation. These included, in the first place, war, political instability and the decline in multilateralism, which had weakened the international framework for employment creation. Governments therefore needed to strengthen the United Nations and other multilateral institutions. Secondly, even though the workforce had become increasingly feminized, a large percentage of the female workforce was illiterate. These women were excluded from the high end of the labour market and could not, for example, gain access to jobs in the knowledge economy. Thirdly, the ageing workforce also faced problems. Older workers were increasingly confronted by discrimination as employers sought to employ younger workers who were less expensive and who could be hired on precarious contracts.
- 153.** She expressed concern that international institutions which included employment promotion in their mandate, including the United Nations, the international financial institutions, WTO and OECD, in practice showed little political commitment to carrying out this part of their mandate. International institutions still based their action on an economic approach under which employment creation was considered to be a mechanical result of neo-liberal economic policies. Yet it was clear that structural adjustment measures led to higher unemployment and a reduction in income, social protection and workers' rights. The WTO's trade policies had had a negative impact on developing countries, especially in the textile and agricultural sectors, where workers in developing countries were placed at a disadvantage by the subsidies provided by the European Union and the United States. Moreover, WTO supported the free movement of goods, but not of workers. Migrant workers had the right to leave their countries, but not to enter other countries, and were subject to trafficking, abuse and atypical forms of employment.

The changing context

- 154.** The Employer members recalled that 40 years after the adoption of Convention No. 122 in 1964, the world had changed a great deal. Even in 1984, when the Conference had adopted a supplementary Recommendation to Convention No. 122, the dominant issue had still been whether to define "the right to work" as meaning guaranteed employment, an issue that was now a political artefact of the cold war. By 1996, the characteristics of today's world had taken over, as reflected in the conclusions of the general discussion on employment policies in a global context at the 84th Session of the Conference. Today's world was increasingly interconnected. Falling trade barriers, instant communications, relatively fast and inexpensive transportation and rapidly changing technologies were shaping the world economy. An economic era had emerged in which the pace of change was increasing; economic security depended on lifelong learning; jobs and competitiveness no longer depended on the strengths and weaknesses of any single nation's economy or economic base; and worker and employer interests increasingly coincided. These were economic realities that differed substantially from those prevailing when most ILO standards and domestic employment policies had been adopted, including Convention No. 122.
- 155.** The Employer members added that, as reflected in paragraph 199 of the General Survey, the relevance and importance of employment policies in a global context were being redefined. Competitiveness in the twenty-first century was not a macroeconomic contest between nations. It was a struggle fought daily at the establishment level by employers and

employees in every nation of the world. The function of standard setting was to provide an international and domestic employment policy environment that balanced the need for business to benefit from sufficient flexibility and entrepreneurial expertise so that it could be competitive in global markets, and for workers to have certain essential social protections and be able to acquire the necessary education and training to become and remain economically secure. However, international labour standards and domestic labour laws generally sought to correct labour market imperfections without regard to their impact on jobs. These standards and policies had been developed during a period of unprecedented economic growth and prosperity, particularly in developed countries, and they had been adopted in the belief that there were no adverse consequences of such policies on job creation, productivity, innovation, entrepreneurial success, the standard of living of workers and economic growth at the national level. The Employer members considered that this situation clearly no longer prevailed, but it was not always evident that national governments or the Committee of Experts recognized this reality.

- 156.** The Employer members emphasized the fundamental need for an economic and labour market environment that facilitated increased economic and productivity growth and recalled that enterprise development was the basic means of combating poverty and worker dislocation and of raising the standard of living of workers. This required an economic environment which provided clear incentives to enterprises for investment and job creation. At the same time, it required social policies and institutions which facilitated labour market mobility and flexibility, and promoted systems of worker involvement to raise productivity growth. They added that, in determining what constituted full employment, changes in the structure of employment, including new forms of flexible employment and working-time arrangements, needed to be taken into account. Work-related benefits for alternative forms of employment should therefore be developed, with due regard to their impact on job creation.
- 157.** With respect to the question of the revision of ILO standards on employment promotion, it was clear (to the Employer members) that considerations relating to the reform of domestic employment policies were also applicable to both the revision of old ILO standards and the adoption of new standards, which had an impact at the domestic level after they were ratified. Existing ILO standards that no longer fitted the characteristics of the modern workplace or new standards that sought to resolve every labour market imperfection were counterproductive in relation to the objective of full employment, especially in relation to the very basic issue of the ability of firms to create jobs, increase productivity and improve the standard of living of workers. Conventions that were no longer adapted to the needs of the workplace of the twenty-first century therefore constituted a competitive disadvantage for those countries that had ratified them.
- 158.** The Worker members said that the General Survey clearly showed that the concept of full employment was closely related to that of the right to work. In market-oriented countries, there was no such thing as an individual right to work. However, this should not prevent reflection on the legal basis of certain aspects of the right to work. One of these was non-discrimination in access to employment. Significant progress had been made on this point in recent years. There was also reason to reflect on the right to retain a job or, in other words, protection from dismissal. In some countries, protection from dismissal was being questioned, sometimes at the instigation of international institutions. The concept of the right to work was being put to the test, particularly in the context of company restructuring. However, as far as workers' organizations were concerned, the employer's right to dismissal had to be severely constrained. In situations of enterprise restructuring, employers should do everything possible to avoid dismissals and unemployment. But the authorities could also intervene, as had happened in many countries, with results that the

ILO should make public. They regretted that this aspect was not sufficiently addressed in the General Survey.

- 159.** The Worker members commented on a number of other issues covered in the General Survey. First of all, the concept of full employment had previously been defined as a situation in which the unemployment rate was below 3 per cent. This standard had been subsequently questioned under the pretext that the modern labour market would necessarily have to face more problems in bringing together supply and demand and that there would therefore be considerable marginal unemployment. Such a viewpoint disregarded the genuine mission of public authorities and the social partners, especially in terms of vocational training. Full employment could not be a vague objective. It had to be translated into figures.
- 160.** A further very relevant issue concerned the concept of employment. In practice, a tendency could be noted to pursue the objective of full employment, not by creating jobs, but by redefining the concept of employment. It was from this viewpoint that workers' organizations were accused of clinging to an outdated notion of employment. This even went as far as promoting the concept of volunteer work, as in the case of Poland. This led to a strong temptation to focus entirely on the informal economy and to move away gradually from the well-defined framework of the ILO. The Worker members could not subscribe to an approach which emptied the concept of full employment of all content. Moreover, they recalled that the concept of full employment was inseparable from that of decent work. Work should be a source of well-being and prosperity, and this could only be the case if certain well-defined criteria were respected within the framework of decent work. In this respect, as indicated in the 2002 resolution on decent work and the informal economy, the latter should not be conceived as a final state. A full employment policy should allow workers in the informal economy to accede progressively to the structured sectors of the economy. This was precisely the point of the notion of productive employment as set out in Convention No. 122, although this aspect had not been taken into account sufficiently in the General Survey.
- 161.** The objective of full employment presupposed the existence of an employment policy. Yet it appeared to the Worker members that there was no policy of this nature in a number of countries, which had not developed the mechanisms for the implementation of such a policy together with the social partners. In certain countries, the policy adopted came down to "activating" the unemployed so that they took up a job or created their own employment. This tendency derived from a certain mentality according to which the unemployed were held responsible for their situation and was used as a pretext for reducing social benefits.
- 162.** Several Worker members pointed to the impact of globalization on employment. The Worker member of India said that globalization had led to downsizing, closures of factories and reductions in employment. However, the ILO did not talk of a right to work, only rights at work. Workers were accorded rights while they had work, but these rights were lost if they lost their work. He therefore called upon the ILO to propose a constitutional amendment to provide for a minimum right to work, which would facilitate the development of a society in which all workers were employed and where production was aimed at satisfying the needs of the people, rather than the greed of capital. The Worker member of Tunisia added that decent work was an important element in the discussions of employment creation. It was important to overcome situations in which labour legislation was not respected, such as special economic zones and individual contracts which did not comply with labour laws, so that workers were not treated as commodities and their right to participate in genuine negotiation was upheld. The Worker member of Colombia expressed the opinion that the support provided by the ILO for

employment promotion was not sufficient in the face of the policy orientations of the international financial institutions, which were leading to ever higher unemployment rates. Indeed, unemployment was one of the worst problems in Latin America, where it was endangering social peace, frustrating youth, excluding women and marginalizing older persons, who were denied opportunities to earn a living.

- 163.** A Worker member of France observed that the importance of the subject addressed by the General Survey was confirmed by the report of the World Commission on the Social Dimension of Globalization, which considered, in the same way as workers' organizations, that globalization had not delivered the beneficial effect on growth that had been predicted, and that the result was increased unemployment worldwide and rising inequality and insecurity. In this respect, the Worker member of Italy emphasized the importance of the ILO Global Employment Agenda and called upon the ILO to promote forums for inter-institutional coordination to establish coherent employment policies among the various institutions and to launch an initiative to assess the impact on employment of international agreements and initiatives. A discussion on this subject should be promoted based on the proposal made by the World Commission for the creation of a Global Social Trust Fund for employment. Support should also be provided to governments for the development of budget strategies which targeted employment creation, assisted by development assistance and debt relief.

Components of an active employment policy

- 164.** The Employer members highlighted a number of economic, political and legal factors which they believed should be present for full employment to be achievable. These included: a stable economic, political, legal and social environment; low inflation; low interest rates; coherent macroeconomic policies; stable exchange rates; guarantees of human rights; secure property rights; enforceable contracts; open markets; stable commodity prices; low taxes; currency liberalization; and debt reduction. In particular, they laid emphasis on key factors in job creation. A legitimate, consistent legal system was essential. Investors and business owners needed assurance that contracts could be enforced, that the rules of economic life were clear, that laws did not change arbitrarily and that penalties were not imposed capriciously. Financial and physical infrastructure mattered. Access to credit, price stability and financial transparency were critical factors affecting investment. Similarly, the availability, reliability and efficiency of communications, transportation, information and energy infrastructure were critical factors. Innovation mattered. Both public and private sources of research, innovation and diffusion of technology should be continuously promoted. Labour market dynamics were important. Labour markets that experienced high rates of job creation were also subject to high rates of turnover, job elimination and other results of change. Protective barriers which made it hard to eliminate or change existing jobs discouraged businesses from taking the risk of creating new jobs. Flexibility was important. The availability of a variety of employment arrangements and schedules was a significant contributor to job creation. Successful job creation options included temporary and part-time work, contract employees, free agents, telecommuting, incentive pay and profit-sharing options, flexibility in hours of work and leeway for innovations in working arrangements.
- 165.** The Employer members also considered that high tax rates inhibited entrepreneurial activity because they acted as a tax on success, claiming a larger share of income from flourishing enterprises, while governments shared little of the risk. For most entrepreneurs, taxes reduced the finance available to promote their expansion through the purchase of equipment and the hiring of more workers. They added, however, that new ventures needed to be allowed to fail, as job creation involved risk and failures were the necessary complement to success. Generally, economies that succeeded in achieving the highest rates

of job creation also experienced the highest rates of new business failures. Moreover, while technological change drove long-term economic growth, productivity and the improvement of living standards, the emergence and diffusion of new ideas, products and production techniques throughout an economy entailed a process of creative destruction. New technologies destroyed jobs in some industries, especially among the low skilled, while creating jobs which were often in different industries and required different skills. Technology's economy-wide employment impact was likely to be positive, provided that the mechanisms for translating technology into jobs were not impaired by deficiencies in training and innovation systems and rigidities in product, labour and financial markets. Governments needed to make innovation and technology diffusion policies an integral part of overall economic policy. Obsolete industries should therefore be allowed to die. Policies that attempted to prop up industries which had lost their comparative advantage or economic survival potential inevitably created barriers to the emergence and growth of new industries which had the potential to lead to job creation. Instead of artificially prolonging the existence of declining industries, policies should therefore be adopted that speeded the transition to the new paradigm.

- 166.** The Employer members also observed that, in developing countries in particular, the process of job creation was likely to be more successful in economies that were open and market oriented, and earlier success would be achieved where there was a social consensus. However, they considered that a gradualist approach to trade liberalization, privatization and economic restructuring should be rejected and added that labour standards in most countries improved progressively with the rising standard of living which resulted from development. In their view, employment policy for industrialized countries was more complicated because of the mixture of macroeconomic and employment policy issues. Nevertheless, attention clearly had to be paid to labour market costs and rigidities when reforming labour markets, upgrading active labour market policies and reducing non-wage labour costs.
- 167.** In sum, the Employer members underlined four critical employment policy principles: first, the primary goal of employment policy should be to enhance the ability of firms to create jobs, to increase productivity and to raise the standard of living of workers. Second, employment policies should be based on an accurate understanding of current conditions and practices in the workplace. Small businesses driving innovation, new firms established on the premise that they could do a better job, innovative businesses for which excellence was an endless pursuit and dynamic companies drove the job creation process, so that entrepreneurship became a path to prosperity for men and women alike. As reflected in the General Survey, these conditions were equally applicable to jobseekers and unemployed workers who needed to know the requirements of available jobs and to acquire and keep current the knowledge, skills and abilities needed to perform at a high level. Third, employment policies should be implemented at the company level and below by those most directly affected, and should allow flexibility in the achievement of defined policy goals. And, fourth, labour market policies should encourage individuals to be socially responsible and to have a job. The Employer members considered that these principles were essential for rational employment policies in the twenty-first century.
- 168.** The Worker members emphasized that a policy of full employment should not only be a policy for dealing with unemployment, but should first and foremost be a policy aimed at economic growth, the preservation and creation of employment and a better distribution of jobs. As explained in the Global Employment Agenda, the ILO was calling for the objective of full employment to be given central importance in the macroeconomic policies of each country. Policies to combat poverty, in the same way as those to combat unemployment, needed to form part of an integrated policy framework. However, few countries had provided explanations in their reports as to how they integrated employment

into their macroeconomic policy. The objectives of employment were often sacrificed to other macroeconomic objectives, such as combating inflation, balancing budgets, reducing taxes and, in some cases, reducing foreign debt. They also referred to the role of the public authorities in the placement of workers and recalled that there was international pressure for liberalization in the service sector, including job placement. Indeed, the OECD had declared itself openly in favour of such liberalization. However, problems had been noted in several countries where the principle of free job placement had been called into question. In their view, there was little chance in this field that liberalization would be to the advantage of the unemployed. From the neo-liberal point of view, the idea was to provide the quickest supply of any type of job at the lowest cost, to the detriment, for example, of long-term investment through professional training.

- 169.** The Worker members observed in this regard that, while there was still a tendency to paint public services as synonymous with bureaucracy and inefficiency, there were many examples throughout the world of public employment services which performed to a high level, thereby contributing to the creation of an efficient and socially more just labour market. In their opinion, public employment services were therefore a priority and should be set up wherever they were needed, so that this function was not left to the market and to private interests.
- 170.** The Worker member of Tunisia supported the view that, if labour is not to be treated as a commodity, decent work must be at the core of any discussion on employment creation. The Worker member of France further noted that the General Survey demonstrated that one of the main reasons for increased unemployment lay in the fact that the goal of full, productive and freely chosen employment was not integrated as a priority in overall economic and social policies. On the contrary, employment policies and strategies had, over the years, been strangled by restrictive economic policies that gave priority to budgetary, monetary and finance policies. As a result, the effective implementation of Convention No. 122 and its related instruments would require a complete overhaul of policies. He added that the workers were unwilling to accept responsibility for these failures and totally rejected attitudes that tried to pin the blame for unemployment on them. In this respect, they utterly condemned the trend in certain countries to impose, under the cover of an “active labour market policy”, reductions in unemployment benefits which pretended to “encourage” workers to accept jobs that were in fact precarious, badly paid, part time or remote from their homes. Such policies sought to exclude from unemployment statistics workers who had not freely chosen their jobs, which was completely against the spirit of the Convention.
- 171.** Several Government members contributed to the discussion of employment policy measures and approaches by providing information on the policies adopted in their countries or the assistance provided to other countries for the development and implementation of policies to promote employment creation.
- 172.** The Government member of Argentina emphasized that full, productive and freely chosen employment should become a major goal of countries, and not a secondary result of economic policy. Referring to the situation in his own country, he said that in the recent past it had been considered that employment creation should be a result of economic policy, but this had led to marginalization, exclusion and instability in large sectors of the Argentine population. National policy was now oriented to place employment at the centre of economic policy, in accordance with the views expressed in the General Survey. Accordingly, employment policy issues were being addressed by the Government as a whole, as they clearly entailed issues relating to education, health and social peace. In this respect, he reported that a MERCOSUR Regional Conference on Employment had been organized in Buenos Aires in May 2004, with the support of the ILO. It had been attended

by representatives of the education and economic sectors alongside ministers of labour and had formulated a ministerial declaration calling for the development of an employment strategy plan for MERCOSUR, which would involve other MERCOSUR bodies related to social and educational issues and would place employment at the centre of regional policy. At the national level, the Government and the social partners intended to continue examining the possibility of ratifying Convention No. 122 within the framework of the tripartite consultations provided for in Convention No. 144.

- 173.** The Government member of Australia stated that Australian employment policy reflected the principles and standards contained in Conventions Nos. 122 and 142 and that her Government considered that the best way to tackle unemployment was to promote sustainable national economic growth. The Government had therefore given priority to establishing economic conditions that encouraged business investment and growth, and its employment programmes formed an integral part of the overall economic and social policy agenda. She expressed the belief that this policy approach had been proven by the economic and employment outcomes in Australia, which continued to have one of the strongest economic growth records among OECD countries. The unemployment rate had fallen and over 1.2 million jobs had been created. Moreover, she agreed with the Committee of Experts that it was important to monitor closely the progress of economic and social policies and that having adequate information on the state of the labour market was essential for the adoption of well-targeted measures. The comprehensive labour market information system in her country was of considerable use to the Government in evaluating the effects of economic and social policies on employment growth. She also referred to the creation of Job Network as a revolutionary change in the service provided to unemployed people in Australia. An important feature of the network of community and private organizations contracted by the Australian Government to deliver employment services was its outcome-based funding model so that Job Network members were paid for results and not for process.
- 174.** The Government member of Japan recalled that his country had ratified Conventions Nos. 122 and 142 and was now implementing its Ninth National Plan for Employment which included employment creation, human resources development and enforcement of labour market functions and policies covering youth and the elderly. Under this plan, unemployment levels had improved and were now between 5 and 6 per cent. Yet big problems still remained, including a mismatch between the supply and demand of young workers and jobs and differences among the regions. Structural changes, such as an increase in atypical workers, also posed a challenge. The Japanese Government was addressing these problems through consultation and guidance, cooperation and linkages between industrial and employment policies at the regional level for job creation, and human resources development through the private sector. However, youth employment remained an important problem. It had previously been customary for Japanese companies to hire unskilled young workers and to foster them through on-the-job training. More recently, companies had sought to hire ready-made workers with the requisite skills. Atypical employment was also on the rise among young workers, which could lead to some young workers being excluded from society. To address this situation the Government had launched a “challenges for independence” initiative for youth. He looked forward to the ILO hosting a forum on this issue so that countries could share their experiences on youth employment policies.
- 175.** The Government member of Poland indicated that, as a result of the political changes since the end of the 1980s, the Polish labour market had undergone significant transformation, which had led to a rise in official unemployment and decreasing rates of professional activity in a context of economic restructuring, organizational changes in companies, technical progress and a decline in local and international demand. With support from the

ILO, which had provided her Government with advice, knowledge and expertise, emphasis had been given to stimulating employment and eliminating formal obstacles to the establishment of new enterprises, the operation of existing ones and strengthening the services sector. By virtue of a dynamic social and economic environment, the unemployment rate had started to decrease a few months ago and there was confirmation that this trend would remain permanent. At the same time, she noted a growing need for the establishment of a system of activities to increase labour market flexibility. She emphasized the key significance of increased employment in ensuring social peace and eliminating social exclusion. Labour market policies should therefore concentrate on creating an environment which enhanced economic activity while, on the other hand, the qualifications of the labour force should be increased through investments in education and vocational training so as to facilitate adaptation to change. She also announced the adoption of a new Act on the promotion of employment and labour market institutions, which had come into force on 1 June 2004, with a view to promoting innovative solutions for the organization, financing and functioning of the labour market. The new Act provided directions for labour market institutions, the activities of which should focus on human resources development and lifelong learning. The Act also aimed to improve the functioning of public employment services through their reorganization, taking full advantage of information technologies and guaranteeing the broad participation of the social partners, as success in this field was only possible through tripartite dialogue.

- 176.** The Government member of Belgium referred to the assistance that his country was providing to the Balkan countries for the development of a regional coordination policy for employment. Although employment policy in the subregion still needed to be proven to be effective, it was benefiting from integrated assistance from the ILO, the Council of Europe and the participating countries. The methodology used in this context bore similarities to the European Employment Strategy, which was the key instrument used by the European Union to achieve an integrated approach which responded to national and local concerns, while favouring convergence in a transnational marketplace. The exercise undertaken involved each of the countries involved developing a national plan of action providing a balance sheet of employment policies.
- 177.** The Government member of Lebanon indicated that, with a view to the implementation of Conventions Nos. 122 and 142 and Convention No. 9 of the Arab Labour Organization, her country had adopted legislation and had established economic incentives to create further work. A technological university prepared students for productive employment of a technical nature and the National Employment Institution collects information on job opportunities and receives demands for work including from the disabled. She referred to the importance of paying attention to the informal sector. The Government was in the process of preparing framework of strategies and workplans to create jobs in Lebanon and in cooperation with the ILO Beirut Office and hopes to benefit from ILO programmes relating to this issue. She proposed convening a new international conference on employment bringing together all concerned ministries, social partners and academic institutions in order to find the best way to integrate social and economic policies with employment policy. The ILO should disseminate information on job creation through seminars and training courses.
- 178.** The Employer member of India, recalling that employment was the greatest challenge for every country, said that, with the decline in public employment, enterprises had become the central mechanism for creating employment. The question was which strategies to pursue. Should it be the adoption of laws, regulations, and international standards, or should it be the creation of a flexible environment which allowed enterprises to flourish and to create jobs? The former approach stifled enterprises and tended towards job protection. The latter allowed enterprises to liberate their job creation potential, as shown

by the low unemployment rates in countries that had adopted this approach. Furthermore, the informal sector was becoming an important area for job creation. The quality of jobs in this sector was inadequate and the ILO should focus its attention on improving employment in the informal sector. The Employer member of Cuba agreed that macroeconomic policies which promoted economic growth and development inevitably led to the creation of new jobs. Measures that created obstacles to international trade and the transfer of technology, as well as the imposition of unilateral measures impeding the development of trade, constituted an obstacle to enterprise competitiveness and to job creation. Measures that promoted international trade and the elimination of the barriers impeding it could therefore make an important contribution to employment promotion on the global scale. The Employer member of the Islamic Republic of Iran, whose country needed to create over 1 million new jobs a year, said that the national legislation was an obstacle to employment promotion. Furthermore his country suffered low productivity and low-skilled managers. He therefore requested the ILO to assist his country, in consultation with the social partners, to tackle these problems.

The role of small and medium-sized enterprises in employment promotion

- 179.** Many members of the Committee emphasized the important role played by small and medium-sized enterprises (SMEs) in the promotion of employment. The Employer members considered that small businesses and self-employment needed to be nurtured, as recognized in the General Survey. They recalled that most innovation, new products and new services that led to significant job creation were the product of individual entrepreneurs. Most big companies had started as small businesses. The fact that small companies were viewed as risky deprived them of access to top talent and funding. Innovative financial policies could therefore help in managing the risks of smaller businesses by bundling the equity of smaller companies into less risky investments. These bundles could be consolidated into securities and sold through financial institutions, giving smaller companies access to global financial markets at better rates.
- 180.** The Worker members observed from the General Survey that member States were experiencing difficulties in reporting on their policies for the promotion of SMEs. In their view, this was perhaps a good thing in so far as it revealed that, in these countries, SME policies were not dealt with in a different way from policies for other enterprises. The Worker members considered that SME policies should not be separated from overall economic and social policy, because of the risk of discrimination presented by legal dispensations in the field of labour rights. The possibility should never be excluded that an SME might become a major enterprise. This was the calling of SMEs, and they should never therefore be definitively placed in a situation of being dispensed from observing workers' rights. Moreover, the Worker members regretted that the General Survey did not address sufficiently the participation of workers in SMEs and that, on the ground, the presence of trade unions in SMEs was often a taboo subject.
- 181.** The Government member of Italy said that SMEs played an important role both in promoting employment and in the economic inclusion of marginalized groups, by providing them with an extension of their range of options for remunerated activity. His country had a long tradition of establishing SMEs as an integral part of its employment policies, particularly for women and young persons. The State provided fiscal incentives for enterprises in the South and for enterprises set up by women and young persons. The Government member of Australia referred to the specific assistance extended to entrepreneurs in particular groups, under the New Enterprise Incentive Scheme (NEIS) programme for the unemployed and a number of indigenous programmes, such as the Indigenous Capital Assistance Scheme (ICAS). The Government member of Venezuela

added that it was difficult to overcome poverty when the majority of the population did not have access to the means of production or to technology. His Government was therefore adopting financing measures so that workers could set up their own enterprises and participate in markets which had hitherto been the reserve of major enterprises and monopolies. A system of public financing had been established, based on the Women's Bank and the People's Bank, while at the same time obliging private banks to provide preferential financing to SMEs. The access of the micro-, small- and medium-sized enterprises to the government procurement market was also being promoted to generate opportunities. The Government member of Tunisia indicated that in his country the overall enterprise environment, including the legal framework, had been adapted to the new challenges facing these enterprises without ignoring such basic principles as the safeguarding and protection of the social rights of workers provided by the standards regulating professional relations. Many mechanisms had also been put in place to encourage employment creation, in particular to finance microcredit, promote self-employment and assist in the creation of new enterprises. Hence, the mobilization of employment-generating investment, together with the encouragement of self-employment, had become not only one of the biggest sources of income for jobseekers, but also a means of reintegrating those workers who had previously lost their jobs for economic reasons. The Government member of the Libyan Arab Jamahiriya indicated that the promotion of SMEs by encouraging individual initiatives by both men and women was a salient feature of employment policy in his country.

Investment in the knowledge economy

- 182.** The Employer members emphasized the need to promote individual and collective investment in human capital. As recognized in paragraph 232 of the General Survey, lifelong education and training were essential to ensure that the workforce was ready and available to fill the potential employment opportunities that were emerging in a competitive and technologically dynamic environment. Even with differing levels of economic development, labour market flexibility could be improved in all countries by: improving training systems and the employability of workers; encouraging the development of SMEs through access to capital markets and improved entrepreneurial and management skills; removing discriminatory barriers to the workplace; reforming the labour market; promoting worker involvement in decisions at the enterprise and workplace levels that enhanced job creation, flexibility and security; encouraging research and development; and developing tripartite dialogue for employment generation at the national level.
- 183.** Several Government members also placed emphasis on the need to address the generation of employment through general, technical and vocational training policies. The Government member of Peru indicated that this was a determining factor in employment promotion, which showed its most negative aspects in developing countries, and that it was a principal element of any strategy for overcoming poverty. The Government member of Venezuela indicated in this respect that his Government had endorsed the objective of extending the coverage of basic, middle-level and even university education, as well as vocational training, in terms of both their beneficiaries and the quality of the services provided, so as to make it possible for the millions of persons who were excluded and marginalized from development opportunities to be included and participate in the labour market, thereby raising the standard of living for them and their families. With this objective in view, his Government had set aside the neo-liberal dogma and, with international assistance, had provided literacy training over the past ten months to 1,200,000 persons and had included another million students of very different age ranges into its middle education and university systems. He expressed the view that the primary responsibility of States had to be to increase spending on education and training. In this

regard, Venezuela had earned recognition from UNESCO for its progress in complying with the Millennium Development Goals in the field of education. Agreeing that training and education throughout life had acquired a vital role, the Government member of Italy said that it was also necessary for education and training to be linked to employment and to be accessible and adaptable to all, in particular to the most vulnerable social groups.

- 184.** The Worker member of Colombia observed that, for all the talk about the necessity to increase capacity in order to be able to obtain employment, whether by way of vocational training or university education, employment prospects ultimately depended on scarce employment offers, which called for structural solutions to unemployment.

Importance of social dialogue in employment promotion

- 185.** The Worker members emphasized that, in general, the social partners were not sufficiently involved in the adoption of economic measures when their interlocutor was not the Ministry responsible for employment and social affairs. In their view, by referring simply to consultations rather than negotiations for the conclusion of agreements with the social partners, the General Survey inexplicably overlooked many examples of good practices whereby public authorities and the social partners could reach a consensus on the overall social and economic policy, often with excellent results in the field of employment.
- 186.** Several Government members also drew attention to the importance of fostering a broad basis of support for employment policy through the involvement of the social partners and other stakeholders in social dialogue. The Government member of Peru emphasized the importance of the effective participation of the vital forces of society in policy development as the only way in which sufficient clarity of purpose could be attained to ensure that the decisions taken were of the necessary level of social efficiency. He indicated that social dialogue and institutions at the national and regional levels should be accorded the necessary focus and that greater efforts should be made to ensure that the ILO, which was the model of social dialogue, was gradually converted into the global forum in which the social dimension found its most effective instrument. With a view to achieving an integrated approach, the Government member of Italy underlined the importance of a broad, consensual and concentrated effort by governments, employers and workers for the adoption and implementation of employment policies. The Government member of Belgium, emphasizing that the experience of the social partners was indispensable in developing and adapting employment policy, called for their contribution to the development of employment policies to become even more effective in Europe.
- 187.** The Government member of Venezuela added that employment policies, and particularly those promoting entrepreneurship among vulnerable groups, could not be viable or sustainable without support, consensus and social dialogue with stakeholders and workers' and employers' organizations, based on a commitment to the concept of participatory democracy and social justice, an openness to the plurality and diversity of stakeholders and transparency in the presentation of projects and proposals for the transformation of society. He indicated that, for this reason, his Government was promoting sectoral agreements which gave priority to jobs with dignity, thereby facilitating the transformation of an outdated institutional framework which was preventing the real exercise of the rights of citizens.

Concluding observations

- 188.** The Employer members noted that the broad discussion that had taken place did justice to a well-prepared General Survey. There appeared to be two major points of view. With regard to full, productive and freely chosen employment, for some the glass was half full, for others half empty. In their view, job creation required a positive attitude. They recalled that Convention No. 122 was a promotional instrument that rightly did not attempt to define full employment, which could not be determined mathematically, but had to be determined in relation to circumstances in each country. Nevertheless, the goal was clear. Enough jobs would have to be created to meet the demand from workers qualified to do them. Some interventions had mentioned the need for decent work in relation to employment creation, without defining what this was. They stated that attaining the policy goal of Convention No. 122, namely the creation of productive work, was already difficult enough without adding decent work. While there clearly needed to be a balance between social protection and entrepreneurial flexibility, levels of social protection could not be so high as to be an obstacle to job creation. The key to job creation was a stable entrepreneurial environment and a strong educational and lifelong learning environment which sought to ensure that workers had the skills to perform increasingly complex jobs.
- 189.** The Worker members expressed the view that the discussion had been very fruitful and thanked the Committee of Experts for the excellent quality of the General Survey. This survey would also influence the discussions that would take place in the Human Resources Committee, which was reviewing the Human Resources Development Recommendation, 1975 (No. 150). They emphasized that the key concept in the General Survey was that of full employment, or in other words the right to work. This concept must remain at the heart of the ILO's activities and those of other international agencies. It was not sufficient for the European Union to follow an employment strategy in the absence of a common economic policy to promote growth, particularly if the monetary policy adopted ran counter to this objective. It was also inadequate to refer to a fair globalization when there were no permanent structures in international institutions permitting dialogue and the coordination of activities in this respect.
- 190.** To achieve the objective of full employment, the ILO needed to exert pressure on and support member States, where necessary through recourse to technical assistance. The Worker members urged international organizations to make full employment a real objective, particularly in the framework of combating poverty. Moreover, the notion of full employment needed to be combined with that of decent work. In this respect, it was clear that full employment could not be achieved merely through an expansion of the informal economy, which generated low productivity without offering adequate protection to workers, or by relaxing the conditions of work in the formal economy, thereby increasing precarious employment. The challenge of decent work should not only be perceived as the main mission of the ILO, but also as a responsibility of all international organizations. All enterprises, without exception, should be moving in the direction of decent work, including the SMEs covered by Recommendation No. 189, as well as enterprises in export processing zones, which were endeavouring to avoid fundamental standards.
- 191.** Noting that several countries had expressed a willingness to ratify Conventions Nos. 122 and 142, the Worker members urged the countries in question to undertake the necessary measures for ratification at the earliest opportunity, and to do so in consultation with the social partners.
- 192.** In conclusion, the Worker members said that the major challenge for member States and international institutions was the articulation of the notion of full employment with the concept of decent work. The ILO needed to play a major role in this respect. They recalled

that in its final comments in the General Survey, the Committee of Experts laid emphasis on the importance of integrating the full employment objective in macroeconomic policies. The ILO should therefore do more work in this area, while at the same time ensuring the continuous monitoring of developments in the various countries and the dissemination of good practice. In this context, the Worker members wondered if it would not be possible to take the bold step of going further and adopting the same approach as that followed in environmental policies, whereby the central objective of full employment would be translated for each country into specific quantitative criteria.

E. Compliance with specific obligations

- 193.** In examining individual cases relating to compliance by States with their obligations under or relating to international labour standards, the Committee applied the same working methods and criteria as last year.
- 194.** In applying those methods, the Committee decided to invite all governments concerned by the comments in paragraphs 51 (failure to supply reports for the past two or more years on the application of ratified Conventions), 58 (failure to supply first reports on the application of ratified Conventions), 62 (failure to supply information in reply to comments made by the Committee of Experts), 92 (failure to submit instruments to the competent authorities), and 98 (failure to supply reports for the past five years on unratified Conventions, Recommendations and Protocols) of the Committee of Experts' report to supply information to the Committee in a half-day sitting devoted to those cases.

Submission of Conventions and Recommendations to the competent authorities

- 195.** In accordance with its terms of reference, the Committee considered the manner in which effect is given to article 19, paragraphs 5-7, of the ILO Constitution. These provisions require member States within 12, or exceptionally 18, months of the closing of each session of the Conference to submit the instruments adopted at that session to the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action, and to inform the Director-General of the ILO of the measures taken to that end, with particulars of the authority or authorities regarded as competent.
- 196.** The Committee noted from the report of the Committee of Experts (paragraph 84) that considerable efforts to fulfil the submission obligation had been made in certain States, namely: **Angola, India and Suriname.**
- 197.** In addition, the Committee was informed by various other States of measures taken to bring the instruments before the competent national authorities. It welcomed the progress achieved and expressed the hope that there would be further improvements in States that still experience difficulties in complying with their obligations.

Failure to submit

- 198.** The Committee noted with regret that no indication was available that steps had been taken in accordance with article 19 of the Constitution to submit the instruments adopted by the Conference at the last seven sessions at least (from the 83rd to the 89th Sessions) to the competent authorities, in the cases of **Afghanistan, Armenia, Cambodia, Haiti, Lao People's Democratic Republic, Latvia, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, Turkmenistan and Uzbekistan.**

Supply of reports on ratified Conventions

199. In Part B of its report (General questions relating to international labour standards), the Committee has considered the fulfilment by States of their obligation to report on the application of ratified Conventions. By the date of the 2003 meeting of the Committee of Experts, the percentage of reports received was 65.9 per cent, compared with 64.5 per cent for the 2002 meeting. Since then, further reports have been received, bringing the figure to 72.6 per cent (as compared with 71.8 per cent in June 2003, and 72.2 per cent in June 2002).

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

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

201. The Committee also noted with regret that no first reports due on ratified Conventions had been supplied by the following countries: since 1992 – **Liberia** (Convention No. 133); since 1995 – **Armenia** (Convention No. 111), **Kyrgyzstan** (Convention No. 133); since 1996 – **Armenia** (Conventions Nos. 100, 122, 135, 151), **Uzbekistan** (Conventions Nos. 47, 52, 103, 122); since 1998 – **Armenia** (Convention No. 174), **Equatorial Guinea** (Conventions Nos. 68, 92), **Uzbekistan** (Conventions Nos. 29, 100); since 1999 – **Turkmenistan** (Conventions Nos. 29, 87, 98, 100, 105, 111), **Uzbekistan** (Conventions Nos. 98, 105, 111, 135, 154); since 2001 – **Armenia** (Convention No. 176), **Kyrgyzstan** (Convention No. 105), **Tajikistan** (Convention No. 105); and since 2002 – **Azerbaijan** (Conventions Nos. 81, 129), **Bosnia and Herzegovina** (Convention No. 105), **Chad** (Conventions Nos. 132, 182), **Gambia** (Conventions Nos. 29, 105, 138), **Kyrgyzstan** (Convention No. 81), **Saint Kitts and Nevis** (Conventions Nos. 87, 98, 100, 111, 144), **Saint Lucia** (Conventions Nos. 154, 158, 182), **Yemen** (Convention No. 182). It stressed the special importance of first reports on which the Committee of Experts bases its first evaluation of compliance with ratified Conventions.

202. In this year's report, the Committee of Experts noted that 37 governments had not communicated replies to most or any of the observations and direct requests relating to Conventions on which reports were due for examination this year, involving a total of 325 cases (compared with 379 cases in December 2002). The Committee was informed that, since the meeting of the Committee of Experts, ten of the governments concerned had sent replies, which would be examined by the Committee of Experts at its next session.

203. The Committee noted with regret that no information had yet been received regarding any or most of the observations and direct requests of the Committee of Experts to which replies were requested for the period ending 2003 from the following countries: **Albania, Antigua and Barbuda, Bosnia and Herzegovina, Cambodia, Central African Republic, Chad, Democratic Republic of the Congo, Denmark (Greenland), Eritrea, Georgia, Grenada, Guinea, Haiti, Israel, Kyrgyzstan, Lao People's Democratic Republic, Liberia, Libyan Arab Jamahiriya, Malawi, Mali, Paraguay, Serbia and Montenegro, Sierra Leone, Solomon Islands, Swaziland, Tajikistan, United Arab Emirates** and **United Kingdom (Montserrat)**.

204. The Committee noted the explanations provided by the governments of the following countries concerning difficulties encountered in discharging their obligations: **Cambodia, Central African Republic, Chad, Denmark (Greenland), Eritrea, Israel, Liberia,**

Libyan Arab Jamahiriya, Malawi, Mali, Paraguay, Serbia and Montenegro, Swaziland, United Arab Emirates and United Kingdom (Montserrat).

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

Supply of reports on unratified Conventions, Recommendations and Protocols

206. The Committee noted that 283 of the 545 article 19 reports requested on the Employment Policy Convention, 1964 (No. 122), and the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), and aspects relating to the promotion of full, productive and freely chosen employment of the Human Resources Development Convention, 1975 (No. 142), and of the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), had been received at the time of the Committee of Experts' meeting, and a further three since, making 52 per cent in all.

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

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

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

Application of ratified Conventions

209. The Committee noted with particular interest the steps taken by a number of governments to ensure compliance with ratified Conventions. The Committee of Experts listed in paragraph 69 of its report new cases in which governments had made changes to their law and practice following comments it had made as to the degree of conformity of national legislation or practice with the provisions of a ratified Convention. There were 34 such cases, relating to 28 countries; 2,376 cases where the Committee has been led to express its satisfaction with progress achieved since the Committee of Experts began listing them in 1964. These results are tangible proof of the effectiveness of the supervisory system.

210. This year, the Committee of Experts listed in paragraph 71 of its report, cases in which measures ensuring better application of ratified Conventions had been noted with interest. It has noted 213 such instances in 106 countries.

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

Specific indications

212. The Government members of **Cambodia, Central African Republic, Chad, Denmark (Greenland), Eritrea, Iraq, Ireland, Israel, Latvia, Liberia, Libyan Arab Jamahiriya, Malawi, Mali, Mongolia, Paraguay, Serbia and Montenegro, Slovakia, Swaziland, Uganda, United Arab Emirates, United Kingdom (Montserrat)** and **Yemen** have promised to fulfil their reporting obligations as soon as possible.

Cases of progress

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

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

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

Special case

215. The Committee considered it appropriate to draw the attention of the Conference to its discussion of the case mentioned in the following paragraph, a full record of which appears as Part Two of this report.

216. As regards the application by **Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee took note of the statement made by the Government representative and the detailed discussion that followed. The Committee recalled that it had discussed this serious case on many occasions during more than 20 years, and that since 1996 its conclusions had been included in a special paragraph for continued failure to implement the Convention. The Committee was nevertheless obliged to point out once again that despite the repeated examination of this case, there had been no progress with respect to the adoption of a legislative framework which would allow for the establishment of free and independent trade union organizations. The Committee noted with great concern the information provided about nine persons, including three persons who had been convicted of high treason for having maintained contacts with the ILO or having been affiliated to the Federation of Trade

Unions of Burma. The Committee took note of the urgent and serious case before the Committee on Freedom of Association, the allegations of which referred to the conviction of three persons, two of whom were serving prison terms, for having exercised trade union activities. The Committee urged the Government to liberate those who remained in prison and to provide it with the text of a judgement which had convicted a trade union official in absentia. The Committee took due note of the information provided by the Government according to which the National Convention was preparing a Constitution and that once the Constitution was promulgated, it would make efforts to establish a legislative framework for the recognition of freedom of association. Recalling that fundamental divergences had existed between the national legislation and practice and the Convention since the Government had ratified the Convention 50 years ago, the Committee urged the Government in the strongest terms to urgently adopt the necessary measures and mechanisms to guarantee in law and in practice to all workers and employers the right to establish and join organizations of their own choosing without previous authorization, as well as the right of these organizations to affiliate with federations, confederations and international organizations, without interference from the public authorities. Moreover, the Committee underlined that respect for civil liberties was essential for the exercise of freedom of association and urged the Government to take the necessary measures so that workers and employers could exercise the rights guaranteed by the Convention in a climate of complete freedom and security, free from violence and threats. The Committee urged the Government to communicate all relevant draft laws as well as a detailed report on the concrete measures adopted to ensure improved conformity with the Convention, including a response to the comments presented by the ICFTU, so that this report could be examined by the Committee of Experts this year. The Committee expressed the hope that in the coming year it would be in a position to observe significant progress in this respect. The Committee decided to include its conclusions in a special paragraph of its report. It also decided to mention this case as a case of continued failure to implement the Convention.

Continued failure to implement

217. The Committee recalls that its working methods provide for the listing of cases of continued failure over several years to eliminate serious deficiencies, previously discussed, in the application of ratified Conventions. This year the Committee noted with great concern that there had been continued failure over several years to eliminate serious discrepancies in the application by **Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**.
218. The government of the country to which reference is made in paragraph 216 is invited to supply the relevant reports and information to enable the Committee to follow up the abovementioned matter at the next session of the Conference.

Participation in the work of the Committee

219. The Committee wished to express its gratitude to the 32 governments which collaborated by providing information on the situation in their countries and participating in the discussions of their individual cases. §
220. The Committee regretted that, despite the invitations, the governments of the following States failed to take part in the discussions concerning their countries' fulfilment of their constitutional obligations to report: **Afghanistan, Azerbaijan, Bosnia and Herzegovina, Democratic Republic of the Congo, Georgia, Haiti, Kyrgyzstan, Somalia and The former Yugoslav Republic of Macedonia**. It decided to mention the cases of these States

in the appropriate paragraphs of its report and to inform them in accordance with the usual practice.

- 221.** The Committee noted with regret that the governments of the States which were not represented at the Conference, namely **Antigua and Barbuda, Equatorial Guinea, Gambia, Grenada, Lao People's Democratic Republic, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Sierra Leone, Solomon Islands, Tajikistan and Turkmenistan**, were unable to participate in the Committee's examination of the cases relating to them. It decided to mention these countries in the appropriate paragraphs of this report and to inform the governments, in accordance with the usual practice.

Geneva, 15 June 2004.

(Signed) Noemí Rial,
Chairperson.

Maria Helena Robert Lopes,
Reporter.

