

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

**Report of the Committee on the
Application of Standards**

PART ONE

GENERAL REPORT

Contents

	<i>Page</i>
A. Introduction.....	3
B. General questions relating to international labour standards.....	7
C. Reports requested under article 19 of the Constitution – General Survey on the fundamental Conventions	16
D. Compliance with specific obligations.....	27
E. Discussion of the list of individual cases to be considered by the Committee	32
F. Follow-up discussion on the way forward.....	46
G. Decision paragraph submitted by the Chairperson of the Committee following tripartite consultation	48
H. Adoption of the report and closing remarks	52
Annex 1. Work of the Committee	58
Annex 2. Preliminary list of possible cases to be examined by the Committee on the Application of Standards at the ILC in June 2012.....	72

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 176 members (117 Government members, 46 Employer members and 13 Worker members). It also included eight Government deputy members, 43 Employer deputy members, and 214 Worker deputy members. In addition, 32 international non-governmental organizations were represented by observers.¹

2. The Committee elected its Officers as follows:

Chairperson: Mr Sérgio Paixão Pardo (Government member, Brazil)

Vice-Chairpersons: Mr Christopher Syder (Employer member, United Kingdom) and Mr Marc Leemans (Worker member, Belgium)

Reporter: Mr David Katjaimo (Government member, Namibia)

3. The Committee held 11 sittings.
4. In accordance with its terms of reference, the Committee was called upon to consider 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 Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105), the Minimum Age Convention, 1973 (No. 138), the Worst Forms of Child Labour Convention, 1999 (No. 182), the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).² The Committee was also called on by the Governing Body to hold a special sitting concerning the application by Myanmar of the Forced Labour Convention, 1930 (No. 29), in application of the resolution adopted by the Conference in 2000.³

¹ For changes in the composition of the Committee, refer to reports of the Selection Committee, *Provisional Record* Nos 3–3H. For the list of international non-governmental organizations, see *Provisional Record* No. 2-3.

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: General Survey on the Fundamental Conventions concerning rights at work.

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

Opening statements of Vice-Chairpersons

5. The Worker members focused in their statement on the issue of improving the standards-related actions of the ILO and on the approach taken towards the ILO standards policy with a view to creating more social justice by putting the worker back at the centre in a world confronted with immense economic, political and climatic challenges, and with the urgent need to consider a world that was more sustainable. It should be possible to adopt new standards to effectively respond to new challenges concerning the quality of employment and the creation of adequate social protection for all workers. While the revision of certain standards or their coordination might be necessary to respond more usefully to the sustainable development challenge, the adoption of new binding standards must also be envisaged in order to cover new risks in the area of health and safety, the fight against poverty or to guarantee quality of employment. Moreover, without the supervisory mechanisms, the standards adopted would remain a dead letter. The supervisory mechanisms provided for in the ILO Constitution did not have any penal or financial sanctions against the States concerned. The supervisory mechanisms in place were fundamentally good, but they had to be better understood, known and applied. In this regard, the ILO Constitution could be better used.
6. The Committee of Experts had a fundamental role. It prepared the work of the Conference Committee with scientific rigour, independence and objectivity, with a view to ensuring the application of standards in law and in practice. It also entered into a dialogue with governments by means of direct requests. Finally, its work had pedagogical value through general surveys and the identification of cases of progress. The organizations of employers and workers could, on the basis of its report, find legal and practical elements to improve the application of standards. The examination of individual cases by the Conference Committee constituted another fundamental element of the supervisory system. The tripartite nature of this examination, which relied on the work of the Committee of Experts, gave it high authority. In adopting conclusions on these cases, the Conference Committee put pressure on the States concerned.
7. The reporting by governments also constituted a major element and had to be subject to better ownership of all parties involved. This was an onerous task, but if shared with the social partners within the framework of, for example, national tripartite commissions established on the basis of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), it became easier and gained in quality. It was true that the reporting obligations of States were multiple and not limited to those related to the ILO. Coordination between the various institutions concerned was desirable in order to avoid duplication and the ILO could perhaps establish a mapping of mechanisms that had become redundant. Moreover, many member States of the ILO were members of regional organizations which also set standards. It would be appropriate to establish greater coherence in the supervision and the implementation of the obligations common to the ILO and these organizations, as well as institutional collaboration among bodies of tripartite social dialogue in each of these different institutions.
8. With respect to the special supervisory procedures on the application of standards, a better utilization of the complaints-based procedures provided for in the ILO Constitution would allow the Committee of Experts to concentrate more on its pedagogical work and on the analysis of the effective application of standards. Moreover, the correct application of standards required certain tools aimed at ensuring the understanding of these instruments and the ownership of the concepts therein. It was therefore appropriate to support, including through financial recourses, the development of assistance and technical cooperation offered by the Office, and its presence in regions at risk.

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9. The Worker members further affirmed that an effective standards policy should be modern and innovative to respond adequately and with relevance to the present challenges faced by workers in these times of economic crisis and austerity policies. However, the fundamental objectives of ILO standards stood unchanged and the recent economic and financial crisis showed the persistence, if not growth, of threats against workers, which the ILO Constitution, ILO standards and the Philadelphia Declaration had meant to address. Consequently, a modern approach towards standards could not solely be based on quest for simplification in itself, without taking account of the social gains that had been obtained through hard struggles. The ILO standards policy could not be replaced by guidelines on corporate social responsibility, nor just be guided by the need to be competitive.
 10. In conclusion, the Worker members emphasized that: (1) it should be ensured that ILO standards provide effective protection to workers, today and in the future, in their places of work; (2) in the future, the imperative need to invest in sustainable enterprises should be taken into account by all – enterprises, governments and workers; (3) in facing the changes to which the world was confronted, the body of international standards should remain responsive to needs, while at the same time being sufficiently flexible to guarantee their effective application in practice by member States; (4) the conviction that standards and the supervisory mechanism were useful and should be strengthened, and action should be taken to increase the number of ratifications and to improve the application of ratified Conventions; (5) it should be declared that standards-related activities of the ILO remained relevant in tackling future challenges of workers and enterprises; and (6) it should be reaffirmed that the ILO Constitution, the 2008 Declaration on Social Justice in a Globalized World, the 1998 Declaration on the Fundamental Principles and Rights at Work, and the Decent Work Agenda remained valuable in the twenty-first century.
 11. The Employer members expressed appreciation for the productive dialogue that had taken place between Vice-Chairpersons of the Conference Committee and the members of the Committee of Experts in November 2011. The constructive relationship that existed between the previous Vice-Chairpersons had been taken forward by the new Vice-Chairpersons and constructive informal consultations had already taken place. The Employer members recognized the importance of the Committee on the Application of Standards, expressed their commitment to a supervisory mechanism that was relevant, and highlighted the importance of the Standards Review Mechanism and the discussions in the Governing Body in this regard. They also recognized the historic importance of this year's General Survey, because it was the first General Survey to discuss all eight fundamental Conventions. The principles and rights enshrined in the fundamental ILO Conventions were embedded in a number of other United Nations (UN) instruments and mechanisms, including the UN *Guiding principles on business and human rights*, the Organisation for Economic Co-operation and Development (OECD) *Guidelines for multinational enterprises* and the UN Global Compact. In addition, this Committee had the significant task to brief the Conference Committee on the recurrent discussion on the strategic objective of fundamental principles and rights at work (Recurrent Item Committee), on the outcome of the discussions on the General Survey.
 12. Moreover, while the Employer members recognized that the Committee of Experts was an independent body composed of legal experts, they recalled once again that the overall responsibility for the supervision of international labour standards lay with the International Labour Conference (ILC), through this Committee, which had to establish to this end an effective framework, including rules and methods. The Committee of Experts had a mandate to undertake preparatory tasks in this context – that were delegated to the Office – and to facilitate, not to replace, the tripartite supervision of this Committee. The supervision of international labour standards should be at the service of the ILO's tripartite constituents and reflect their needs, including the needs of workers and employers.

Work of the Committee

13. In accordance with its usual practice, the Committee began its work with a discussion on general aspects of the application of Conventions and Recommendations and the discharge by member States of standards-related obligations under the ILO Constitution. In this part of the general discussion, reference was made to Part One of the report of the Committee of Experts on the Application of Conventions and Recommendations and to the information document on ratifications and standards-related activities. During the first part of the general discussion, the Committee also considered its working methods with reference being made to a document submitted to the Committee for this purpose.⁴ A summary of this part of the general discussion is found under relevant headings in sections A and B of Part One of this report.
14. The second part of the general discussion dealt with the General Survey concerning the fundamental Conventions and entitled *Giving globalization a human face* carried out by the Committee of Experts. It is summarized in section C of Part One of this report.
15. Following the general discussion, the Committee considered various cases concerning compliance with obligations to submit Conventions and Recommendations to the competent national authorities and to supply reports on the application of ratified Conventions. Details on these cases are contained in section D of Part One of this report.
16. The Committee was called upon to hold a discussion on the list of individual cases to be considered by the Committee. A summary of this discussion is contained in section E of Part One of this report. Subsequently, the Committee held sittings to follow-up on the possible ways forward. Details of this discussion are contained in section F of Part One of this report. Further to such discussion, a decision was adopted, following tripartite consultation and is reflected accordingly in section G. The adoption of the report and closing remarks are contained in section H of Part One of this report.
17. 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 Two of this report.

Working methods of the Committee

18. The Chairperson announced, in accordance with Part V(E) of Document D.1, the time limits for speeches made before the Committee. These time limits were established in consultation with the Vice-Chairpersons and it was the Chairperson's intention to strictly enforce them in the interest of the work of the Committee. The Chairperson also called on the members of the Committee to make every effort so that sessions started on time and the working schedule was respected. Finally, the Chairperson recalled that all delegates were under the obligation to abide by parliamentary language. Interventions should be relevant to the subject under discussion and be within the boundaries of respect and decorum.
19. The Government member of Sudan, speaking on behalf of the Government group, reiterated his commitment to the ILO supervisory system, including the work of the Conference Committee on the Application of Standards, and emphasized the importance of a balanced and constructive dialogue on individual cases by this Committee. The final list

⁴ Work of the Committee on the Application of Standards, ILC, 101st Session, C. App/D.1 (see Annex 1).

of cases should be published in due time on the second day of the Committee's work, as currently foreseen in the plan of work of this Committee, or at the very latest on the third day. The events of the last few years had clearly shown that the late publishing of the final list severely hampered the ability of governments to participate in an adequate manner in these proceedings. He further expressed the desire to continue to improve the working methods of the Conference Committee, and was confident that he could count on the understanding of the social partners in this regard in order to contribute to a more meaningful exchange of views and experiences among all parties.

20. The Government member of Brazil, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), supported the statement made by the Government member of Sudan reiterating its commitment to the work of the Committee. He also emphasized that the provisional working schedule of the Conference Committee planned for the adoption of the list of individual cases on the second day of its work, and asked that this deadline be respected.
21. The Government member of Brazil expressed the concern of his Government over the situation in the Committee regarding the publication of the list. He emphasized the need to preserve the supervisory system and called attention to the systemic risks of the current situation. He underlined the need to publish the list in time and reiterated GRULAC's call in this regard.
22. The Worker members stated that they were unable to negotiate a list of individual cases with the Employer members if the Employer members insisted that this list could not contain any cases concerning the right to strike. This unacceptable attitude jeopardized the credibility of the ILO's supervisory system, to which the Worker members remained committed.
23. The Employer members emphasized that it was important to remain dignified in difficult circumstances. The difficulties they faced in relation to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) would become crystal clear in the presentation they would make during the discussion on the General Survey. The Employer members had to act in accordance with their statements in order to be coherent. Thus, the Committee could have had before it a proposed list of 25 cases for discussion on 14 Conventions, including six fundamental, two governance and six technical Conventions. This list was balanced and the Employer members refused to be seen as the party responsible for the current stalemate.
24. The Worker members stated that there had never been a negotiated list.

B. General questions relating to international labour standards

General aspects of the supervisory procedure

Statement by the representative of the Secretary-General

25. First of all, the representative of the Secretary-General indicated that this past year had seen continued engagement between this Committee and the Committee of Experts, as well as the continued evolution of the working methods of this Committee. The Tripartite Working Group on the Working Methods of the Conference Committee had built on its

past achievements, while addressing questions such as how to coordinate with the Working Party on the Functioning of the Governing Body and the ILC. Since its establishment in June 2006, the Tripartite Working Group had held a total of 11 meetings. Document D.1, currently before this Committee, reflected the adjustments made to its working methods on the basis of the recommendations of this Working Group. These adjustments included, for instance, the arrangements for the Employers' and Workers' groups to meet informally to improve the process for the adoption of the final list of individual cases, as well as the continued use of the automatic registration and slotting of cases for discussion by this Committee. The Working Group had also discussed the possibility for the Committee to resume the inclusion of a case of progress among the cases to be discussed, as had been the case until 2008.

26. Regarding the General Survey, the speaker underlined that the current General Survey on the eight fundamental Conventions concerning rights at work represented the first time in the ILO's history that the Committee of Experts had examined all eight fundamental Conventions concurrently. As these eight Conventions enjoyed a high rate of ratification, the comprehensive approach of the General Survey would permit linkages to be made between the four categories of fundamental Conventions, aiding both the Office and constituents in devising new strategies to meet the goal of universal ratification. This General Survey would also complement the recurrent item report on the four categories of fundamental principles and rights at work which would be discussed by the Recurrent Item Committee this year. The outcome of this Committee's discussion would feed into the deliberations of the Recurrent Item Committee so that the Organization could adopt conclusions that take full account of all of the ILO means of action, including standards-related action.
27. The speaker highlighted that the work of the Committee and the Committee of Experts would be influenced by the new reporting cycle which took effect from this year and, from this point forward, reports on the fundamental and governance Conventions would be due every three years, and reports on the technical Conventions would remain due every five years. This change would reduce the workload for both the constituents and the supervisory bodies and it was to be hoped that this would enhance the quality of the reports.
28. Turning to the issue of supervision and technical cooperation, the representative of the Secretary-General emphasized that supervision of the application of international labour standards must go hand in hand with technical cooperation in order to achieve the greatest impact of these standards on the ground. Technical assistance was key in addressing implementation gaps. In this regard, the allocation of US\$2 million in the Special Programme Account fund by the Governing Body for the 2012–13 biennium had enabled the Office to design and implement technical assistance programmes specifically targeted to those member States hampered by persistent reporting or implementation gaps in their international labour standards obligations. Working closely with field specialists and colleagues at the Turin Centre, the International Labour Standards Department had identified 28 countries from all regions that would receive assistance to better implement their obligations under a wide variety of Conventions. Concurrently, some of the resources from the Special Programme Account would be directed at assisting those member States which had a significant reporting backlog.
29. However, the speaker underlined that it was equally important to acknowledge the impressive progress that had already been made by some member States, with the assistance of the ILO. In 2012, the Committee of Experts had noted "with satisfaction" the application of international labour standards by 54 member States. This represented a 35 per cent increase from 2011. Similarly, the Committee of Experts had noted "with interest" the application of international labour standards by 130 member States, which

was a 6.5 per cent increase from 2011. She wished to highlight a few cases in which work by the Office or the ILO supervisory bodies had helped to stimulate progress by member States.

30. This progress had come about as a result of several different types of collaborative action including through the undertaking of missions to member States. These missions had included a technical assistance mission to Zimbabwe in July 2011; two high-level missions to Greece in September 2011 and April 2012; tripartite seminars on the Maritime Labour Convention, 2006 (MLC, 2006) in India, Malaysia and the Philippines between July and October 2011; technical assistance missions to Haiti and Panama in January and February 2012 respectively; and two high-level missions to Bahrain in February and March 2012. Some of these had resulted in concrete, identifiable outcomes. For example, in Panama, a tripartite conflict resolution mechanism had been promoted that focused on solving cases which were before the Committee on Freedom of Association. This type of mechanism, which had first been implemented in Colombia with successful results involving several cases in May 2012, allowed for the resolution of freedom of association issues at the national level, while simultaneously promoting an innovative way to exercise the rights of trade unions.
31. Of course, progress in reducing the implementation gaps was often made independently of the undertaking of missions. This progress was frequently achieved after years of coordinated action and follow-up by this Committee, the Committee of Experts, and the Committee on Freedom of Association. For example, this year the Committee of Experts' report had welcomed changes in legislation in Peru, regarding the right to consultation under the Indigenous and Tribal Peoples Convention, 1989 (No. 169); in Romania, regarding the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); in the Republic of Korea, regarding the Labour Administration Convention, 1978 (No. 150); in Costa Rica regarding the Social Security (Minimum Standards) Convention, 1952 (No. 102); in Azerbaijan concerning the Minimum Age Convention, 1973 (No. 138); and in the Philippines concerning the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), with measures taken by the Government with the adoption of "Guidelines on the conduct of government agencies" relative to the exercise of workers' rights. These Guidelines would also govern the conduct of the armed forces of the Philippines and the police.
32. However, all member States could do more to ensure that the ILO's body of standards was relevant to the modern world of work. Two immediate opportunities for action came to mind. The first was the promotional campaign and plan of action towards widespread ratification and effective implementation of the governance Conventions, namely: the Labour Inspection Convention, 1947 (No. 81); the Employment Policy Convention, 1964 (No. 122); the Labour Inspection (Agriculture) Convention, 1969 (No. 129); and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). A plan of action for the governance Conventions had been adopted by the Governing Body in November 2009, and implementation was ongoing. In support of this plan of action, in 2012 the Office had renewed its promotional campaign asking governments to ratify, as a matter of priority, the governance Conventions.
33. The second opportunity for member States to work towards meeting the objectives of the ILO was through the ratification of the MLC, 2006. The previous six months had seen a flurry of ratifications from Asia, Africa, Europe and the Americas, with the current count sitting at 27. The gross tonnage requirement for the MLC, 2006, had long been surpassed, with over 56 per cent of world gross tonnage. The Convention would thus come into force 12 months after 30 ILO member States had ratified it. The International Labour Standards Department, together with its partners in the Sectoral Activities Department, the Turin Centre and the field offices, had implemented a comprehensive training and capacity-

building programme and had published guidance handbooks on the MLC, 2006. The Office remained ready to assist countries with ratification and implementation issues.

34. There were also increasing opportunities of engaging with non-state entities and economic actors, such as multinational enterprises and trade unions at the global level as called for by the 2008 Social Justice Declaration to promote international labour standards through the international organizations of employers and workers. The Office stood ready to provide effective guidance and advice for the better implementation of rights at work at the enterprise level and across the supply chain.
35. Referring to the increasing tensions and queries over recent years as to the relevance of certain standards, the speaker indicated that extensive tripartite consultations had taken place over the last year on the modalities of a proposed Standards Review Mechanism. She was pleased to report that agreement had been reached in principle between governments and the social partners during the March 2012 session of the Governing Body that would enable the latter to have a substantive discussion on this topic in November 2012. Progress had also been made on the ongoing question of improving the methodology in setting the agenda of the ILC. She wished to express her sincere gratitude to all of the tripartite constituents for their flexibility in accommodating alternative viewpoints as they worked together to resolve these two challenging issues.
36. Finally, the speaker highlighted that NORMLEX, a new information database which combined data that was previously available in the APPLIS, ILOLEX, LIBSYND, and NATLEX databases, had gone live in February 2012. NORMLEX had proved to be very popular among users, enjoying more than 100,000 page views in April 2012, and had received extremely positive feedback from users, 66 per cent of whom were returning visitors. The database was an invaluable research tool. In particular, it allowed member States, employers' and workers' organizations, and the general public to review ratification information regarding labour standards. NORMLEX would also become indispensable for governments looking to meet their reporting obligations, as it contained an easy to use "search" function of all present and previous observations and direct requests from the Committee of Experts. A "country profile" page had been created for each member State, which contained links to national legislation, comments made by the ILO supervisory bodies, observations submitted by the social partners under article 23 of the ILO Constitution, and additional background information on any complaint procedures that were pending. The Office was hopeful that NORMLEX would become an essential instrument for constituents in the coming years as they worked to address the implementation gaps surrounding labour standards.
37. In conclusion, the representative of the Secretary-General emphasized that a new era was dawning where labour standards were enjoying higher visibility than ever before, and playing a prominent role in an international legal order where influences from several diverse fields were converging to meet the current socio-economic challenges and respond to the economic, financial and jobs crises. This was obvious as well in forums outside the ILO. The outcome document from the November 2011 G20 leaders summit contained language specifically calling on the ILO to continue its work in support of a social protection floor and to promote ratification and implementation of the eight core Conventions ensuring fundamental principles and rights at work. This recognition from the G20 leaders, that ILO standards and principles were a critical component of the global recovery, should provide motivation to continue collaboration on improving the body of international labour standards, and their effective application to all aspects of the modern labour market.

Statement by the Chairperson of the Committee of Experts

38. The Committee welcomed Mr Yozo Yokota, Chairperson of the Committee of Experts. He welcomed the opportunity to speak as evidence of the good working relationship between the two Committees which carried out the supervision of international labour standards. These two Committees, one with a tripartite composition and the other composed of independent experts, had been working together to promote, protect and enhance the rights and quality of life of all the workers in the world.
39. The speaker then turned to the meeting of the last session of the Committee of Experts, indicating that the workload had been heavy. The Committee of Experts had welcomed one new member, from Panama. Moreover, he noted that the Governing Body had appointed two other new members in March 2012, which would surely facilitate the work of the Committee of Experts in the future. In addition, the Committee of Experts had enjoyed the opportunity to exchange opinions in a special sitting with the Vice-Chairpersons of this Committee. The exchange of views that took place had been very active, frank and productive. The discussion had focused on issues such as ways to reinforce the complementary relationship between the two Committees in order to promote the effective application of international labour standards by member States. The discussion had also considered possible improvements in the way in which one Committee would take into account the views expressed by the other.
40. The Employer Vice-Chairperson had made comments on the role of the Committee of Experts and the cooperation between it and the Conference Committee, on the question of interpretations by the Committee of Experts and on the development of a method for measuring progress in compliance with standards. In response, a number of Experts had emphasized the independent, impartial and technical role that is required of the work of the Committee of Experts. They had pointed out, however, that workers' and employers' organizations could provide comments on government reports and had expressed the hope that these organizations would continue to do so. Such comments would provide an opportunity for social partners to enhance the Committee of Experts' assessment of the application of ratified Conventions.
41. Referring to collaboration with other international organizations, the speaker indicated that the Committee of Experts had held an annual meeting with members of the United Nations Committee on Economic, Social and Cultural Rights in November 2011, on the theme: "Just and favourable conditions of work". Moreover, in accordance with the arrangements made between the ILO and the Council of Europe, the Committee of Experts had examined 20 reports on the application of the European Code of Social Security and, as appropriate, its Protocol.
42. Turning to the methods of work of the Committee of Experts, the speaker indicated that since 2001, this subject had been discussed in the Subcommittee on Working Methods, to rationalize and streamline the functioning of the Committee of Experts. During the last session, the Subcommittee had undertaken a close examination of the comments made by members of this Committee in June 2011 on specific aspects of the work of the Committee of Experts. The Committee of Experts had reached agreement on a number of points, on the basis of the recommendations of the Subcommittee. Firstly, the Office should continue to provide thorough briefings, individually and collectively, to new members of the Committee of Experts on its work as well as the work of other supervisory bodies, in particular this Committee, as well as its relationship with the Committee of Experts. Secondly, the Committee of Experts had decided to create a table in this year's General Report showing the actions taken by governments as follow-up to the conclusions reached by the Conference Committee at its previous session. Thirdly, the Committee of Experts

reaffirmed that all comments of the social partners were to be taken into consideration. However, it was important to underline that such comments should reach the Office by the designated deadline in order to be adequately reflected in the report of the Committee of Experts. Fourthly, with respect to the issue of the right to strike, the Committee of Experts recalled that the right to strike was reflected in the 1994 General Survey on freedom of association and collective bargaining. It was also dealt with in this year's General Survey on the fundamental Conventions which clearly reflected the views of the social partners. Lastly, while the information on the issue of cases of failure to respond to the comments of the Committee of Experts had been provided in a footnote of the General Report, the Committee of Experts had also decided to present this information in a summary table in 2012 in order to give it more visibility.

43. The speaker then addressed the issue of reporting obligations. At the last session, 3,013 reports under articles 22 and 35 of the ILO Constitution had been requested, and by the end of the session, 2,084 reports (69.1 per cent) had been received by the Office. The Committee of Experts was aware of the difficulties which arose out of a lack of adequate human and financial resources that could be, and in many instances had been, addressed through technical assistance by the Office. The late submission of reports due had been a problem, and the Committee of Experts hoped that, for its next session, a larger number of reports would be submitted within the time limits and would contain the required information.
44. Turning to the General Survey, the speaker highlighted that it dealt with the eight fundamental Conventions concerning four categories of rights at work. While the four categories and eight Conventions dealt with by this General Survey were distinct and specific, the Committee of Experts was of the view that they were closely interconnected, interrelated and complementary. In fact, this was the position clearly expressed in the ILO Declaration on Fundamental Principles and Rights at Work of 1998 and the ILO Declaration on Social Justice for a Fair Globalization of 2008. This position had also been confirmed by the Governing Body when it decided that the 2012 General Survey would cover the eight fundamental Conventions. The 2012 General Survey sought to give a global picture of the law and practice in member States in terms of the practical application of these eight Conventions, describing various positive initiatives undertaken in some countries as well as certain serious problems encountered in the implementation of their provisions. One important issue for the universal application of these eight fundamental Conventions was how to achieve their universal ratification. Out of 185 member States, 135 had ratified all eight fundamental Conventions. This meant that there were 50 member States, including those with the highest populations, that had not ratified all of the fundamental Conventions. It was to be hoped that the 2012 General Survey would provide guidance to non-ratifying member States in identifying obstacles to ratification and possible means to removing them.
45. In conclusion, the speaker wished to thank the Committee for giving him the opportunity to present the General Report of the Committee of Experts and to follow this Committee's discussion on the General Report and the General Survey. He also wished to underline the unanimous view of the members of the Committee of Experts that the two Committees were the core of the ILO's supervisory system and that many persons' right to life, health, safety, personal aspirations and dignity depended on this joint work.
46. The Employer members and the Worker members, as well as all Government members who spoke, welcomed the presence of the Chairperson of the Committee of Experts in the general discussion of the Conference Committee.

Statement by the Employer members

47. The Employer members reaffirmed their full commitment to a relevant tripartite supervisory mechanism and to relevant tripartite international labour standards, which had a vital role to play in the real world of work. In their view, ILO standards should help employers to both create quality jobs and protect workers. While the human rights of the workforce needed to be protected, business needed to know what it should be doing, so as to determine its ability to do it. This was, and always would be, a balancing act given the environment in which business operated. Accordingly, a one-size-fits-all approach to labour standards did not work in a globalized world.
48. As repeatedly pointed out by the Employer members in the past, tripartite ownership of ILO standards supervision had been lost sight of, since the role of ILO tripartite constituents had been reduced to providing information and giving more visibility to the supervisory activities of the Committee of Experts and the Office. The Employer members quoted the following sentence in the publication of the International Training Centre in Turin entitled *“International labour law and domestic law – Training manual for judges, lawyers and legal educators”* (page 73): “The Committee on the Application of Standards is clearly not as useful for judges and legal practitioners as the Committee of Experts”, reiterating that this statement was fundamentally unacceptable to them. The Employer members believed that ILO standards supervision, like any other ILO activity, should be at the service of ILO’s tripartite constituents, and that the outcome of ILO standards supervision should reflect their needs. As for the needs of the Employers, it was crucial for them to know how the ILO’s Conventions and Recommendations interacted with economic growth and the creation of quality jobs.
49. In the view of the Employer members, ILO standards were politically negotiated texts and, in case of problems of application or ratification, the body that had created those standards should be able to review those matters and take a decision. It was not the role of the Committee of Experts to determine the development of standards application and, while acknowledging that the Committee of Experts might need to interpret and judge in order to accomplish preparatory work for this Committee, the critical issue was that its observations were being viewed by the outside world as a form of soft law labour standards jurisprudence. Moreover, the ILO fundamental Conventions were embedded in several instruments outside the ILO, including the UN Global Compact, the OECD Guidelines, the UN Human Rights Council’s “Protect, Respect and Remedy” Framework, the ISO 26000, etc. The Employer members indicated that the question as to how to respect human rights instruments, in which ILO fundamental Conventions were embedded, was regularly raised by their affiliates. Moreover, many problems of interpretation and application stemmed from the fact that international labour Conventions were politically negotiated to be applied by governments in the first place, and not by employers. The best example to illustrate the issue was the right to strike. For example, out of the 73 observations that had been made by the Committee of Experts on Convention No. 87, 63 observations dealt, at least partly, with various aspects of the right to strike. With reference to their position described during the discussion of the General Survey, the Employer members called for this issue to be brought urgently before the Governing Body as part of the ongoing Standards Review Mechanism discussions.
50. Furthermore, the role of the Office was to serve the tripartite constituents in the framework of the programme and budget agreed upon by the Governing Body. While expressing great admiration for the dedication of the International Labour Standards Department, the Employer members stressed that the Office was not the ILO and that the ILO was the governments, workers and employers. The Office should therefore exercise restraint when referring to or promoting the views of the Committee of Experts, as they could be deemed to be the views of the ILO in other UN or international forums, which would undermine

tripartite relationships and weaken the ILO supervisory machinery. The Employer members also called for this issue to be discussed at the Governing Body.

51. With reference to the current procedure for briefing new members of the Committee of Experts, the Employer members noted that the International Labour Standards Department provided most of the support and was the main contact for the Experts in the Office. However, the Employer members requested that the Experts meet the Employer and Worker spokespersons before starting their work and have far greater interaction with the Bureau for Employers' Activities (ACT/EMP) and the Bureau for Workers' Activities (ACTRAV). In this regard, the Governing Body should also consider how to find an urgent way forward to improve the transparency and governance of the Committee of Experts' work. In the Employer members' view, the Committee of Experts should do its work within an agreed tripartite framework. In the past, the Employer members had repeatedly proposed changes to the format of the Committee of Experts' report by giving employers, workers and governments the possibility to set out their views on standards and supervision-related issues, including application and interpretation of ILO Conventions. This would better reflect tripartite ownership thus strengthening the credibility, acceptance and results of ILO standards supervision.
52. Turning to cases of progress, there were 72 cases of progress concerning 54 countries this year, of which many had occurred in the field of child labour (31 cases); but only a few as regards other fundamental Conventions, e.g. only two cases of progress for Convention No. 87. The Employer members considered that these observations helped the outside world understand what worked and what did not and called on this Committee to examine a proper balance of cases that could materially impact upon the critical employment and social policy issues of the time: job creation, social protection and youth unemployment. In their view, the measurement of progress in the application of ratified Conventions needed to be re-examined by exploring, as part of the Standards Review Mechanism within the Governing Body, a new joint methodology of this Committee and the Committee of Experts, taking into consideration the following elements: (i) record cases of progress by individual Conventions; (ii) compare the number of cases of progress in relation to the number of existing or new cases of non-compliance; and (iii) develop qualitative criteria of progress (e.g. seriousness of the problem solved, number of workers or employers benefiting from improvement, etc.). This would have a tangible practical benefit for employers as they entered new labour markets in search of growth opportunities.
53. The Employer members concluded by stating that they looked forward to working with the new Director-General-elect, the Worker members and the Governments to improve the work of the Committee of Experts in relation to the abovementioned concerns.

Statement by the Worker members

54. The Worker members stated that they felt reassured with regard to the implementation of the methodological and political changes introduced in 2010. The new format of the General Survey and the relations with the Recurrent Item Committee were now well understood by everyone. The Committee of Experts had proven its ability to analyse, in an objective and informed manner, the application of Conventions that, while certainly different, were interdependent. The link between the work of this Committee and the Recurrent Item Committee remained an essential issue that could doubtless be improved. It had to be hoped that the work of the latter would result, with or without the tripartite contribution of this Committee, in a strong, common and tripartite will to reaffirm the importance of fundamental rights and principles in the current times of crisis and attempts to reform labour law on the basis of austerity. It was important to reaffirm in the context of the Conference that the problems faced by the ILO were the result of an ineffective growth model that had revealed its limitations and increased inequality, and shown itself unable to

respond usefully to the challenges of a sustainable society. Universal ratification of the eight fundamental Conventions needed to remain a priority for the ILO and its member States.

55. The Worker members requested that all the discussions on General Surveys or on the reports to be provided to the Recurrent Item Committee should be set out in detail in the record, so as to provide a solid basis of information that could be used with a view to drawing lessons from the processes related to the 2008 Declaration. With regard to methods of work, positive experience had been acquired and relations between the Conference Committee and the Committee of Experts were becoming increasingly constructive.
56. The Worker members expressed the wish to address the cases of progress in a different manner, by devoting a separate discussion to them during the first week of the Committee's meeting, based on arrangements to be specified, which would be equivalent to adding an item to the agenda. It was particularly important to be able to highlight the positive practices emphasized by the Committee of Experts. The Worker members also emphasized the completeness and user-friendliness of the NORMLEX database, which contained information on reporting, the comments of the supervisory bodies and the points on which governments should focus their efforts. In addition, the information document on ratifications and standards-related activities contained valuable information on the special procedures and on technical assistance and cooperation, the added value of which should be emphasized. Lastly, the Worker members thanked the Chairperson of the Committee of Experts, welcomed the appointment of Ms Dixon as an Expert and noted the appointment of two new Experts.

Statements by Government members

57. The Government member of Canada, speaking on behalf of the group of governments of industrialized market economy countries (IMEC) expressed her appreciation for the work of the Committee of Experts and noted that it was not operating at full capacity, which was unfortunate given the enormity of its contribution to the standards-related work of the ILO. IMEC hoped that the Director-General would quickly fill all vacancies on the Committee of Experts and called on the new Director-General to ensure that the essential work of the International Labour Standards Department was among his top priorities so that it had adequate resources to meet its continually increasing workload, especially with respect to the fundamental Conventions.
58. The Government member of the United States expressed full support for the statement that was read on behalf of the IMEC group. She emphasized the importance that her Government attached to the work of the International Labour Standards Department in support of fundamental principles and rights at work. The dedicated and tireless efforts of the Standards Department in helping the supervisory bodies to assess the application of the fundamental Conventions and helping governments to overcome difficulties were critical to the most essential aspect of the ILO's mission. The speaker echoed IMEC's message to the new Director-General that the Standards Department should have adequate resources.

C. Reports requested under article 19 of the Constitution

General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008

59. The Committee held a discussion on the General Survey on the fundamental Conventions in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008,⁵ prepared by the Committee of Experts on the Application of Conventions and Recommendations. In an effort to align the General Survey with the recurrent item report, the Governing Body decided that the General Survey would cover the eight fundamental Conventions. In that respect, it considered that the fundamental principles and rights at work set out in the fundamental Conventions were mutually supportive rights which would logically best be considered in a holistic manner.

Opening remarks

60. The Employer members emphasized that their priorities, in light of the 2008 Declaration, were job creation for all and the protection of workers fulfilling those jobs. They reaffirmed that one of the main pillars of the 2008 Declaration was “sustainable enterprises”, which were the basis for decent work, employment creation and economic growth. It was therefore to be regretted that there was not a single reference in the General Survey to that perspective, which reduced the practical value and relevance of the General Survey. They therefore called on the Office and the Committee of Experts to give proportionate consideration to the needs of sustainable enterprises in preparing future General Surveys.
61. The Employer members added that the General Survey showed that progress had been made in the implementation of the fundamental Conventions in many respects, which was encouraging, although much remained to be done. They could therefore support the great majority of the General Survey. They recalled in that respect that the Committee of Experts was an independent body entrusted with examining the application of ILO Conventions and Recommendations by member States. However, overall responsibility for the supervision of ILO standards lay with the ILC, in which the governments, employers and workers from all member States were represented. The Committee of Experts therefore had a mandate to undertake the preparatory work in that context, but not to replace the tripartite supervision carried out by the Conference Committee on the Application of Standards. The Employer members emphasized that the supervision of standards, like all other ILO work, had to be at the service of the tripartite constituents and to reflect their tripartite needs.
62. The Worker members reaffirmed the importance of the fundamental Conventions, which set out human rights and were essential tools for the development of democracy. The General Survey showed the indivisible nature and the complementarity of the fundamental Conventions, which were linked to a body of international and regional instruments protecting human rights. At the heart of the fundamental Conventions were those on freedom of association, which were the basis for all the other labour rights, as emphasized

⁵ ILC, General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, *Giving globalization a human face*, Report III (Part 1B), 101st Session, Geneva, 2012.

in the Social Justice Declaration of 2008. And yet, the establishment of free and pluralist trade unions was impaired in many countries, as illustrated by the examples of associated work cooperatives in Colombia and the attempts by the Greek Government to replace trade unions by workers' associations. While welcoming the General Survey, the Worker members expressed disquiet at its title, *Giving globalization a human face*. They did not believe that there could be anything in common between globalization and a human face. Globalization did not bring justice, but rather a constant decrease in rights, increased social exclusion, inequality between men and women and anti-union practices. Throughout the world, workers, young persons and women were suffering, and in many cases were under the threat of poverty due to a financial crisis for which they were not responsible. Globalization had also served as a pretext in many countries for the establishment of export processing zones, where the most basic workers' rights were denied. Nevertheless, the General Survey provided a complete vision of the manner in which the fundamental Conventions were applied throughout the world and the difficulties encountered. Moreover, the General Survey attached importance to the gender dimension and clearly demonstrated that women were becoming increasingly vulnerable as a result of globalization and were the first victims of non-compliance with the fundamental Conventions.

63. The Government members welcomed the General Survey which, for the first time in the ILO's history, provided a global overview of all eight fundamental Conventions in an interrelated manner as a follow up to the 2008 Declaration. The General Survey provided an excellent overview of the protection of fundamental principles and rights at work at the national level and of the challenges to the full implementation of the fundamental Conventions. At the same time, it provided a detailed compilation of the interpretations by the Committee of Experts of those Conventions, and was to be welcomed as the first General Survey covering Convention No. 182.
64. Many Government members emphasized that the eight fundamental Conventions, including those adopted many decades ago, remained relevant and well-equipped to deal with existing, emerging and even as yet unforeseen issues relating to fundamental principles and rights at work. They agreed that the fundamental Conventions were interrelated and mutually reinforcing and expressed strong commitment to the fundamental principles and rights at work, particularly to prevent a downward spiral in labour conditions and to build the global economic recovery. They welcomed the links between fundamental principles and rights at work and the overall United Nations human rights framework, as well as their broad recognition in many international and regional texts. Fundamental principles and rights at work were an important part of international action aimed at consolidating and supporting democracy, the rule of law, human rights and the principles of international law. As indicated in the General Survey, ensuring respect for fundamental principles and rights at work resulted in undeniable benefits for the development of human potential and for economic growth in general, and therefore contributed to global economic recovery. Failure to respect these principles and rights at such a critical time would represent not only a moral failure to uphold universally recognized rights, but would also jeopardize economic strategies to ensure growth and recovery, as well as social justice. Several Government members added that technical assistance was a key dimension of the ILO supervisory system and was important in helping governments advance towards better application of these fundamental Conventions and in removing obstacles to ratification. It was also recalled that greater attention should be paid throughout the work of the ILO to the comments of the supervisory bodies, and that the social partners should play a more active role in technical cooperation projects, in which they should be involved from the design stage.
65. The Government member of Canada, speaking on behalf of IMEC, reiterated strong commitment to the fundamental principles and rights at work. Noting that in many

instances the General Survey condensed material from previous Surveys, she requested clarification on whether the present General Survey was intended to stand alone, or whether it was to be read in combination with previous Surveys. She appreciated the format of the General Survey, which was accessible to a wide audience, the continued use of positive developments and examples of good practice to illustrate change, and the inclusion of the relevant dissenting views on the interpretation of Conventions.

Promoting the ratification and application of the fundamental Conventions

66. The Employer members, with reference to the call to achieve universal ratification of the fundamental Conventions by 2015, observed that the reasons why certain countries had not ratified the Conventions were unlikely to disappear within the next three years. In their view, the objective of universal ratification of the eight Conventions by 2015 was therefore unrealistic. The main effort should therefore be on promoting the application of the fundamental Conventions, rather than their ratification, particularly as there were countries that gave effect to Conventions in their national law, even though they had not ratified them, while others failed to apply Conventions that had been ratified.
67. The Worker members welcomed the positive developments outlined in the General Survey in relation to the fundamental Conventions, including the increasing number of ratifications and the fact that many countries had adapted their legislation accordingly. The fundamental Conventions were also being used as a starting point for the development of rights at the regional level, and were increasingly being utilized in collaboration with the United Nations and in trade agreements, where the respect for fundamental Conventions was a condition for public procurement, as well as in framework agreements with multinational enterprises. However, in that regard, they firmly condemned the schizophrenia of the international financial institutions and of certain member States in economic coordination bodies, such as the G20, which were calling for compliance with ILO Conventions when, in some cases, they had failed to ratify Convention No. 87. They added that too many countries were lagging behind in terms of ratification and implementation. Over half of the world's population lived in countries that had not ratified Conventions Nos 87 and 98, and even where they had been ratified, many countries envisaged numerous exceptions. That was exacerbated by the fact that workers in the informal economy were not covered by the legislation giving effect to the Conventions, while the growth in precarious forms of employment impaired the development of freedom of association and collective bargaining. When all the exceptions and exclusions were taken into account, far too much of the world's population still lacked any protection under the fundamental Conventions. The Worker members therefore fully endorsed the suggestion by the Committee of Experts that a tripartite forum should examine for all countries the extent to which precarious labour relations had an impact on trade union rights. It was particularly important to focus on the need for equal treatment for workers employed under temporary contracts. Moreover, the very concept of labour needed to be thoroughly examined, with special attention to the issue of subcontracting in the global economy, which resulted in much of the work being carried out in the informal economy. In view of the increasingly vague distinction between wage workers and the self-employed, the question also arose of the application of the fundamental Conventions to self-employed workers.
68. The Worker members observed that the persistent economic problems resulting from the financial crisis of 2008 had resulted in the adoption of measures by countries, often under the influence of the international financial institutions, which further undermined the fundamental rights of workers, particularly in the public sector. Several Worker members described the situation in their countries resulting from the crisis. In Greece, since May

2010, the industrial relations system was being methodically eradicated and the fall in workers' living standards was being compounded by the deconstruction of labour institutions. New legislation was methodically dismantling core labour rights and demolishing the social state, the national minimum wage had been cut by 22 per cent, and by 32 per cent for young workers, while employers in small and medium-sized enterprises were now allowed to form workers' associations under their control, and to conclude agreements with them that were binding for the rest of the workplace. In the Netherlands, one third of the workforce was in atypical employment and the number of self-employed workers had increased by over 10 per cent since the economic crisis.

69. The Worker members agreed with the indication in the General Survey that the fundamental labour standards would remain a dead letter if the necessary investments were not made to give them effect. Yet such investment was largely lacking and, in view of the budgetary constraints faced by many countries, the situation was liable to get worse. Moreover, ILO technical assistance was being short-circuited by austerity programmes. The whole problem was bound up with the implementation of the Conventions on labour inspection although, as indicated by the Committee of Experts, labour inspection was just one component in a global policy in which other factors played a crucial role: permanent monitoring; adequate supervision by the administration and its supervisory services, including supervision of the informal economy; the availability of sufficiently dissuasive sanctions in the event of infringements; an efficient and independent justice system that was accessible to workers and could take fairly swift legal action; as well as appropriate action by national social partners in collaboration with the supervisory authorities. It was also increasingly clear that the strengthening of international cooperation, particularly between inspection services in the various countries, was essential for the proper application of the fundamental Conventions.
70. The Government member of Denmark, speaking on behalf of the European Union (EU) and its Member States, the accession country Croatia, the candidate countries, Iceland, The former Yugoslav Republic of Macedonia, Montenegro and Serbia, the countries of the stabilization and association process and potential candidates, Albania and Bosnia and Herzegovina, the Republic of Moldova as well as Ukraine and Georgia, reaffirmed the EU's full commitment to the fundamental principles and rights at work, which had been embodied in the legislation of all EU Members and the Charter of Fundamental Rights. The fundamental principles and rights at work were also part of the EU's collective action on the international scene aimed at consolidating and supporting democracy, the rule of law, human rights and the principles of international law. The EU and its Member States were strongly attached to the principles of freedom of association and collective bargaining, and shared the view that the rights of workers' and employers' organizations could only be exercised in a democracy, and in a climate where human rights were recognized, free from violence, pressure or threats against the leaders and members of those organizations. They were also committed to the abolition of forced labour, with particular attention to members of the most vulnerable groups. They were strongly committed to the abolition of child labour and the protection of young people at work, and noted with concern that child labour affected 215 million children in the world. The rights of the child were actively promoted and protected as an integral part of the EU's external human rights policy, including through development cooperation. They also fully supported the principles of equality and non-discrimination and the need to monitor closely the impact of austerity measures on the employment situation of vulnerable groups. They therefore regretted that some ILO member States, including the States with the highest populations, had not yet ratified the eight fundamental Conventions. The worldwide ratification and implementation of the eight core Conventions should be encouraged and supported. The violation of fundamental principles and rights at work must not be used as a legitimate comparative advantage, and labour standards should not be used for protectionist trade purposes.

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71. The Government member of France added that the goal of universal ratification of the fundamental Conventions by 2015 was directly linked to the quest for sustainable and fairer globalization, linking economic and social progress. The eight fundamental Conventions together made up a regulatory framework that was conducive to economic development and social justice. The content of Conventions Nos 87 and 98, which had the lowest ratification rates of the fundamental Conventions, provided the basis for addressing all fundamental rights through social dialogue and collective action. While recognizing that the diversity of institutional systems and the histories of the various countries prevented immediate universal ratification, the General Survey represented an opportunity to reflect on solutions that would allow for the elimination of obstacles to ratification, with the aim of making further progress in terms of decent work, especially with regard to the informal economy. In this connection, technical assistance from the Office and cooperation programmes, such as the Programme to Support the Implementation of the ILO Declaration on Fundamental Principles and Rights at Work (PAMODEC), to which the French Government gave particular support, provided assistance to beneficiary countries and the social partners for ratification and for the implementation of the ILO standard-setting policy.
72. The Government member of Switzerland regretted to note from the General Survey that, in certain areas, little progress had been made, in particular concerning the ratification of the Conventions on freedom of association and collective bargaining, despite their importance for democracy and economic and social development. Stronger political will and the increased provision of resources for technical cooperation were necessary to attain ratification and universal implementation of the eight fundamental Conventions, which established the ground rules for a genuine social dimension to globalization.
73. The Government member of the United States agreed with the assessment in the General Survey that the ratification of ILO Conventions was testimony to the commitment of member States to the rights and principles contained in the Conventions, and provided certainty and transparency in implementation and monitoring. Her Government had not so far been able to ratify many of the fundamental Conventions but stressed that ratification was not an end in itself. She recalled that the United States was bound by rules, drawn up with the social partners, establishing that it could not ratify an ILO Convention unless, or until, its law and practice were in full compliance with its provisions. Nonetheless, law and practice in the United States were in general conformity with non-ratified fundamental Conventions. She furthermore noted that US laws and regulations were continually scrutinized with an eye to ensuring that they adequately protect and promote workers' fundamental rights. Moreover, in recent bilateral trade agreements, the United States and its trading partners had pledged to adopt and maintain the rights contained in the ILO Declaration on Fundamental Principles and Rights at Work, 1998. In view of the importance of technical assistance in advancing the application of the fundamental Conventions and removing obstacles to ratification, she would welcome recommendations from the ILO for appropriate tripartite technical assistance.
74. The Government member of Bahrain, speaking on behalf of the Governments and Labour Ministers of the Member States of the Gulf Cooperation Council (GCC), namely Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates and Yemen, attached particular importance to the need to guarantee good conditions of work and the payment of wages without any discrimination. As their labour markets depended greatly on temporary contract workers, the GCC countries had organized permanent consultations with the countries of origin of these workers to find common solutions to issues affecting them and to elaborate the relevant labour laws.
75. The Government member of Morocco indicated that, in accordance with the 1998 Declaration, his country had reinforced its legislative framework and enshrined human

rights in the 2011 Constitution, and particularly the right to non-discrimination, freedom of association, including the right to be a member of a trade union or a political party, the right to collective bargaining and the right to strike, which meant that these rights benefited from a stronger position in the hierarchy of norms. Emphasis should be placed on the important role of technical cooperation in providing clarifications and developing tools aimed at supporting the application of ILO Conventions, and particularly the principle of equal remuneration for work of equal value.

76. The Government member of Algeria reaffirmed that the principles established in the fundamental Conventions, all of which had been ratified by Algeria, had been enshrined in the national Constitution of 1989 and had been implemented by national labour legislation. Emphasizing the complementary nature of the fundamental and governance Conventions, and particularly the Labour Inspection Convention, 1947 (No. 81), and the need for effective labour inspection to ensure compliance with the principles set out in the fundamental Conventions, he said that the Algerian authorities had endeavoured to provide the labour inspection services with increased resources to improve their performance.
77. The Government member of Senegal was heartened by the increasing interest shown by the international community in the fundamental Conventions, although much still remained to be done to achieve full implementation. The question of the supervision of the application of these Conventions was a key aspect of standard-setting activity, and the implementation of procedures aimed at solving application issues which had been identified was vital too. The speaker concluded by emphasizing that Senegal, following the example set by the ILO's standard-setting work, was constantly taking initiatives to pursue the goal of social development, and the support given by the Office in this area was substantial.
78. The Government member of India emphasized the pressing need for the protection of fundamental principles and rights at work in the context of globalization and financial crisis. However, although ratification of the fundamental Conventions was very important, the main thrust should be on the realization of the principles enshrined therein. Some of the Conventions, such as those on child labour, presupposed time-bound action and universal access to education, the cost of which would be astronomical to place all the world's estimated 215 million child labourers in school. Although all countries were bound to respect and implement the fundamental Conventions, the pace of implementation would have to be determined by the resources, economic status and specific circumstances of each country. In that sense, the 2015 time line for achieving universal ratification was unrealistic and the number of ratifications should not be the sole yardstick for measuring the situation in a country. Prospects for progressive ratification should be examined, taking into account national diversities and complexities. A detailed analysis should be carried out within the framework of the Standards Review Mechanism of why some of the fundamental Conventions had not been ratified by countries comprising over half of the global population and emphasis should be placed on capacity building and technical cooperation to create the necessary conditions for ratification.
79. The Government member of the Russian Federation welcomed the increase in the ratification of the fundamental Conventions, which had been made possible by the work of the Committee of Experts and the Conference Committee. He called on the governments that had not yet done so to ratify all the fundamental Conventions, and emphasized that compliance with Conventions Nos 87 and 98 was particularly significant in view of the global economic crisis and its consequences. Particular importance should be given by the ILO to the application of further measures for the eradication of all forms of discrimination at work, including discrimination in the remuneration of men and women workers.

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80. The Government member of Norway emphasized the need to strengthen labour inspection and social dialogue in the process of the implementation of the fundamental Conventions at the national level. She drew attention to the need to focus on women workers, workers in the informal economy and vulnerable groups of workers, as well as issues of equity and non-discrimination. Greater attention should also be paid throughout the work of the ILO to the comments of the supervisory bodies, and the social partners should play a more active role from the design stage in technical cooperation projects.
81. A Worker member of the Bolivarian Republic of Venezuela indicated that his country recognized fundamental workers' rights in the Organic Labour Act, which gave effect to the eight fundamental Conventions, and that it had achieved economic growth for the past few years while recognizing all the fundamental principles and rights at work. Collective agreements had been, and were being, negotiated in many sectors, and working hours had been reduced to 40 a week, with two rest days. Another Worker member of the Bolivarian Republic of Venezuela added that, through the establishment of workers' rights in law, the new model of production developed with the participation of the workers and an equitable distribution of wealth, her country was now recognized as one of the Latin American countries with the lowest levels of inequality.

Freedom of association and collective bargaining

82. The Employer members, with reference to the comments by the Chairperson of the Committee of Experts concerning the discussion of the right to strike in relation to the 1994 General Survey, emphasized that, as indicated in the present General Survey, they had clearly articulated their objections during the 1994 discussion to the interpretation by the Committee of Experts of the right to strike. While the Employer members acknowledged that a right to strike existed, as it was recognized at the national level in many jurisdictions, they did not at all accept that the comments on the right to strike contained in the General Survey were the politically accepted views of the ILO's tripartite constituents. As the Employers' group had consistently highlighted year after year, they fundamentally objected to the Committee of Experts' opinions concerning the right to strike being received or promoted as soft law jurisprudence. There was no mention of the right to strike in the text of Convention No. 87, and the determinative body to decide such rules recognized by the ILO was the Conference, not the Committee of Experts. Under article 37 of the ILO Constitution, only the International Court of Justice (ICJ) could give a definitive interpretation of international labour Conventions. The situation was exacerbated because General Surveys were important and were published and distributed worldwide without any prior approval by the Conference Committee. The fundamental Conventions were embedded in many international processes and instruments, such as the UN Global Compact, the OECD Guidelines for Multinational Enterprises and ISO 26000. The Employer members therefore objected in the strongest terms to the interpretation by the Committee of Experts of Convention No. 87 and the right to strike, to the use of the General Survey with regard to the right to strike and to being placed in such a position by the General Survey. They indicated that, to maintain the credibility and coherence of the Employers' group, their views and actions in all areas of ILO action relating to the Convention and the right to strike would be materially influenced.
83. In more general terms, the Employer members agreed with the comments of the Committee of Experts that, in the absence of a democratic system in which fundamental rights and principles were respected, freedom of association could not be fully developed. There were situations of the failure to apply Convention No. 87 outlined in the General Survey, such as the denial of the right to organize to certain categories of persons, restrictions on the holding of free elections in representative organizations, restrictions on the categories of persons who could hold office in organizations, restrictions on the

independence and functioning of organizations, the requirement of excessive numbers of members to establish organizations, which went to the heart of the Convention and were also experienced by some employers. Moreover, the Committee of Experts had rightly emphasized that employers were also protected by the freedom of association instruments.

- 84.** An Employer member from Denmark noted that he represented public employers, although he did not represent the State, and that he wanted to comment on the impact of Conventions Nos 87 and 98 on public employers. The Committee of Experts had created arbitrary distinctions in interpreting the right to strike, which forced it to make special rules for the public sector. Public employers would not follow the creative inventions of the Committee of Experts, as the right to strike depended on national legislation, not on international ILO Conventions. The Committee of Experts' interpretation of Convention No. 98 was problematic in that it allowed minority unions to conclude agreements when no union comprised a majority of workers. While minority unions could negotiate agreements, Employers retained the right to refuse.
- 85.** The Worker members, with reference to the remarks of the Employer members, reaffirmed that the right to strike was an indispensable corollary of freedom of association and was clearly derived from Convention No. 87. Moreover, the Committee of Experts had once again advanced a well thought-out argument on why the right to strike was quite properly part of fundamental labour rights. It was important to recall that the Committee of Experts was a technical body which followed the principles of independence, objectivity and impartiality. It would be wrong to think that it should modify its case law on the basis of a divergence of opinions among the constituents. While the mandate of the Committee of Experts did not include giving definitive interpretations of Conventions, for the purposes of legal security it nevertheless needed to examine the content and meaning of the provisions of Conventions and, where appropriate, to express its views in that regard.
- 86.** The Worker members said that the right to strike was part of the ordinary exercise of freedom of association. Without that right, workers would not be in a position to exert any influence in collective bargaining. Questioning the right to strike as an integral part of freedom of association would mean that other rights and freedoms were meaningless in practice. The fundamental labour rights and their interpretation within the context of the supervisory process were essential elements in ensuring the durability of social rights and civil liberties.
- 87.** The Worker member of Peru added that the right to strike was sacred, inalienable and non-negotiable and thousands of workers had lost their lives or suffered torture defending that right. The Worker member of Brazil said that the right to strike was as important as the right to work and the right to decent wages.
- 88.** The Worker members welcomed the reference in the General Survey to their concerns on the direction taken by the case law of the European Court of Justice regarding the relationship between the right to strike and the free movement of services. They expressed pessimism concerning the so-called Monti II Regulation and noted that European case law was running counter, not just to the principles of freedom of association, but also to the right to collective bargaining. Although the Committee of Experts had noted that its mandate was limited to the shortcomings of member States and did not extend to regional organizations, national policy could not possibly be divorced entirely from regional policy. The question therefore arose as to whether the supervisory machinery should also cover problems at the regional level, and not only in Europe.
- 89.** Several Worker members referred to restrictions on trade union rights in their countries. The Worker member of the United States indicated that, in the United States in 2011, the authorities in certain states had used budget deficits resulting from the financial crisis to

justify efforts to cut the wages and benefits of teachers and other public sector workers and to eliminate or restrict their collective bargaining rights. Employers in the United States were extremely hostile to trade unions and continued to use anti-union tactics to put workers under pressure not to join unions. In the context of continued high unemployment and weak economic growth, certain private sector employers had used lockouts to pressure workers to accept wage and benefit concessions, greater numbers of temporary workers and subcontracted work. It was also noted that in Senegal, civil service status, reserved for a minority, removed collective bargaining and consultation rights from workers, who were not therefore able to negotiate their pay. In the Republic of Korea, trade union law had recently been revised in a retrogressive manner. Workers who took the lead in union activities and collective action risked dismissal, imprisonment or lawsuits for the compensation of damage. Certain workers' confederations had been repeatedly threatened with the cancellation of their registration because of the high numbers of precarious workers in their membership, and when subcontracted workers tried to exercise the right to organize, the subcontract could be cancelled, which had the same effect as collective dismissal.

90. Several Government members recalled that the right to strike was well established and widely accepted as a fundamental right. The Government member of the United States expressed appreciation of the Committee of Experts for its continuing efforts to promote better understanding of the meaning and scope of the fundamental Conventions, including the right to strike. The Government member of Norway added that her country fully accepted the position of the Committee of Experts that the right to strike was a fundamental right protected under Convention No. 87.

Forced labour

91. The Employer members observed that Conventions Nos 29 and 105 remained extremely relevant and they welcomed the comprehensive information provided in the General Survey on their application in law and practice. However, there was no room for complacency, as problems still existed, particularly in terms of a lack of commitment to taking effective action for the elimination of forced labour and the mechanisms for the enforcement of its prohibition. Moreover, the Employer members noted a tendency in the General Survey to expand the definitions of forced labour to new areas, such as prison labour and overtime. They warned that such extensions ran the risk of inadvertently trivializing the problem. In the case of prison labour, they expressed the view that the definition provided by the Committee of Experts of the notion of voluntariness was too narrow. Moreover, while an approximation to a free labour relationship could be an indicator of an absence of forced labour in those circumstances, there were other viable indicators. It would probably be advisable to define more closely the limits of voluntariness. In relation to overtime, it should be emphasized that, although excessive overtime hours did not constitute decent work, nor did they amount to forced labour if the worker was free to leave the employment relationship. With reference to the prohibition by Convention No. 105 of forced labour as a punishment for having participated in strikes, they added that the Convention was not an instrument for regulating strikes, nor did it prohibit sanctions for strikes, but only the exaction of forced labour as a sanction for having participated in strikes, whether or not the strikes were legal.
92. The Worker members said that forced labour, which was the antithesis of decent work, was not limited to certain countries or sectors, but was to be found throughout the world in such forms as human trafficking, new forms of migration, the privatization of prisons, and even in the progress of "quid pro quo" social security policies (under which workers who were unemployed or living in poverty had to perform work of public interest in exchange for their benefits).

Elimination of child labour

93. The Employer members welcomed the first General Survey to cover Convention No. 182, and the first for over 30 years on Convention No. 138. It was timely to look at developments in relation to the elimination of child labour and the wealth of information provided on the implementation of the two Conventions was appreciated. It was clear that child labour was a problem that affected the future of nations. Most children who were engaged in work had little opportunity to pursue their education and training, which meant that in later life they would find it very difficult to obtain anything other than work requiring low skill levels and offering low rates of remuneration. Action to combat child labour should therefore be closely related to education and training measures. They noted the many examples of the efforts made by ILO member States, in both law and practice, but observed that the measures taken were often insufficient. In particular, legislation was ineffective in prohibiting child labour in the informal economy, where it was most prevalent. In certain countries, the legislation on child labour failed to cover such sectors as domestic work, agriculture and commerce. Moreover, although one of the principal means of enforcing the prohibition of child labour was through labour inspection, the respective services often lacked the necessary material and human resources and specific training. It should be recalled that the social partners had an important role to play in combating child labour, but that employers, in particular, were often not sufficiently consulted.
94. The Employer members called for an immediate end to the involvement of state institutions in many of the worst forms of child labour, including the compulsory recruitment of children into national armed forces, the compulsory mobilization of children in the context of school programmes and the complicity of government officials in the trafficking of children.
95. The Worker members acknowledged that significant progress had been made in a range of countries, particularly in relation to the worst forms of child labour, and that many of the time-bound programmes implemented had been effective. However, according to the 2010 Global Report, a very large number of children worldwide continued to work (215 million), many under the age of 15 (153 million) and in hazardous forms of work (116 million), particularly in the informal economy, agriculture and domestic work. The Committee of Experts had rightly emphasized the new or additional risks arising out of the globalization of the labour market, the ongoing problem of human trafficking, the recruitment of child soldiers in conflict zones and the role of the Internet in encouraging sex tourism and the sexual exploitation of children.

Equality, non-discrimination and equal remuneration

96. The Employer members observed that discrimination at work was not only a violation of a human right, but that it also hindered the development of workers and the utilization of their full potential, and therefore constituted a barrier to the promotion of sustainable enterprises. A diverse workforce enabled employers to recruit the most talented workers from a broad pool of candidates and was accordingly beneficial to enterprises and enabled the workforce to offer its whole range of experiences, perspectives and cultural understanding. However, they observed that the lack of implementation of the anti-discrimination Conventions was primarily related to societal perceptions based on historical attitudes and stereotypes which were difficult to change and sometimes required a long period of adaptation. In view of the consequences of anti-discrimination standards on employers' activities, they considered that the related policies should not place a burden on enterprises which might impair their sustainability and their ability to create jobs.

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97. With regard to the principle of equal remuneration for work of equal value, the Employer members underlined the importance of flexibility in the application of Convention No. 100 at the national level. It should be recalled that governments were entitled to use any combination of means at their disposal for the application of the principle, although they were not necessarily required to do more than legislate. The value of collective bargaining in that respect was that it allowed workers and employers to take into account business and employment needs, while drafting equal pay plans and anti-discrimination measures. With reference to the concept of equal remuneration, they observed that the dilemma lay in the fact that there was no generally agreed correct system for establishing the value of a job. The comments of the Committee of Experts that factors such as skills, responsibility, effort and working conditions were relevant in determining the value of jobs, and that the overall value of a job could be determined only when all factors were taken into account, left a certain ambiguity in the concept. Such ambiguity highlighted the difficulty of attempting to create a “one-size-fits-all” definition of equal value, and suggested that greater discretion should be allowed to make such determinations at the national level.
98. The Employer members added, with regard to the monitoring and enforcement of Conventions Nos 100 and 111, that neither Convention required a shifting of the burden of proof to the employer, which had proven to be an extremely heavy bureaucratic burden for employers in countries where it existed. They emphasized that much had been done by the business community to apply the principles of equality set out in the two Conventions, especially through collective agreements, the adoption of voluntary codes of conduct, wage mapping and action plans. They therefore called for consistent and flexible anti-discrimination standards.
99. The Worker members welcomed the special attention paid by the Committee of Experts to the wage gap between women and men, which could only be tackled if the factors underlying segregation in the labour market were addressed at the same time. With regard to Convention No. 111, they recalled that Article 1 of the Convention did not envisage any specific restrictions and applied to any discrimination which had the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. However, in practice, many countries established limitative lists, or limited the scope of application to their own nationals. It was becoming increasingly important to extend the scope of the Convention to combat new forms of discrimination, such as genetic discrimination and discrimination based on lifestyle choice. It was also important to prohibit discrimination based on trade union activities and to establish specific protection measures, such as the reversal of the burden of proof and employment protection through special judicial and administrative procedures.

Final remarks

100. The Employer members thanked the Committee of Experts and were able to support 95 per cent of the General Survey. They noted the rich discussion and the obvious interest in and recognition of the importance of the fundamental Conventions.
101. The Worker members, with reference to the comments by the Employer members concerning the absence of any reference in the General Survey to the concept of sustainable enterprises, said that emphasis should also be placed on durable and decently remunerated employment, the right to social protection in the broad sense of the term and the guarantee of quality jobs that respected workers, their health, security and family environment. All those rights depended on the effective application of the eight fundamental Conventions and were beneficial for employers and governments through the promotion of greater social cohesion.

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- 102.** The Worker members re-emphasized the crucial nature of the right of freedom of association and collective bargaining to the application of the other Conventions. The eight fundamental Conventions dealt with human rights and were essential instruments for developing democracy. Moreover, it was important to reaffirm that the right to strike was clearly derived from Convention No. 87 and was an obligatory corollary of freedom of association. The Committee of Experts was a technical body operating in accordance with the principles of independence, objectivity and impartiality. It could therefore not modify its jurisprudence in light of diverging and evolving points of view. In that respect, the Committee of Experts had indicated in its report to the Conference in 1990:

The Committee has already had occasion to point out that its terms of reference do not require it to give definitive interpretations of Conventions, competence to do so being vested in the International Court of Justice by article 37 of the Constitution of the ILO. Nevertheless, in order to carry out its function ..., the Committee has to consider and express its views on the content and meaning of the provisions of Conventions and to determine their legal scope, where appropriate. It therefore appears to the Committee that, in so far as its views are not contradicted by the International Court of Justice, they are to be considered as valid and generally recognised. ... The Committee considers that the acceptance of the above considerations is indispensable to maintenance of the principle of legality and, consequently for the certainty of law required for the proper functioning of the International Labour Organisation.

- 103.** The Worker members, turning to the substance of the General Survey, strongly endorsed the appeal for special attention to be devoted to vulnerable categories of workers, notably domestic workers, migrant workers and informal sector and agricultural workers, and to the growing problems they faced in exercising their fundamental rights and freedoms at work. Concerning atypical forms of work, the Worker members requested for a tripartite meeting of experts to be organized on the subject by the ILO. With regard to the elimination of all forms of forced labour and, although Conventions Nos 29 and 105 were among the most widely ratified, they recalled that various forms of forced or compulsory labour continued to exist. Governments should therefore develop a comprehensive juridical policy framework to combat all forms of forced labour, which not only established punitive measures, but also encompassed the protection of victims and compensation for the damage suffered. They added that the fundamental principle of gender equality and the elimination of discrimination in employment was a human right to which all men and women were entitled, and that it had an important bearing on the exercise of all other rights. A discussion should perhaps be held on new forms of violation of equality, with a view to the possible development of a modern instrument reflecting changes in society and comprising a list of new forms of discrimination and suggestions as to how they might be remedied.
- 104.** In conclusion, the Worker members encouraged the ILO to pursue its campaign to promote the ratification and observance of the fundamental Conventions with a view to establishing, by 2015, a social framework that was conducive to peace, stability, economic development, prosperity and social justice.

D. Compliance with specific obligations

- 105.** The Chairperson explained the working methods of the Committee for the discussion of cases of serious failure by member States to respect their reporting and other standards-related obligations.
- 106.** The Employer members indicated that the supervisory system depended on reports by the governments on compliance with Conventions. The system could not function without their regular submission. They noted the institutional and infrastructural constraints due,

for instance, to political unrest, which resulted in lack of human and financial resources and communications between ministries. The Office could provide relevant technical assistance and hoped that the governments would avail themselves of this possibility. They stated that the governments had to consider their responsibility for reporting upon consideration of ratifying Conventions. The group observed a general improvement compared to last year in the situation of discharge by member States of their reporting obligations under articles 22 and 35 of the ILO Constitution, as indicated in the General Report of the Committee of Experts. They, however, emphasized that further efforts were needed.

- 107.** The Worker members emphasized the fact that the obligation to send reports before the deadline and with useful information had to be respected by all governments. The regularity of reporting and the quality of replies influenced greatly the work of the Committee of Experts. If the reports were of high quality, the supervisory mechanism could attain its objectives, which was to the maximum benefit of workers and the defence of their rights. The progress observed at the moment as regards sending reports was insufficient and the governments concerned had to take all measures necessary to fulfil their obligations in this regard.
- 108.** 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.
- 109.** In applying those methods, the Committee decided to invite all governments concerned by the comments in paragraphs 31 (failure to supply reports for the past two years or more on the application of ratified Conventions), 37 (failure to supply first reports on the application of ratified Conventions), 40 (failure to supply information in reply to comments made by the Committee of Experts), 89 (failure to submit instruments to the competent authorities), and 98 (failure to supply reports for the past five years on unratified Conventions and Recommendations) of the Committee of Experts' report to supply information to the Committee in a half-day sitting devoted to those cases.

Submission of Conventions, Protocols and Recommendations to the competent authorities

- 110.** In accordance with its terms of reference, the Committee considered the manner in which effect was given to article 19, paragraphs 5–7, of the ILO Constitution. These provisions required member States within 12, or exceptionally 18, months of the closing of each session of the Conference to submit the instruments adopted at that session to the authority or authorities within whose competence the matter 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.
- 111.** The Committee noted from the report of the Committee of Experts (paragraph 87) that considerable efforts to fulfil the obligation to submit had been made in certain States, namely: Cape Verde, Central African Republic, Kenya, Mongolia and Qatar. In addition, the Conference Committee received information about the submission to parliaments from many governments and in particular from Cambodia, The former Yugoslav Republic of Macedonia, Turkmenistan and Uzbekistan as well as the ratification of the Maritime Labour Convention, 2006, by Saint Kitts and Nevis; and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), by Togo.

Failure to submit

112. The Committee noted that in order to facilitate its discussions, the report of the Committee of Experts mentioned only the governments which had not provided any information on the submission to the competent authorities of instruments adopted by the Conference for seven sessions at least (from the 90th Session in June 2002 to the 99th Session in June 2010, because the Conference did not adopt any Conventions and Recommendations during the 93rd (2005), 97th (2008) or 98th (2009) Sessions). This time frame was deemed long enough to warrant inviting Government delegations to the special sitting of the Conference Committee so that they may explain the delays in submission.
113. The Committee noted the regrets expressed by several delegations at the delay in providing full information on the submission of the instruments adopted by the Conference to parliaments. Some governments had requested the assistance of the ILO to clarify how to proceed and to complete the process of submission to national parliaments in consultation with the social partners.
114. The Committee expressed great concern at the failure to respect the obligation to submit Conventions, Recommendations and Protocols to national parliaments. It also recalled that the Office could provide technical assistance to facilitate compliance with this constitutional obligation.
115. The Committee noted that 33 countries were still concerned with this serious failure to submit the instruments adopted by the Conference to the competent authorities, that is, **Bahrain, Bangladesh, Belize, Colombia, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Ethiopia, Fiji, Georgia, Guinea, Haiti, Iraq, Ireland, Kyrgyzstan, Libya, Mozambique, Papua New Guinea, Rwanda, Saint Lucia, Sao Tome and Principe, Seychelles, Sierra Leone, Solomon Islands, Somalia, Sudan, Suriname, Tajikistan and Uganda**. The Committee hoped that appropriate measures would be taken by the governments and the social partners concerned so that they could bring themselves up to date, and avoid being invited to provide information to the next session of this Committee.

Supply of reports on ratified Conventions

116. In Part II of its report (Compliance with obligations), the Committee had considered the fulfilment by States of their obligation to report on the application of ratified Conventions. By the date of the 2011 meeting of the Committee of Experts, the percentage of reports received was 67.8 per cent (compared with 67.9 per cent for the 2010 meeting). Since then, further reports had been received, bringing the figure to 77.4 per cent (as compared with 77.3 per cent in June 2011, and 77.6 per cent in June 2010).

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

117. The Committee noted with regret that no reports on ratified Conventions had been supplied for the past two years or more by the following States: **Chad, Djibouti, Equatorial Guinea, Grenada, Nigeria, Sierra Leone and Somalia**.
118. The Committee also noted with regret that no first reports due on ratified Conventions had been supplied by the following countries:

State	Conventions Nos
Bahamas	– since 2010: Convention No. 185
Equatorial Guinea	– since 1998: Conventions Nos 68, 92
Guinea-Bissau	– since 2010: Convention No. 182
Kazakhstan	– since 2010: Convention No. 167
Kyrgyzstan	– since 1994: Convention No. 111 – since 2006: Conventions Nos 17, 184 – since 2009: Conventions Nos 131, 144 – since 2010: Conventions Nos 97, 157
Nigeria	– since 2010: Convention No. 185
Sao Tome and Principe	– since 2007: Convention No. 184
Seychelles	– since 2007: Conventions Nos 147, 161, 180
United Kingdom (St Helena)	– since 2010: Convention No. 182
Vanuatu	– since 2008: Conventions Nos 87, 98, 100, 111, 182 – since 2010: Convention No. 185

- 119.** It stressed the special importance of first reports on which the Committee of Experts based its first evaluation of compliance with ratified Conventions.
- 120.** In this year's report, the Committee of Experts noted that **43** 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 **537** cases (compared with 669 cases in December 2010). The Committee was informed that, since the meeting of the Committee of Experts, 15 of the governments concerned had sent replies, which would be examined by the Committee of Experts at its next session.
- 121.** 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 2011 from the following countries: **Bahamas, Barbados, Burkina Faso, Burundi, Chad, Comoros, Democratic Republic of the Congo, Denmark (Greenland), Djibouti, Equatorial Guinea, Ghana, Grenada, Guinea, Guyana, Haiti, Iceland, Ireland, Kazakhstan, Kiribati, Kyrgyzstan, Nigeria, Pakistan, San Marino, Sao Tome and Principe, Sierra Leone and Slovakia.**
- 122.** The Committee noted the explanations provided by the governments of the following countries concerning difficulties encountered in discharging their obligations: **Afghanistan, Bahrain, Burkina Faso, Chad, Denmark (Greenland), Iceland, Ireland, Nigeria, Pakistan, Seychelles and Sudan.**

Supply of reports on unratified Conventions and Recommendations

- 123.** The Committee noted that **160** of the **282** article 19 reports requested on fundamental Conventions had been received at the time of the Committee of Experts' meeting. This is 56.23 per cent of the reports requested.
- 124.** The Committee noted with regret that over the past five years none of the reports on unratified Conventions and Recommendations, requested under article 19 of the Constitution, had been supplied by: **Afghanistan, Cape Verde, Guinea-Bissau, Samoa, Sierra Leone, Somalia, Turkmenistan and Vanuatu.**

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

125. 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

126. 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 61 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 72 such cases, relating to 54 countries; 2,875 cases where the Committee of Experts was led to express its satisfaction with progress achieved since it began listing them in 1964. These results were tangible proof of the effectiveness of the supervisory system.
127. This year, the Committee of Experts listed in paragraph 64 of its report, cases in which measures ensuring better application of ratified Conventions had been noted with interest. It noted 325 such instances in 130 countries.
128. At its present session, the Conference Committee was informed of other instances in which measures had recently been or were about to be taken by governments with a view to ensuring the implementation of ratified Conventions. While it was for the Committee of Experts to examine these measures, the present Committee welcomed them as fresh evidence of the efforts made by governments to comply with their international obligations and to act upon the comments of the supervisory bodies.

Specific indications

129. The Government members of **Afghanistan, Bahrain, Bangladesh, Burkina Faso, Cape Verde, Chad, Colombia, Congo, Denmark (Greenland), Ethiopia, Ghana, Guinea, Guyana, Iceland, Ireland, Nigeria, Pakistan, Papua New Guinea, Seychelles, Sudan, Suriname** and **Uganda** had promised to fulfil their reporting obligations as soon as possible.

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

130. 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 Two of the report.

Participation in the work of the Committee

131. The Committee wished to express its gratitude to the 43 governments which had collaborated by providing information on the situation in their countries.

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132. The Committee regretted that, despite the invitations, the governments of the following States failed to take part in the discussions concerning their countries and the fulfilment of their constitutional obligations to report: **Bahamas, Barbados, Belize, Burundi, Comoros, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Fiji, Georgia, Grenada, Guinea-Bissau, Haiti, Iraq, Kazakhstan, Kiribati, Kyrgyzstan, Libya, Mongolia, Mozambique, Rwanda, Saint Lucia, Samoa, San Marino, Sao Tome and Principe, Sierra Leone, Slovakia, Solomon Islands, Somalia, Tajikistan, Turkmenistan, United Kingdom (St Helena) and Vanuatu.** The Committee decided to mention the cases of all these States in the appropriate paragraphs of its report and to inform them in accordance with the usual practice.
133. The Committee noted with regret that the governments of the States which were not represented at the Conference, namely: **Bahamas, Belize, Dominica, Equatorial Guinea, Grenada, Guinea-Bissau, Saint Lucia, Samoa, Somalia and Vanuatu** were unable to participate in the Committee's examination of the cases relating to them. It decided to mention these countries in the appropriate paragraphs of this report and to inform the governments, in accordance with the usual practice.

E. Discussion of the list of individual cases to be considered by the Committee

134. With regard to the adoption of the list of individual cases for discussion by the Committee in the second week, the Worker members emphasized the fact that only the Workers and the Government representatives were present at the sitting on Friday, 1 June 2012, after 8.30 p.m. They wished to provide some explanation regarding the attempts made in reaching an agreement on a list of 25 individual cases. Unfortunately this had not been possible, since the conditions put forward by the Employer members were unacceptable. The Worker members considered that it was not their responsibility to explain those conditions. As to the substance of the matter, the issue raised by the Employer members was identical to the one that they had referred to previously, namely that the Committee of Experts had taken the initiative to provide explanations concerning the right to strike in the General Survey, and that was something that the Employer members could not accept. The Worker members considered, however, that the Committee of Experts worked in complete autonomy. As the Committee of Experts had emphasized in its annual report, it was "an independent body composed of legal experts charged with examining the application of ILO Conventions and Recommendations by ILO member States". It was not possible to assess its independence in a different manner than had previously been done. The fact was that it had not been possible to reach consensus between the Employer members and the Worker members. The Worker members would have liked to propose a list including cases to which they attached particular importance and which raised serious issues for the workers of the countries concerned. It had unfortunately proven impossible to reach an agreement with the Employer members regarding such a list. The Worker members deplored the situation because it showed that tripartism and social dialogue did not always enable positive and constructive solutions to be found. Consequently, they had looked for a practical solution to this impasse and had proposed a "default list", in other words a list drawn up in the absence of one negotiated and approved by the groups. They had proposed starting with the examination of the double footnoted cases, following the French alphabetical order from the letter K onwards: Mauritania (Convention No. 81); Dominican Republic (Convention No. 111); Senegal (Convention No. 182); Fiji (Convention No. 87); and Guatemala (Convention No. 87). The Worker members had also proposed to examine 20 cases following the same alphabetical order on the basis of the preliminary list. The Worker members reaffirmed that this list was not the one they would have preferred and that it was a "default list". They expressed the wish to have the possibility of making other comments at the start of the examination of individual cases. In conclusion, the Worker

members emphasized the fact that they had not created this situation. They felt that they were victims of a situation which had been shaped by others, one in which they had not played an active role.

135. The Chairperson invited the Government members to make comments regarding the statement of the Worker members and the situation faced by the Committee.
136. The Government member of Zimbabwe informed the Committee that it would not be appearing before the Committee in the case of a “default list”.
137. The Government member of the United States stated that she was beyond disappointment and foresaw that many other governments would wish to make statements at a later stage. She wondered whether the fact that the Employer members were no longer present in the room, meant that they would not participate in the discussion of a “default list”.
138. The Government member of Brazil, speaking on behalf of GRULAC, expressed his deep frustration about the whole situation, which was offensive and disrespectful to governments. He recalled the statements that had been previously made by the Government group and GRULAC underlining the importance of having a list of individual cases on time, and considered that still not having such a list severely hampered the constitutional functions of the ILO.
139. The Government member of Greece supported the statement made by the Government member of Brazil and, noting that the Employer members were not present, requested indications from the Office on the way forward.
140. The Worker members requested clarifications regarding the manner in which the outcome of the Committee’s discussion would be reported to the Recurrent Item Committee. In the absence of joint conclusions, the groups could consider submitting their conclusions separately.
141. The representative of the Secretary-General in reply to the various questions raised, indicated that the Office had first to reflect on possible ways forward. In the afternoon, the Committee had agreed on the brief summary of the discussion on the General Survey. The revised version of this document (document D.8(Rev.), which included the comments made by the Worker and Employer Vice-Chairpersons, would be communicated to the Recurrent Item Committee on Saturday afternoon, 3 June 2012. The Committee had not agreed on a proposed outcome but it was already scheduled in the programme that the Officers would brief the Recurrent Item Committee on the outcome. The Office had not been informed that the Employer members would leave the room and had been taken by surprise. The Government members had been extremely patient and she thanked them for this, as well as for their respect for the institution.
142. On Saturday afternoon, with regard to the ongoing efforts to prepare a mutually agreeable list of cases, the Chairperson announced that he had taken the initiative to convene an informal meeting with all regional coordinators and the Vice-Chairpersons but unfortunately this meeting had produced no results. He also indicated that the different questions put forward by several Government members regarding the manner in which the Committee would proceed with its work would be answered at the Committee’s next sitting on Monday, 4 June.
143. The Government of Brazil, speaking on behalf of GRULAC, said that they had held a meeting at which GRULAC reiterated its commitment to the supervisory system but noted that once again the list of individual cases was not ready in time. He repeated the group’s view that the fact that the list was not ready was offensive and disrespectful vis-à-vis the

governments. Its position was therefore that, if no list was presented before the end of the day (and he was referring to a complete list), then the group did not want any list at all. The situation that had arisen showed that the procedures needed to be reviewed by the Governing Body. He concluded by reiterating GRULAC's firm support for the respect of the plan of work and for the position of the Government group.

- 144.** On Monday, 4 June 2012, the Employer and Worker members, as well as several Government members, made the following statements.
- 145.** The Employer members provided the following explanations concerning the situation that had arisen with regard to the list of cases. In relation to the interpretation of the right to strike, they referred to the publication of the Committee of Experts' General Survey on the eight ILO fundamental Conventions in advance of the 101st Session of the International Labour Conference. The General Survey was a guide to the Conference Committee to assist it with its work when supervising the application of ratified labour standards by member States of the ILO. The General Survey, like the report of the Committee of Experts, was not an agreed or authoritative text of the ILO tripartite constituents, namely, the Governments, Employers and Workers. Outside of the ILO, this important distinction was either misunderstood or forgotten and General Surveys were seen as being the position of the ILO, which they were not. The Employer members had, for many years, consistently stated this position concerning General Surveys and the reports of the Committee of Experts. The role of the International Labour Office was to serve its tripartite constituents to the best of its abilities. The ILO was the Governments, Workers and Employers. Both the General Survey and the report of the Committee of Experts were created with the assistance of the International Labour Office. The Governments, Employers and Workers were not involved in their creation or publication. The first opportunity for the Governments, Employers and Workers to consider these publications as groups was at the International Labour Conference.
- 146.** The eight fundamental Conventions were important not only within the ILO, but also because other international institutions regularly used them in their activities. The fundamental Conventions were embedded in the UN Global Compact, the OECD Guidelines for Multinational Enterprises, and the UN Human Rights Council's "Protect, Respect and Remedy" framework. The ILO's supervisory machinery related to member States only, not to businesses, so it was vital that, when other international institutions used the fundamental Conventions, such use was correct. A correct understanding of the fundamental Conventions was imperative for businesses because they were used in international framework agreements, transnational company agreements and in European framework agreements with global trade unions, where they were often not defined. Accordingly, that year's General Survey had particular contextual importance for the Employer members. Within the General Survey, the commentary on Convention No. 87 concerning freedom of association included interpretations by the Committee of Experts on the exercise of the right to strike.
- 147.** Interpretations of a right to strike by the Committee of Experts were fundamentally unacceptable to the Employer members. The Employer members stated that they had made it clear last week to the Conference Committee that they were of the view that the Committee of Experts' position regarding the right to strike outlined in that year's General Survey did not reflect the views of the Employer and Worker members in the Conference Committee. The Employers' group had a long-held policy position in the ILO on this matter. They had repeatedly expressed their opposition to any attempt by the Committee of Experts to interpret the ways by which the right to strike, where it was recognized in national law, could be exercised. This issue was complicated by the fact that Convention No. 87 itself was silent on the right to strike and, in the view of the Employer members, was therefore not an issue upon which the Committee of Experts should express any

opinion. The mandate of the Committee of Experts was to comment on the application of Convention No. 87 and not to interpret a right to strike into Convention No. 87. The General Survey was simply meant to be used by the Conference Committee to inform its work, leaving it for the tripartite constituents to determine, where consensus existed, the position of the ILO, with regard to the supervision of Conventions. Further, under article 37 of the ILO Constitution, only the ICJ could give a definitive interpretation of international labour Conventions. If the Constitution were to be applied, given the absence of any reference to a right to strike in the actual text of Convention No. 87, then internationally accepted rules of interpretation required Convention No. 87 to be interpreted without a right to strike. In addition, it should be noted that the principle of freedom of association contained in Convention No. 87 had a separate supervisory procedure: namely the Committee on Freedom of Association (CFA). The Employer members had also objected for many years about the use of CFA cases by the Committee of Experts when examining Convention No. 87, the use of CFA cases when interpreting the right to strike, and the use of the Committee of Experts' interpretations of the right to strike in the CFA. The Employer members were critical of the confusion and lack of certainty that the supervisory system created.

- 148.** In the view of the Employer members, Convention No. 87 cases that concerned a nationally recognized right to strike should only be supervised by the CFA only in order to ensure certainty and coherence. They objected to any view that the Committee of Experts' interpretations of the right to strike were legal jurisprudence, as the Committee of Experts did not have a judicial mandate within the ILO. The Committee of Experts did not have a determinative role within the ILO supervisory machinery. The Committee of Experts did not supervise labour standards; rather the ILO tripartite constituents did. Referring their interpretations of the right to strike within Convention No. 87 to the ICJ was therefore inappropriate. The CFA produced recommendations to the Governing Body for adoption. The Governing Body did not have a judicial role either; it also did not supervise labour standards. For the same reason, referring the CFA recommendations to the ICJ was also inappropriate.
- 149.** The interpretation of the right to strike was important because the Employer members asserted that it was for national governments to establish their own rules/practices concerning the right to strike when considering how to resolve national breakdowns in industrial relations. It was important in the context of the international human rights debate that a correct use of Convention No. 87 was made, because an incorrect inclusion of the right to strike risked the Committee of Experts' interpretation of the right to strike becoming an internationally accepted human right to strike, which would restrict the ability of national governments to define their right to strike. This restricted the role of governments in, for example, the circumstances when a lawful strike could be called and the definition of essential services. This was unacceptable to the Employer members. There was no legal requirement for governments that had ratified Convention No. 87 to address the Committee of Experts' interpretation of the right to strike. The Employer members could not agree to the Committee of Experts' interpretation of the right to strike because of the risk that it would be misused.
- 150.** Regarding this year's Conference, the Employer members stated that, given their longstanding objections to the Committee of Experts' interpretation of the right to strike, they sought to clarify the mandate of the Committee of Experts with regard to the General Survey. They brought this important issue to the attention of the Worker members and, together, they had negotiated and formulated the following draft clarification: "The General Survey is part of the regular supervisory process and is the result of the Committee of Experts' analysis. It is not an agreed or determinative text of the ILO tripartite constituents." The Employer members' proposal was that the International Labour Office would be instructed to immediately insert the clarification in future hard copy and ILO

website publications of this year's General Survey and the report of the Committee of Experts. It was not possible to simply remove the Committee of Experts' interpretations as the International Labour Office had already published the General Survey containing the Committee of Experts' interpretation of the right to strike. They had made it clear that without the abovementioned clarification in respect to the General Survey, in order for the Employer members' consideration of the cases in the Committee to be coherent, they could not accept the supervision of Convention No. 87 cases that included interpretations by the Committee of Experts regarding the right to strike. After much confidential negotiation with the Worker members, regrettably, those negotiations had irretrievably broken down. The Employer members considered, in this connection, that it was inappropriate to lift the veil on those negotiations, as they were and remained of a confidential nature.

- 151.** The Employer members highlighted that on Friday, 1 June 2012, after the negotiations had irretrievably broken down, the Employer Vice-Chairperson returned to the Committee room, as he was informed that the Worker Vice-Chairperson had done so. His position was that the negotiations had failed so there was confusion concerning why it was necessary to return to the Committee room. During the period he was in the room, he observed officials of the International Labour Office in discussions with Worker and Government members of the Committee. It was important to be aware that Employer members had made it clear that the list of cases to be supervised could only be agreed in direct negotiation with the Worker members. The Government members could not be involved as they had a conflict of national interest. The International Labour Office could not be involved as it was not an ILO constituent and had to be impartial. Members of the Employers' group had been waiting in the Committee room from 5 p.m. awaiting confirmation concerning the negotiations. The Employer Vice-Chairperson informed the Employer members that the negotiations had failed. At 8.31 p.m., when the meeting was 91 minutes past its scheduled close of 7 p.m., as no one from the International Labour Office had communicated to him what was happening, he had then informed the Deputy Director of the International Labour Standards Department that the Employer members were leaving the Committee room for the evening. The Employer members had then left. There had been no meeting of the Conference Committee occurring at the time so it had not been a walk-out. The Employer members had left the room after the scheduled close and while private meetings involving others had been happening, of which the Employer members had known nothing about. Many other delegates had either left or were leaving. The Employer members had attended the next scheduled meeting.
- 152.** On Saturday, 2 June 2012, following a request from the Government regional coordinators for an informal meeting with the Employer and Worker Vice-Chairpersons, the Employer Vice-Chairperson had attended the informal meeting and explained that he would not negotiate a list of cases with the involvement of the Government members. He had confirmed that he would provide a statement of the Employer members' position with regard to the failed negotiations for a list of cases.
- 153.** The Employer members then proposed a possible way forward for the Conference Committee, and formulated the following suggestions:
- The Employer members remained supportive of the application of labour standards provided there was respect for genuine tripartism of the ILO constituents.
 - The proposed clarification to clearly appear in all International Labour Office and Committee of Experts documentation prepared for a debate and discussion by the International Labour Conference or the Governing Body.
 - An urgent review of the working methods and mandate of the international labour standards supervisory system (including its interaction with other areas of the ILO),

including the Committee of Experts, the Conference Committee and the International Labour Office, was required.

- The Employer and Worker Vice-Chairpersons to meet with the Committee of Experts before they started their work each year and for the Committee of Experts to have far greater interaction with employers' and workers' bureaux within the ILO in order to strengthen cooperation and governance. The Committee of Experts should have a tripartite agreed framework in which to do its work. In past years, the Employer members had proposed changes to the format of reports of the Committee of Experts with a view to have tripartite views better reflected. More precisely, the Employer members proposed that there should be possibilities for Employers, Workers and Governments to set out in the reports of the Committee of Experts their views on standards supervision-related issues, including on the application and interpretation of particular Conventions.
- An urgent review of the International Labour Standards Department of the International Labour Office was required. The role of ILO officials required respect for the tripartism and impartiality in their work. Their role was to support and facilitate the work of the ILO tripartite constituents, which required neutrality and balance. It required staffing with politically neutral international civil servants that supported the work of the Committee of Experts, not the Committee of Experts supporting the work of the Office. Neutrality would help create mature and respectful international industrial relations between the Governments, Employers and Workers.
- Respect for the relationships with other international agencies to ensure that the views of the ILO were those of the tripartite constituents.

154. In conclusion, the Employer members stated that the ILO was now facing a multifaceted crisis concerning the interpretation of the right to strike in connection with Convention No. 87. It was not acceptable for anyone to be confused or misled as to the true status of any ILO text simply because it bore its logo or was silent as to its proper status. This was now more than just an issue involving the General Survey as it affected the Convention No. 87 cases to be supervised in the Conference Committee. The absence of an express right to strike in Convention No. 87 meant that the Committee of Experts was effectively making policy, which was outside of their mandate. Policy-making was the exclusive domain of the Governments, Employers and Workers. The Committee of Experts could advise on application, not determine application on behalf of the ILO and certainly not determine new rights and obligations regarding a right to strike within Convention No. 87. It was important that all Governments, Employers and Workers alerted their constituents and relevant authorities as to the true status of the Committee of Experts' interpretation of the right to strike.

155. The Worker members emphasized that the situation seen today had never before been experienced in the history of the Committee on the Application of Standards. They added that the present statement was the outcome of long discussions in the Workers' group of the Committee which, alarmed by the course of events, had called for a statement that was clear and strong, but nevertheless constructive. In the view of the Worker members, the Committee needed to proceed with its work and the cases should be discussed without delay, as requested vigorously by the Government members present on Friday evening and Saturday afternoon.

156. The Worker members said that a rereading of the records of the Committee for previous years showed that for a few years the issue of the choice of individual cases had become a very difficult exercise, and not only in view of developments in the political and economic situation in many member States. Considerations related to the supervisory machinery

itself had been raised by the Employer members, who had started to express the wish to weaken the supervisory methods in 2010. Yet, in 2009, the spokesperson for the Employers' group had indicated the following: "The Employer members pointed out that the participation of the Chairperson of the Committee of Experts in the work of the Committee reflected the essential fact-finding role of the Committee of Experts in relation to the work of the Conference Committee. Without the help of the Committee of Experts, this Committee could not function." (*Record of Proceedings* No. 16, paragraph 42). This was clearly true and, as recalled the previous Friday by Mr Yokota, Chairperson of the Committee of Experts, the Committee of Experts took everything into account when drawing up its reports. It had a global vision of the information provided and on that basis it carried out an analysis of law and practice.

157. The Worker members emphasized that in 2010 the Employer members had mounted a first major challenge against a large number of principles that were commonly accepted and recognized as guarantees of the Committee's work as a supervisory body of the application of ratified ILO Conventions. The Employer members had clearly indicated, on several occasions, that in their view the tripartite governance of the supervision of the application of standards was compromised, or at least that there was a faulty line in this process of tripartite governance.
158. The Worker members had emphasized in 2011 that the list had to be drawn up together, that is with the Employer members, and that it was together that they had to reach a compromise, as a veto had no place in the process, either directly (by rejecting a particular country) or indirectly (by establishing restrictive rules). They had specified that the rule could not be that one of the parties always had to give way, and it was to be regretted that methods of work based on consensus were increasingly difficult to achieve.
159. The Worker members affirmed that this year they had been very brutally confronted by the fact that the Employer members were contesting the mandate of the Committee of Experts, essentially in relation to the interpretation of the right to strike under Convention No. 87. It should be clarified that that this challenge to the General Survey and the mandate of the Committee of Experts only came from the Employer members, who had no right to make comments in the name of this Committee against the supervisory system. The direct consequence had been that an explicit veto had been expressed in relation to the possible examination of individual cases in which the right to strike might be raised during the discussion.
160. The Worker members considered that the confrontation had been brutal for the following reasons. As happened every year, significant preparatory work had been carried out within the Workers' group. The preparatory work was carried out seriously because, for the Worker members, the discussion of the most serious individual cases at the Conference was a unique occasion. It was the only time that they could describe openly and without fear the numerous violations of the rights accorded to them by ILO standards. The report of the Committee of Experts had been published on 28 February 2012. The General Survey had been published on the same date. The electronic versions of those documents had been published on the Web on 2 March 2012. Yet, during the 313th Session of the Governing Body, held in March 2012, the Employers had not at any time given an indication of any possible criticisms concerning the role of the Committee of Experts, nor on it exceeding its mandate in its interpretation of the right to strike. It had only been on Friday, 1 June 2012, during the discussion of the General Report, that the Employer members had clearly indicated, in the context of the present Committee, their vision on this divergence of views. However, based on the published reports, the preparatory work of the Workers' group had commenced in March 2012 in regional coordination meetings, and then in an international meeting held in Brussels on 2 April. It had culminated in May in a series of open, frank and sincere confidence building contacts with the spokesperson of the Employer members

of the Committee. On that occasion, without any reservations, he had put forward his group's list of cases, with no comment on the mandate of the Committee of Experts, or on any reservations concerning the discussion of Convention No. 87. A preliminary list of 49 cases had accordingly been drawn up and forwarded by the ILO to governments on 8 May 2012.

161. In the Worker members' view of the approach to the work of supervising the application of standards, they considered very sincerely that the contribution of the Employers' group, through their spokesperson, who had made suggestions for cases to be included in the provisional list, had meant that preparatory work similar to that of the Workers' group had been undertaken. That was particularly the case as it was known that the list was to be forwarded to governments.
162. The Worker members were very willing to recognize that in certain countries the rights of employers were also violated and that the Employer members valued more technical subjects. Clearly, there was no obligation to engage in preparatory work, as understood by the Worker members. Each group was free to organize its own work. However, taking the supervisory machinery seriously required preparatory work, for the members themselves and for those involved in the discussion process. That was why the Worker members were certain that they could work constructively as soon as they arrived at the Conference. They had never imagined that the drawing up of a final list of 25 cases to be discussed in the Committee would be as dramatic as it had been this year. They had never thought that they would be driven to make the proposal that they had put forward on Friday evening.
163. The Worker members emphasized that their objective had clearly been to come together and, on a basis of consensus, to place emphasis on the most serious cases and to give a very clear signal to the governments on the list concerning the serious nature of their failings. It was clear that coming up with a preliminary list of 49 cases had already been very frustrating for many Worker members present in the Committee. Even though they had understood that the case concerning their government would not be raised, many colleagues had nevertheless made the journey to the Conference in Geneva, which was the only forum in which their voices could be heard and where they could participate effectively in the discussions.
164. The Worker members recalled that, as indicated by the Worker member of Colombia on Friday: the process of drawing up the final list of cases had always been difficult, but the list was not a spoil of war and did not require the taking of hostages, that wisdom always prevailed and that an agreed list would certainly be presented to governments. Many of the Workers' group still expected such consensus, as a serious political indication of continued belief in social dialogue, the functioning of the ILO supervisory procedures and therefore in its standards.
165. The Worker members said that they had gained the impression that, for the Employer members, the present session of the Committee on the Application of Standards had already ended, that everything would return to normal tomorrow and that in 2013 work would continue as if nothing had happened. However, reflection would be required on the way forward. The Employer members had put forward proposals, but that was the task of the Governing Body, which would have to consider the latest events without delay, as the Conference Committee was not the place to discuss them. Being made aware of them before the Conference would have made it possible for the Committee to go ahead with its supervisory work, instead of creating a crisis situation that was prejudicial to everyone.
166. The Worker members stated that, more than anyone, they wanted to come through the storm. Employers needed workers and their representatives, and should not forget that. Without social peace, without counterparts, it would be the law of the jungle and no longer

a question of productivity or growth. The Worker members wondered whether the intention was to override the social pacts which governed industrial relations in many countries.

- 167.** The Worker members emphasized that governments were shocked, which was understandable. But the Worker members were also shocked and were the losers: because they had played by the rules of the game and, as early as March, certain colleagues had already given up the hope of seeing their situation discussed out of solidarity with other colleagues, to whom they had given priority; because they had been taken hostage in a so-called struggle between the Employer members and the Committee of Experts; because the discussion of the role of the Committee of Experts and its competence to give an interpretation of the right to strike did not lie with the Committee on the Application of Standards, but with the Governing Body; because, as a result of the sabotage of the supervisory machinery, it was the rights of workers that were being disregarded; and because workers and their families were the primary victims of the fact that the serious situations that they were experiencing could not be discussed.
- 168.** The Worker members raised the question of what the Employer members wished to gain through this strategy that had been developed over time, and certainly since the Committee's work in 2010. On that occasion, the Worker members had already had to react to the same attacks as those reiterated on this occasion, without warning, at the beginning of the Committee's work. The Worker members wondered if the Employer members were seeking to finish the Committee of Experts, and if the Committee on Freedom of Association would be the next victim. Yet it should be recalled that those bodies were appointed through a tripartite procedure.
- 169.** The Worker members recalled that, on Friday evening, in the absence of a negotiated list, at the risk of shocking many Worker colleagues present in the room, the Worker Vice-Chairperson had had to make a proposal to the Committee. That had been done for the benefit only of the Government members, as the Employer members had left the room without warning, even though the Chairperson had not adjourned the sitting. There had been no negotiated list because the conditions that had been imposed by the Employer members upon the Worker members were unacceptable. In the absence of a final list, the Worker Vice-Chairperson had therefore proposed that 25 cases should be discussed from the long list forwarded to governments on 8 May. A first group would be composed of the five cases with double footnotes. A second group would be made up of 20 cases taken from the long list, starting from the letter K and following the French alphabetical order. This proposal was based on the working methods that had been agreed to in document D.1. The selected method for drawing up the list, based on the pure logic of the French alphabetical order, had been and remained a very delicate matter. It should however be recalled that the list, whether long or short, was one of the elements of the supervisory system itself since, through the list, a clear signal was sent to governments that the situation of non-compliance with ILO Conventions could not continue on their territory. Inclusion on the long list was an indication that pressure was mounting and that the international community was aware of the gravity of the situation of disregard for workers' rights. It had been the only solution to go forward with dignity.
- 170.** Following those explanations, the Worker members wished to put on record that what was occurring in the Committee was not their will. At no time had there been agreement on the list, as some were trying to make people believe. At no time had the Worker members broken off the dialogue or acted in bad faith. The Worker members were in no way responsible for the challenges raised by the Employer members concerning the role of the Committee of Experts and their authority to interpret the links between Convention No. 87 and the right to strike. Moreover, they did not support such a challenge. The Worker members had not been informed of those types of arguments before the Conference, during

the Governing Body in March, nor during the contacts to draw up the preliminary list, or at any other time or by any means.

171. The Worker members concluded that the imposition was not acceptable of such purely exorbitant conditions which went beyond the competence of this Committee, as they were of a political nature. They could not accept such arbitrary edicts based on factors over which, within the Committee, they had no power and which would have the consequence that the cases selected in May might never be discussed. All of that was to be regretted and gave rise to immense wastage: many trade unions and employers' organizations invested time and money in the work of the Committee, as did governments. They could not be sent home empty-handed. The wastage was particularly incomprehensible in view of the calls made by the Employer members for the ILO to make greater savings. The Worker members called on all parties to exercise wisdom and remained open to any solution that was approved and obtained through constructive negotiation.
172. The Government member of Sudan, speaking on behalf of the Government members, regretted that there was no list of individual cases to be discussed at the Committee on the Application of Standards. He considered that a further discussion on the substantive issues raised by the Employer and Worker members had to take place in an appropriate forum. The speaker also considered that this situation clearly showed that there was a need to review the working methods of this Committee.
173. The Government member of Pakistan, speaking on behalf of the Asia and Pacific group (ASPAG), stated that his group valued very much the supervisory mechanism for promoting and supervising ILO standards. For many years, through this system, the governments had received necessary guidance from the social partners that had helped them to overcome challenges in realizing ILO's fundamental principles and values at work. At the same time, governments also felt the need to further streamline the system to make it efficient and fair. They felt that there was a need to establish criteria that allowed the selection of cases by the social partners in a more objective and timely manner. Such a reform would certainly help not only to bring transparency but also to establish sanctity and efficacy of this supervisory system. He indicated that as a result of last year's events and developments during the proceedings of the Committee this year, such reform was inevitable and had to be given priority. At the same time, ASPAG felt that unnecessary delay in the finalization of the list of individual cases this year had caused immense inconvenience for governments. ASPAG therefore called for this particular issue to be addressed before handling individual cases in the Committee on the Application of Standards in the future.
174. The Government member of Niger, speaking on behalf of the Africa group, supported the analysis by the Government group of the absence of the list of individual cases and felt that this regrettable situation highlighted the need to review the working methods for the preparation of the list of cases, which needed more transparency and objective criteria. The current situation should lead to urgent reflection on the revision of the whole of the supervisory system for international labour standards. In the future, it would be essential to communicate the list of individual cases well before the start of the work of the Conference in order to enable the governments to prepare their replies. Lastly, in view of this year's delay, no list could be objectively examined during the current session of the Committee.
175. The Government member of Brazil, speaking on behalf of GRULAC, stated that GRULAC had always been consistent in its position. Since July 2011, the group had been stating that any repetition of the events that had occurred in the Committee at the 100th Session of the Conference should be avoided and that the list should be published in accordance with the plan of work, on the second day of the Committee's session. This request, that deadlines be respected, was repeated at the Governing Body in both November 2011 and March 2012.

GRULAC had shown some flexibility regarding the publication of the list on the third day of the Committee's session, at the latest. On the fourth day of the Committee, in a display of goodwill and flexibility, it had asked for the list to be published that day at the latest. The group had shown consistency in its position and its commitment towards the ILO supervisory system and the constitutional mandate of the Committee. It considered that the current situation was totally unacceptable and stated that there was a need to review the Committee's procedures. The current degree of uncertainty was having a damaging effect on its credibility. The preparation of the list was a prerogative of the social partners. As with any prerogative, it had to be exercised with responsibility and with respect towards governments. These procedures had shown a lack of respect towards governments once again, since they had had no time to prepare or to participate in debates. In conclusion, the speaker reiterated the need for respecting the deadline for the publication of the list and for modifying the Committee's procedures with a view to improving objectivity and transparency and ensuring greater respect for the Government members.

176. The Government member of the United States, speaking on behalf of IMEC, indicated that at the opening sitting of the Committee, IMEC had joined in a unified call by the Government group for prompt adoption of the list of individual country cases. The subsequent deadlock that had prevented the adoption of a list was totally without precedent in the 85-year history of the Committee. It was both disappointing and distressing.
177. It was the firm, long-standing position of IMEC that the governments should not get involved in the development of the list of cases. This position had not changed. For the record, there had been no involvement of governments in the negotiations of the list of cases, and at no time did the governments request to be part of them. The Conference would need to understand that this problem had not been caused by governments.
178. Although governments did not participate in developing the list of cases, they were a key component of this Committee. Governments ratified and implemented Conventions, and then agreed to discuss issues of compliance with the Workers and Employers' groups at the International Labour Conference. The situation at this Conference had put governments in an extremely difficult position, and IMEC regretted that at times there was a distinct lack of courtesy shown towards them.
179. It was the prerogative of the social partners to agree to a final list of individual country cases. While the social partners had the right to agree on the criteria for the list, IMEC did not believe that it was appropriate for the Employer and the Worker members to make agreement on a list conditional upon external issues on which governments had a role in the discussion and decision-making process.
180. It was IMEC's view that the role of the Committee on the Application of Standards was to consider the Experts' report on individual cases, and not to question the status of that report. The issues that had been raised by the Employer members needed to be dealt with in an appropriate forum, but IMEC did not consider that the Committee on the Application of Standards was the appropriate one, and wished to request the ILO Legal Adviser to explain the available options.
181. There were a number of reasons why IMEC was deeply distressed about the failure of the social partners to adopt a list of individual country cases. First, the failure to adopt a list of cases had prevented this Committee from executing the critically important work of supervising countries in the application of labour standards as required by the ILO Constitution and previous decisions of the International Labour Conference. Secondly, the ILO supervisory system was unique and was an essential element of the Organization's mandate and mission. The ILO supervisory mechanisms had long been cited as the most advanced and best functioning of the international system. Not only did the present

situation reflect poorly on the Committee, but also it had serious ramifications for the ILO supervisory system as a whole, and risked irreparable damage to the credibility of the entire Organization.

182. IMEC had a long history of supporting the independence, impartiality and objectivity of the Committee of Experts, as well as its autonomy. The group could understand that there would be occasions when members or groups within the Committee on the Application of Standards would have views that differed from those of the Committee of Experts, and all members had the fundamental right to express those views. However, it was regrettable that the events of the past few days had resulted in a situation that potentially had put the credibility of the ILO and the supervisory system in jeopardy.
183. The question at this point was where this Committee would go. In this connection, IMEC was encouraged that, in the previous week, the Chairperson of the Committee of Experts specifically indicated in his presentation to this Committee a willingness to continue constructive dialogue with this Committee on issues that were at the heart of this present conflict. In addition, the question on the right to strike within the context of Convention No. 87 was a long-standing issue which had not been resolved through tripartite dialogue to date. IMEC noted that article 37 of the ILO Constitution provided that legal clarification on such questions could be sought from the ICJ.
184. The speaker concluded by stating that governments needed to be involved in discussions and decisions on issues other than the negotiation of the list, and in this regard, IMEC welcomed the opportunity to work with the social partners to resolve the concerns raised by the Employer members. IMEC wished to reiterate its strong commitment to the ILO supervisory system and the role of the Committee on the Application of Standards. It was also committed to moving forward in a positive, constructive manner in the spirit of tripartism.
185. The Employer members stated that regretfully, from this point forward, they were working on the basis that there would not be a list of individual cases this year. They also agreed that there was a need for further discussions with regard to the issues that had been raised. They recalled that the International Labour Conference was the supreme body of the ILO and it was for that body to find a solution and that the matter should not be referred to the Governing Body. There was a clear need to agree on the working methods of this Committee and reforms were necessary. Moreover, they insisted on the fact that the behaviour, actions and negotiations of the Employer members had been done in good faith. They reiterated that the Employer members had always intended to respect the governments' time frames, and that the continued negotiations, which had extended past the intended deadline of Thursday afternoon, were not meant to cause any discourtesy to governments. When discussing the working methods, consideration should be given to communication in view of the size of this Committee. Finally, they reiterated that they still had a strong commitment to the Conference Committee and to genuine tripartism.
186. The Worker members emphasized the fact that they could not agree to the inclusion of a disclaimer in the General Survey, which was the result of analyses undertaken by the Committee of Experts. The Worker members considered that it was not the place of the Committee on the Application of Standards and certainly not the Employer members and Worker members alone to discuss such a disclaimer as a discussion of this kind fell within the competence of all ILO constituents. This approach had been confirmed by many governments. Nevertheless, without taking this into account, the Employer members continued to insist on the insertion of such a disclaimer. The Worker members might eventually agree to a joint statement on the divergence of views on the role and mandate of the Committee of Experts. They could thus envisage discussing this divergence of views where it should be discussed, namely in the Governing Body. It would therefore be the

responsibility of the Governing Body to develop a plan to address the subject. The ILO Constitution also provided for the competence of the ICJ for the interpretation of Conventions. The Worker members regretted enormously that the Employer members could not agree to such an approach. They concluded that genuine tripartite social dialogue could not take place within a situation of deadlock.

The reply of the representative of the Secretary-General

- 187.** The representative of the Secretary-General, in response to the comments made by the Employers members, confirmed that the Committee on the Application of Standards had never faced a situation like the current one since its creation in 1926. The Committee was the apex of the supervisory mechanism under a constitutional mandate, but, this year, it had completed its work only partially, having performed its mandate under article 19 of the ILO Constitution, but having failed to do so with respect to article 22 of the Constitution.
- 188.** The International Labour Standards Department had provided its support to the supervisory system, and would continue to do so in total neutrality, balance and impartiality. The Office was governed by article 9 of the ILO Constitution, the Staff Regulations of the Office and the Standards of Conduct of the International Civil Service. Article 9 of the Constitution provided that in the performance of their duties, the staff was required not to seek or receive instructions from any government or other authority external to the Organization. Article 1.1 and 1.4 of the Staff Regulations required all officials not to seek or accept instructions in regard to the performance of their duties from any government or other authority external to the International Labour Office. They had to be subject to the authority of the Director-General and had to be responsible to him in the exercise of their functions. It was recalled that the work of the International Labour Standards Department had never been questioned to date by any official bodies of the Organization. On the contrary, it had been congratulated on numerous occasions by all the supervisory bodies, including the groups of the Conference Committee in the past.
- 189.** She indicated that it was clear that the principles and recommendations of the Committee of Experts, the Committee on Freedom of Association, and the recommendations of the Conference Committee were views and recommendations, and were accordingly not binding. However, they had enormous moral authority. International labour Conventions and Recommendations clearly had more legal authority than any recommendations by a supervisory body.
- 190.** The principles on the right to strike of the Committee of Experts had a tripartite origin: the Committee on Freedom of Association. It was difficult to understand how these principles could be contested within the framework of the Committee of Experts, but accepted in the context of the Committee on Freedom of Association. She then referred to a publication entitled *Employers' organizations and the ILO supervisory machinery*, a joint publication by the International Labour Standards Department and the International Training Centre in Turin in cooperation with the Bureau for Employers' Activities, which had been signed by the Secretary-General of the International Organisation of Employers (IOE), the Director of the Bureau for Employers' Activities and by the Director of the International Labour Standards Department, and indicated that employers had put forward a number of principles related to the right to strike within the context of the supervisory bodies.
- 191.** The weakening of the ILO supervisory machinery would hinder the action for the Office to resolve problems experienced by employers' and workers' organizations in a number of countries. She wished to express the view that many employers' organizations had been able to exist and thrive because of the work of the Committee of Experts together with that of the Conference Committee. The failure to discuss individual cases was in no one's

interest, as workers' and employers' organizations had come to the Conference to have their concerns examined, as provided for by the Standing Orders of the International Labour Conference.

192. Numerous options had been proposed to address the issues relating to the right to strike. It had to be borne in mind that any decision to refer the question of the right to strike to the ICJ, as provided in article 37(1) of the ILO Constitution, could have the effect of making the principles on the right to strike obligatory, while they were now only soft law. She emphasized the need not to forget that the members of the Committee of Experts were appointed through a tripartite process by the Governing Body. She concluded by stating that it was a sad day for the supervisory system and that she shared the concerns expressed during the sitting of the Committee.

The reply of the Chairperson of the Committee

193. The Chairperson expressed his deep regret about the current situation. Nonetheless, he expressed optimism that this situation should allow for reflection and for a solution to be found. The social partners had the same goals of social justice, peace and welfare and trust between them was not lost.

The reply of the Legal Adviser

194. The Legal Adviser, speaking in response to the question raised by IMEC as to what options were available to the Conference Committee to deal with the issues raised by the Employer members on the supervisory machinery and how this could be done in the appropriate forum, presented two options. First, a specific chapter could be created in the report of the Committee on the Application of Standards reflecting the content of the discussion and the different views expressed on the functioning of this Committee, including those in relation to the reports of the Committee of Experts. The specific chapter could terminate with a request for the Conference to decide to ask the Director-General to communicate that chapter to the Governing Body, with a further request for its appropriate follow-up as a matter of urgency. The terms of this request could be further defined in the proposed decision and could include suggestions on the manner in which the Conference would further review the matter following action taken by the Governing Body within its mandate, including any relevant proposals on reform in relation to the functioning of the Conference Committee. Secondly, Committee members concerned could submit the text of a proposed resolution for this Committee to submit to the Conference together with its report. This resolution could note the different views expressed at this session and call for a review of the matters raised and the functioning of the Conference Committee's working methods, including in relation to the reports of the Committee of Experts. It could invite the Governing Body to take up this issue as a matter of urgency, in the context of its ongoing work relating to reform of the Conference or in any other appropriate manner. Such a resolution would be submitted and discussed in accordance with article 63 of the Standing Orders of the Conference.

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195. The Chairperson indicated that he was forced to close the discussion due to the failure to adopt a list of cases to be discussed during this session of the Conference Committee.

F. Follow-up discussion on the way forward

196. The Government member of Sudan, speaking on behalf of the Government group, stated that the Government group was not at this time in a position to discuss the substantive and procedural issues in relation to the functioning of the Conference Committee and the reports of the Committee of Experts. The Government group had noted the options presented by the representative of the Legal Adviser and recommended that a specific chapter be included in the report of the Committee on the Application of Standards reflecting the content of the discussion on those issues as well as the different views expressed. The Government group suggested that the specific chapter should terminate with a request for the International Labour Conference to decide to ask the Director-General to communicate that chapter of the report to the Governing Body, with a further request for its appropriate follow-up as a matter of urgency.
197. The Government member of Belarus supported the statement of the Government group and added that the specific chapter was an important issue which should be brought to the attention of the International Labour Conference.
198. The Employer members were optimistic that, after reflection upon the situation, the Committee would find a way forward, since the tripartite constituents had one common aim – social justice. They appreciated the legal opinion given by the Legal Adviser and anticipated that further questions would be raised by the Committee. However, the Employer members expressed the concern that both options elaborated upon in the legal opinion necessitated further delay in seeking a solution and required this Committee, despite being a sovereign body and the apex of the supervisory system, to refer the matter to a lower body, the Governing Body. In their view, the problem would not be solved before the Governing Body but rather returned to the International Labour Conference at a later stage. It was thus preferable to find a solution now rather than to perpetuate the crisis. Therefore, the Employer members submitted the proposal to add the following text as an introductory paragraph to the General Survey and the report of the Committee of Experts:

Appendix V (Article 408 of the Treaty of Versailles) to the *Record of Proceedings* of the International Labour Conference in 1926 explained the necessity of a technical committee of experts (later named the Committee of Experts on the Application of Conventions and Recommendations (CEACR)) as follows:

“The functions of the Committee would be entirely technical and in no sense judicial.”

“It was agreed however that the Committee of Experts would have no judicial capacity nor would it be competent to give interpretations of the provisions of the Convention nor to decide in favour of one interpretation rather than of another.”

At the 103rd Session of the Governing Body in 1947, it was explained that the CEACR would “carry out an examination of the annual reports submitted by the Governments ... in preparation for the examination of these reports from a wider angle by the Conference” and that this served as an “indispensable preliminary to the over-all survey of application conducted by the Conference through its committee on the Application of Conventions” (paragraph 36, Annex XII, Minutes).

199. The Employer members underlined that this text had been agreed upon in 1926 and reaffirmed in 1947 and that nothing had changed since. They raised the question as to why no agreement could be reached on the insertion of such a text at present. While acknowledging that the current situation was very difficult for governments and that they needed time to consult with their capitals, the Employer members reiterated that there was an urgent need to respond to this key question and discuss the issue immediately. On 7 July 2011, the Bureau for Employers’ Activities had submitted the views of the IOE concerning the right to strike in advance of the elaboration of the General Survey, indicating in particular that:

The right to strike is not provided for in either Convention Nos 87 or 98, and was not intended to be. The legislative history of Convention No. 87 is indisputably clear that, “the proposed Convention relates only to freedom of association and not to the right to strike”. Furthermore, as was emphasized by the Employer spokesperson during the final discussion of Convention No. 98 in 1949, “the Conference Chairman declared irreceivable the two amendments aimed at incorporating a guarantee for the right to strike, as they were not put in the scope of the Convention. The Speaker thus expressed the opinion that the passage in question constituted a factual error with respect to the historical basis of the right to strike being fundamentally inherent in these Conventions”.

- 200.** The Employer members felt that they had raised the issue of the right to strike consistently for numerous years and that they had been ignored in this respect. The content of the General Survey and its use, or misuse, by the outside world had made it imperative for the Employer members to seek clarification of the situation, as it was vital for governments, employers and workers to be clear on what was the right to strike in relation to the ILO. The Employer members indicated that, should the Conference Committee reach an agreement as regards the immediate insertion of the above introductory paragraph into the General Survey and the report of the Committee of Experts, this would address their concerns with regard to the status of these reports, in which case they would be prepared to discuss the five “double-footnoted” cases, which dealt with the most serious violations of ratified Conventions.
- 201.** In conclusion, the Employer members believed that there were lessons to be learnt by all members of the Committee as to communication and management of similar crisis situations. As regards the concern expressed by Government members, that this issue should have been raised in advance before the Governing Body in a tripartite way, the Employer members responded that the matter had not been on the agenda of the Governing Body and that the International Labour Conference was a sovereign body. The Employer members reiterated their preference that the current situation, which had been brought to a head by this year’s General Survey and its use in the outside world, and not by other factors, be resolved in this tripartite sovereign body without delay. There was no bigger industrial relations issue in the world of work than the right to strike, and the General Survey had created the need to resolve the issue urgently so that there would be certainty among tripartite constituents.
- 202.** The Worker members emphasized that from the outset of the work of the Committee they had shown a genuinely constructive attitude, going beyond mere words and putting proposals on the table. However, the current impasse was due to unacceptable, even illegitimate, conditions which had been imposed with regard to drawing up the list of individual cases, notwithstanding the fact that the prime task of the Committee was to examine the cases on that list.
- 203.** The Worker members thanked the Legal Adviser for the replies to the questions raised by IMEC concerning the options available before the Committee. With regard to the explanations given, some points needed further consideration and other questions should be asked, with the proviso that the asking of those questions in no way meant that the Worker members accepted any legal solution or gave their agreement with regard to any specific procedure. Repeated reference had been made to article 37 of the ILO Constitution, which stated as follows: “Any question or dispute relating to the interpretation of this Constitution or of any subsequent Convention concluded by the Members in pursuance of the provisions of this Constitution shall be referred for decision to the International Court of Justice.” The ICJ had been established by article 92 of the United Nations Charter and it had both contentious and advisory jurisdiction. It was only States that could submit contentious cases to the ICJ. Advisory proceedings could be instituted by the General Assembly and the Security Council, as well as by other UN

bodies and organizations, including the ILO, subject to the agreement of the General Assembly. States could not initiate advisory proceedings before the ICJ.

204. The Worker members asked the Legal Adviser to clarify the following points:

- whether the ICJ jurisdiction was contentious or advisory in the context of the application of article 37 concerning the interpretation of the Constitution and Conventions, since paragraph 2 of article 37 appeared to provide for both options;
- how to institute proceedings before the ICJ;
- the procedure to be followed for bringing any proceedings before the ICJ and the usual time frame in which the ICJ dealt with questions or disputes relating to the interpretation of Conventions; and
- the specific ways in which member States would incorporate the judgments or advisory opinions of the ICJ in their national jurisprudence and ensure the observance thereof by jurisdictions at all levels.

205. Furthermore, the Worker members raised the question whether the ICJ already had occasion to rule on questions of interpretation of ILO Conventions and thereby completely undo the analysis undertaken by the Committee of Experts.

206. The Worker members also emphasized that the possibility of inserting a “caveat” or “disclaimer” or even a “caution” or “introductory paragraph” in documents originating from the Committee of Experts and based on the reporting obligations under articles 22 and 19 of the ILO Constitution, namely General Surveys and reports of the Committee of Experts, had been referred to several times. That request from the Employer members had no support whatsoever from the Worker members. Indeed, according to the Employer members, the General Survey and the report could not be seen as texts that were authoritative for the tripartite constituents of the ILO. This gave rise to a number of questions: Who had competence to decide on the insertion of such a “caveat”? Could the initiative be taken by the Worker members or the Employer members acting alone and of their own accord? Was a consensus between Worker members and Employer members sufficient? What was the role of Government members? Was an agreement needed among all the tripartite constituents of the ILO? Could one of the constituents impose the “caveat” on the others and, in the event of their refusal, would the work of the Conference Committee be adjourned definitively and thereby jeopardized? Since these issues were highly sensitive, the Worker members asked the Legal Adviser to make a statement in that regard in due course.

207. Finally, the Worker members proposed that the Tripartite Working Group on the Working Methods of the Conference Committee be convened in November 2012 to examine the consequences of the discussions that had taken place within the Committee and to discuss possible action with an eye to the next session of the International Labour Conference in 2013.

G. Decision paragraph submitted by the Chairperson of the Committee following tripartite consultation

208. The Chairperson submitted, following tripartite consultation, a proposed decision paragraph, which read as follows:

The Committee noted that different views were expressed on the functioning of the Committee in relation to the reports of the Committee of Experts which were submitted for its consideration as found in paragraphs 21, 54, 81–89, 99–103 and 133–224 of this report.

The Committee recommended that the Conference: (1) request the Director-General to communicate those views to the Governing Body; and (2) invite the Governing Body to take appropriate follow-up as a matter of urgency, including through informal tripartite consultations prior to its November 2012 session.

- 209.** The Employer members fully supported the proposed decision paragraph and reiterated their optimism that, with calmness and after reflection upon the problems that had arisen, the tripartite constituents would find a solution together. They were relieved and proud that this Committee was taking tripartite responsibility for finding a solution to the clarification of the mandate of the Committee of Experts and the proposed insertion of an introductory paragraph into the reports of the Committee of Experts so as to avoid any misunderstanding in the world of work. It was and would remain the position of the Employer members that the Committee of Experts' mandate was that which had been historically agreed upon on a tripartite basis.
- 210.** Acknowledging the difficulties that the situation had created for the Government members, the Employer members stressed that they had always been, and in the future would always be, willing to supervise those cases that the Committee of Experts considered the worst cases of workers' rights violations. Reaffirming that all members of the Committee could learn from the communication and committee management issues that had arisen this year and could do better in the future, they renewed their total commitment to this Committee and its important work. They indicated that they were looking forward to working with the Worker and Government members during the informal consultations towards a clarification for everyone on the key political, social and economic issue of the right to strike, as there was no bigger industrial relations issue at the national level. The Employer members expressed their resolution and renewed hope that, at next year's Conference, the Committee would announce as of the first day the solution found by the tripartite constituents and that the Government members would be provided with the final list of individual cases by Thursday of the first week.
- 211.** The Worker members stated that they wished to be constructive so that everything could be put in place for the Committee's meetings in 2013 and thereafter. However, being constructive was not the same as being happy or satisfied with this proposal, which was too solemn and impersonal to be able to give justice to workers. The proposal was very important for safeguarding the mission of the ILO and, above all, for preserving the supervisory machinery for the application of standards, even if it did not make up for the fact that far too much time had been lost and that, at the end of the day, none of the cases on the list had been dealt with. It now fell to the Governing Body to take up the complex issue promptly and to good effect.
- 212.** The Worker members emphasized that they would never be able to take a positive view of the events that had stained the Committee's activities over the past week. Nevertheless, the ILO must live and constantly evolve in order to better achieve the objective of social justice that it had embraced since the Declaration of Philadelphia. The previous day, after long and trying negotiations, a proposal had been submitted by the Chairperson for the Committee's approval, according to which the differences of opinion between Worker and Employer members concerning the reports of the Committee of Experts, which had been noted and would be duly recorded, should be resolved as a matter of urgency and, in any case, within a period of time that would allow the required institutional deadlines for the work of this Committee in 2013 to be observed. In that regard, it was important for the questions put to the Legal Adviser to be duly reflected in the record.

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- 213.** The Worker members indicated that the proposal had been submitted to the Workers' group and had given rise to heated discussions. There had been immense distress at the events that had occurred. While accepting the proposal and, consequently, the procedure that it envisaged, a number of comments needed to be made. The difficult negotiations and the events that had occurred, including the preliminary contacts, the timing of which had been recalled previously, would leave a negative impression in the memory of the Worker members, as the confidence between the partners had been very seriously tested and even nearly broken. The past days' events would also remain entrenched in the memory of the ILO staff. In that regard, emphasis should be placed on the statement made by the Director-General that morning to the plenary of the Conference, in which he had vigorously defended the integrity of the ILO staff and the impartiality of the experts entrusted with supervising the application of Conventions and Recommendations.⁶
- 214.** The Worker members emphasized that the return of the Worker representatives to their countries would be painful, and at times marked by fear. They had come here to describe cases of violation of their rights guaranteed by the ILO's Conventions, and yet they would return empty-handed, without any conclusions from the Committee, without the support of the international community to build up their courage again when facing harassment, aggression, murder and the violation of their basic right to be treated with dignity by governments and national and international companies. What would the Worker members say to the family and colleagues of Manuel de Jesús Ramírez, the Guatemalan trade union leader murdered on 1 June 2012, on the very day that the Committee was beginning its work? What would they say to the workers of Fiji and their representatives, confronted in their country by a military government which showed no respect for the rights of workers, and for whom the only hope that remained was the ILO and the Committee on the Application of Standards? What would they say to the workers of Greece, Turkey, Colombia, Swaziland, Belarus and other countries? Should one minute's silence be requested in memory of the 25 cases that would not be examined? How would these workers understand the attack against the Committee of Experts, which was described by the IOE press release as an "legitimate request for official clarification regarding the status of the observations" of the Committee of Experts. How would they be able to understand that the attack had had the effect of preventing the list of cases from being examined?
- 215.** The Worker members recalled that since the very first interventions by the Employer members opposing the interpretation of the foundations of the right to strike by the Committee of Experts, they had emphasized that this issue lay within the sole and unique competence of the Governing Body and had proposed that the matter should be referred to it. That proposal would have allowed for the examination of the "list" submitted to the Committee by the Worker members. In addition to the five cases with double footnotes, the list had contained several cases submitted by the Employer members. It should not be forgotten that many employers' organizations had been able to exist and prosper as a result of the work of the Committee of Experts and the Conference Committee on the Application of Standards. The failure to examine the list of cases during the Conference benefited neither the workers nor the employers. Indeed, the failure of the Committee's work would benefit all those who challenged the effectiveness of the ILO and its standard-setting function.
- 216.** The Worker members stated that they would stick to the agreement reached because they had always respected the ILO and had followed the rules of the game of tripartism and social dialogue. It was crucial to continue seeking constructive solutions in spite of

⁶ The full text of the Director-General's statement can be found in the *Provisional Record* No. 7, p. 3.

divergence of views and difficult clashes. However, the work entrusted to the Governing Body needed to have a proper framework. The ILO's specificity stemmed from its tripartism which was unique among UN agencies and anything else would be inconceivable. The Committee of Experts, which had been the cornerstone of the supervisory system since 1926, retained the confidence of the Worker members, and its opinions, which although were not legally binding, still had and would always enjoy a high moral authority. As long as these opinions were not contradicted by the ICJ, they remained valid and commonly agreed upon. This essential prerequisite had to be accepted, in particular to ensure the legal certainty necessary for the proper functioning of the ILO. The criticisms addressed to the Committee of Experts with respect to their abuse of authority as regards the interpretation of Convention No. 87 in relation to the right to strike were excessive and indirectly constituted a denial of the jurisprudence of the Committee on Freedom of Association, which was itself a tripartite body. The right to strike was not only a national matter to be dealt with and assessed according to economic or time-bound considerations. Besides Conventions Nos 87 and 98, there was also the International Covenant on Economic, Social and Cultural Rights, as well as several regional texts such as the Charter of Fundamental Rights of the European Union, the European Social Charter, the Convention for the Protection of Human Rights and Fundamental Freedoms and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador").

- 217.** The Worker members requested the Committee, after consultation with the Employer members, to consider the following proposal:

In view of the fact that the Committee on the Application of Standards was not in a position to discuss any of the cases enumerated in the preliminary list and in order to avoid any further disruption of the functioning of the ILO supervisory mechanisms, the Committee requests the governments included in the preliminary list⁷ to send a report to the Committee of Experts to be examined at its next session.

- 218.** In conclusion, the Worker members underlined that it was only the ILO which allowed for a dialogue that moved forward the rights of the most vulnerable. They indicated that they would work today, tomorrow and thereafter on the observance of the agreement reached.
- 219.** The Employer members agreed with the proposal made by the Worker members provided that it was acceptable to the Government members.
- 220.** The Government member of Canada, speaking on behalf of IMEC, endorsed the proposal brought forward by the Worker members.
- 221.** The Government member of the Bolivarian Republic of Venezuela stated that he respected the position of each of the governments that featured on the preliminary list and understood the reasoning given by the Worker members. With that proposal, which had been put before the Committee at the last minute, and on the basis of all that had happened during the Committee's meetings, the urgent need to discuss and establish clear, objective and transparent standards and procedures for the Committee's methods of work had been demonstrated once again. Doing so could not be put off any longer if the credibility and seriousness of the Committee on the Application of Standards was to be ensured; otherwise, the legitimate rights of governments would continue to be eroded, in the sense that the tripartism of this Organization would be called into question even more.

⁷ See Annex 2.

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222. The Government member of Cuba, having listened to the proposal made by the Worker members, indicated that she did not oppose it, but expressed concern regarding the last minute nature of this proposal, which could not be subject to consultations among Government members. These events demonstrated the lack of transparency of this Committee's working methods and the urgent need for reform. She sought clarification as to what purpose it would serve this year for the Committee of Experts to examine the information submitted by the governments on the preliminary list.
223. The Government member of the Islamic Republic of Iran reiterated his Government's full commitment to the ILO supervisory system, including the work of this Committee, as well as the importance it attached to the fair and objective, apolitical and impartial analysis undertaken by the Committee of Experts in the context of the well-defined mandate. His Government deeply regretted the non-adoption of the final list of individual cases and the unexpected closing down of the work of this Committee. The recent apologetic events had severely hampered the ability of governments to adequately participate in the proceedings of this irreplaceable mechanism and had therefore adversely affected the fulfilment of the mandate of this Committee. This year's events would go down into the history of the ILO as unfortunate and unforgettable events tarnishing the reputation of its once highly boasted supervisory body and clearly showed the need for a proper review of the procedures on this matter by resuming the work of the Tripartite Working Group on the Working Methods of the Conference Committee established in June 2006, that had held a total of 11 fruitful meetings. Finally, the speaker trusted that this Committee could rely on the constructive collaboration of the social partners on this important matter.
224. The Government member of Brazil expressed the concern of his Government over the situation in the Committee regarding the publication of the list. He emphasized the need to preserve the supervisory system and called attention to the systemic risks of the current situation. He underlined the need to publish the list in time and reiterated GRULAC's call in this regard.
225. The representative of the Secretary-General, in response to the request from the Government member of Cuba, emphasized the importance the Committee of Experts attached to the work of the Conference Committee and the diligence with which it was taking into account the comments made by this Committee. This year's report of the Committee of Experts contained a special section on all the cases previously discussed in the Conference Committee. Given the respect and the deference the Committee of Experts had to this Committee, it was certain that they would take to heart the request by the Conference Committee to examine the cases on the preliminary list, if these reports were submitted in due time, notably by 1 September 2012. She indicated that a number of countries had already provided information that was meant to be submitted to this Committee, and some governments would need to confirm whether this was the most up-to-date information, or whether new information needed to be provided.
226. The Chairperson observed that there was no disagreement from the Government members on the proposals that appear in paragraphs 207 and 216, and as a result, these proposals were adopted.

H. Adoption of the report and closing remarks

227. The Committee's report was adopted as amended.
228. The President of the Conference said that there were clear synergies between the discussions on youth employment, the social protection floor, the fundamental principles

and rights at work and the transcendental mandate of the Committee on the Application of Standards. The Committee was a fundamental part of the ILO's regular supervisory machinery which had been of inestimable value in the development of international labour law and had given unique prestige to a supervisory system of the application of standards that was the most successful that had existed throughout history. He recalled the words of Nicolas Valticos, who had said that the ILO's founders had set up from the first days a precise mechanism to monitor compliance with the standards to be drawn up by the Organization and that it was acknowledged that the ILO's supervisory functions were the most highly developed in the international arena due to the participation of employers' and workers' organizations, and the qualities of independence and expertise of the members of the supervisory bodies. He added that, on the occasion of the 85th anniversary of the Committee, it had been emphasized that the Conference Committee still offered "a potential that has not been totally exploited. Its tripartite and universal nature, its parliamentary role and its undeniable authority confer upon it an importance that is of great significance and make it the cornerstone of the ILO supervisory system". He reaffirmed that it would be difficult to understand the functioning of labour and constitutional law without the influence of the jurisprudence of the ILO supervisory bodies. The General Survey on the ILO's fundamental Conventions, entitled "Giving globalization a human face", could be considered unprecedented in the ILO and in the world of work as it emphasized the interdependence and complementarity of the fundamental Conventions and their universal applicability, thereby offering an ILO response to globalization. However, he expressed concern at the difficulties surrounding the work of the Committee and hoped that the situation would result in reflection and that solutions would be found that would enable the social partners to find a direction in the context of their views and mandate. He made a call for the dialogue that had served the Committee with a view to preserving and strengthening a unique body in the international arena and he offered his support for any initiative that would reinforce the future work of the Committee.

229. The Worker members said that this year their concluding remarks would be different, as they would not have to evaluate the conclusions adopted by the Committee during its discussions of individual cases. They strongly deplored the serious incidents that had prevented the Committee's work from being carried out. However, a common solution had been found and would need to be given effect in good faith and rapidly. Firstly, it was now for the Governing Body to follow up rapidly the decision adopted by the Committee on 6 June 2012. The differences of views between the Worker and Employer members concerning the reports of the Committee of Experts would have to be resolved on an urgent basis, and in any case sufficiently in advance to allow the timetable of preparations to be followed for the holding of the Committee on the Application of Standards in 2013. Secondly, the 49 countries that were on the preliminary list were expected to provide a report, at the latest by 1 September 2012, containing replies to the comments of the Committee of Experts with a view to avoiding any interruption in the continuity of the supervisory bodies.
230. The Worker members recalled that the General Survey and the work of the Committee on the Recurrent Discussion were linked under the process established in the ILO Declaration on Social Justice for a Fair Globalization of 2008. The Social Justice Declaration needed to be taken seriously and was not just one more procedure. It emphasized the unique comparative advantage and the legitimacy of the ILO based on tripartism and the rich and complementary practical experience of its tripartite constituents in addressing economic and social policies affecting the lives of people. It had been adopted to reinforce the capacity of the ILO in relation to the objectives of the Declaration of Philadelphia and was based on the four strategic objectives that were of equal value. The recurrent discussion this year had addressed compliance with, promotion and implementation of the fundamental principles and rights at work, while the General Survey covered the same fundamental principles and rights at work, as set out in the eight fundamental Conventions.

In order to emphasize the links between the supervisory work entrusted to the Committee on the Application of Standards under articles 19 and 22 of the ILO Constitution, and that of the Committee on the Recurrent Discussion, the Committee on the Application of Standards had been expected to transmit common conclusions to the Committee on the Recurrent Discussion. However, the attack carried out by the Employer members against the General Survey had prevented the Committee on the Application of Standards from presenting its views to the Committee on the Recurrent Discussion, which had not therefore been able to work fully within the framework envisaged by the 2008 Declaration. That raised a political issue that the Office would have to evaluate when assessing the impact of the 2008 Declaration. They greatly regretted the impact of the incidents in the Committee on the Application of Standards on the work of the Committee on the Recurrent Discussion. And yet, it had seemed that tripartite consensus could have been achieved on a message to be transmitted to the Committee on the Recurrent Discussion. In practice, the Employer members did not appear to be opposed to Convention No. 87 as such. Their concerns were related to the fact that, in the view of the Committee of Experts and of the Worker members, the right to strike was based on the Convention. They therefore considered that the interpretation by the Committee of Experts of the right to strike was exaggerated and unjustified. Apart from that, the Convention was unchallenged and was also the basis of the right to organize of employers. Over and above that, could the Committee reaffirm that the eight fundamental Conventions were more topical than ever in the context of the global economic crisis and the other challenges affecting the well-being and livelihoods of workers in all regions? Could the members of the Committee say jointly that, in the context of the crisis and the austerity plans of many governments, it was essential for recovery measures to be designed taking into account the fundamental Conventions? Was it not possible to issue a joint invitation to the Governing Body to prepare a plan of action covering the period up to 2015 for universal ratification of the fundamental Conventions, targeting in particular the 48 member States that had not ratified all of the fundamental Conventions and encouraging States with the highest populations to ratify the eight Conventions? Could a joint request not be made for sufficient resources to ensure the provision of technical assistance by the Office on issues relating to ratification and application in practice? Would it not be possible to make a joint call for an effective increase in social dialogue on the implementation of the fundamental Conventions and for social dialogue to be more effective? The failure of the Committee's work in relation to the eight fundamental Conventions was a matter of concern for the future. The General Survey in 2013 would cover the standards on social dialogue in the public service. The General Survey for 2014 would be on wages. Would fresh difficulties arise? Would it be claimed that wages should not be protected and were no more than an economic variable in the quest for profit?

231. The Worker members, with reference to the geopolitical context of the violation of workers' rights, said that they could not remain silent concerning the cases that had not been examined by the Committee. However, they would not endeavour in a few minutes to make up for all the work that had not been carried out by the Committee. The sole objective was to do justice in a very incomplete manner to the Worker members who had come to Geneva in the hope of being able to speak about their everyday experience of repeated violations of their rights as guaranteed by ILO Conventions. They would be returning home empty handed, without being able to describe the practices in their countries in relation to the application of the Conventions ratified by their governments. They would be returning without the Committee's conclusions, even though they were often the official signal of the support of the international community and of its wish to help them with a view to bringing an end to situations of harassment, aggression, murder and the violation of their rights. The Worker members indicated that they had organized within their group, at their own initiative, an examination of some of the five so-called double footnote cases, as well as certain other very serious cases in meetings that the other groups had been free to attend. That had not constituted an examination of the cases, but

had placed the degradation in the situation of workers the world over in context. Their list of cases had included several of the 27 Member States of the EU, and particularly Spain for the Termination of Employment Convention, 1982 (No. 158), Romania for the Protection of Wages Convention, 1949 (No. 95), and Greece for the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The World of Work Report 2012, published recently by the ILO, indicated that the narrow vision among many countries in the Eurozone concerning budgetary rigour was deepening the employment crisis and could even result in a new recession in Europe. The priority given to a combination of budgetary austerity and drastic labour market reforms had resulted in a dangerous employment crisis in Europe. The European Commissioner for Employment, Social Affairs and Inclusion, Lazlo Andor, had very recently confirmed that approach when he had wondered whether the medicine proposed in many Member States of the European Union was “curing or killing the patient”. The examination of the three cases would have provided an opportunity to assess the practical impact of the reform policies adopted in many European Union countries. It would have shown whether such reform policies still allowed governments to consider that they were in compliance with ILO Conventions. The three cases concerned wages and their negotiation, measures relating to the termination of the employment relationship and their negotiation and, in more general terms, attacks on the autonomy of the social partners and the development of the decentralized bargaining model at the enterprise level. In addition to those cases, reference would have been made to government attacks against workers in the name of budgetary orthodoxy and rigour at any price in public finances. The question would have arisen of the deregulatory role of the European and international financial institutions, which believed themselves above ILO Conventions and placed governments under pressure. The ITUC’s 2012 annual report on violations of trade union rights, published a few days ago, highlighted the violations of Convention No. 87 that the Worker members had placed on their preliminary list of cases. The Committee of Experts had also commented on those cases, on some occasions emphasizing the recurrent and almost traditional nature of the failures noted.

232. The trade union rights of workers were violated throughout the world, which was why the issue arose each year of the selection of too many cases concerning Convention No. 87, without even referring to the question of strikes. The Worker members assured the Committee that they would like not to have to select so many of those cases. They referred to the situation in export processing zones, which was not limited to certain geographical areas, but applied at the sectoral level, as well as the experiments with solidarist associations in Europe which were being carried out with the sole objective of destroying the trade union movement. They also referred to the cases of Fiji and Guatemala – where physical reprisals against Worker members were to be feared – as well as those of Myanmar, Swaziland, Zimbabwe, Turkey, Algeria, Belarus (which was a historical case for the Committee, and where nothing was changing) and Colombia where, although there had been some progress, 29 trade unionists had died in 2011. They also referred to the case of Egypt and recalled that in 2011, the Ministry of Manpower and Migration had emphasized the value of social dialogue between governments, employers and workers with a view to achieving social peace and creating a climate conducive to economic development. One year later, none of that had been achieved. The Worker members also referred to the case of Mexico in relation to the Occupational Safety and Health Convention, 1981 (No. 155), which had been examined by the Committee for several years, including in 2011, where nothing had changed. They also recalled that 2011 had been spectacular in being characterized by democratic movements in the countries of the Middle East and North Africa, including Egypt, as noted previously. In the view of the Worker members, it would also have been important to highlight the persistent violations of Convention No. 111 in Saudi Arabia, which was a model for all of the Arab Emirates. Moreover, discussion of other cases would also have been fully justified. They indicated that they were still concerned at the numerous violations of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and that the case of Paraguay appeared to them to be

particularly significant in relation to violations of the rights of indigenous and tribal peoples. The Government and Employer members had accepted the idea of requesting the governments on the preliminary list to supply a report by 1 September 2012. The cases referred to previously were a sample of the most worrying cases for which a full report was required. The Worker members indicated that they had been mortified by the discussions. The preparation of a final list of cases had been impossible in 2012. The solution for the future depended on the work entrusted to the Governing Body following the agreement reached within the Committee. A solution would need to be found by March 2013.

- 233.** In conclusion, the Worker members thanked the Chairperson and Rapporteur of the Committee, the Chairperson and members of the Committee of Experts. They also thanked the Government members of the Committee for their cooperation. Without their support, it would not have been possible to reach an agreement. The result obtained was owned by the tripartite members of the Committee, and it was to be hoped that it would mark the beginning of the path towards a lasting solution. Finally, they called on the members of the Committee to approve its report so that it could be submitted to the Conference Plenary.
- 234.** The Employer members stated that this had been an unusual year for the Committee, and refuted rumours suggesting that any victory had been won. Nobody had won this year. The purpose of this Committee was to discuss individual cases on alleged violations of ratified Conventions. There had been no list of individual cases this year. The Employer members would also have liked to have cases to be heard in this Committee, such as Serbia (Convention No. 144), Uruguay (Convention No. 98) and Uzbekistan (Convention No. 182); all tripartite constituents had wanted to have cases heard. The Employer members indicated that they had won nothing and emphasized that all social partners had failed in this regard. However, they had been able to raise an important point on the work of the Committee of Experts and of the Conference Committee. Responding to earlier comments that these issues should have been raised earlier, they indicated that they had actually been doing this for many years. Referring to the discussion of the Conference Committee held in 1991, they highlighted that the Employers members, had, at that time, raised the issue and had noted that dialogue could include both criticism and praise; they had also noted that, in their view, the interpretation that Convention No. 87 included the right to strike was not correct. Similar issues had been raised again by the Employer members in both 1994 and in 1998. The reports of the Conference Committee also showed that since 2000, the Employer members had consistently stated that the Committee of Experts should not extend to definitive interpretations of ILO Conventions and that its interpretation that Convention No. 87 implicitly included the right to strike was, in their view, wrong. Convention No. 87 never contained this right.
- 235.** The Employer members concluded by thanking the Chairperson, the Representative of the Secretary-General and the Secretariat, and also thanked the Worker members, and especially the Worker spokesperson for his collaboration. The speaker further thanked the Governments for having to put up with everything, and emphasized that it had never been the intention of the Employer members to cause any inconvenience.
- 236.** The Chairperson of the Committee indicated that, with the end of its work, the Committee was entering a sabbatical period that called for reflection, planning and preparation for the future. The Committee had given indications that changes were necessary. For the first time, the examination of individual cases had been interrupted. Nevertheless, the Committee's objectives, which were the quest for peace, equality and liberty for a better world, were continuing without interruption. The difficult task of finding solutions to make a leap forward and to improve the work of the Committee was a tripartite challenge that would start immediately and it was hoped that more positive results would be achieved in the future. The eyes of the world were on the Committee, and this year it had not had any answers to offer. Countries would not be benefiting from technical assistance to improve

compliance with standards as a result of the discussions of the Committee. He emphasized that it was not the time to think in terms of winners and losers. Everybody had the responsibility to carry forward a constructive discussion on the questions that had arisen and which were reflected in the report adopted by the Committee. It would be necessary to rebuild confidence within the Committee, recuperate and improve the basis for its work and to work for the benefit of standards by pursuing the common objective of peace, social justice, decent work, sustainable enterprises and freedom at all levels. He thanked the members of the Committee, the Secretariat and the interpretation services for their cooperation and work during the session.

Geneva, 12 June 2012

(Signed) Mr Sérgio Paixão Pardo
Chairperson

Mr David Katjaimo
Reporter

Annex 1

INTERNATIONAL LABOUR CONFERENCE
101st Session, Geneva, May–June 2012

C. App./D.1

Committee on the Application of Standards

Work of the Committee

I. Introduction

This document sets out the manner in which the work of the Committee on the Application of Standards (hereafter referred to as “the Committee”) is carried out. It is submitted to the Committee for adoption when it begins its work at each session of the Conference, in particular to enable the Committee to approve the latest adjustments made in its work. The work undertaken by the Committee is reflected in an annual report. Since 2007, in response to the wishes expressed by ILO constituents, the report has been published both in the *Provisional Records* of the Conference and as a separate publication, to improve the visibility of the Committee’s work.¹

Since 2002, ongoing discussions and informal consultations have taken place concerning the working methods of the Committee. In particular, following the Governing Body’s adoption of a new strategic orientation for the ILO standards system in November 2005,² consultations began in March 2006 regarding numerous aspects of this system,³ including the question of the publication of the list of individual cases discussed by the Committee. A tripartite Working Group on the Working Methods of the Committee was set up in June 2006 and has met 11 times since then. The last meeting took place on 12 November 2011. On the basis of these consultations, and the recommendations of the Working Group, the Committee has made certain adjustments to its working methods. An overview of these adjustments is detailed below.

Since 2006, an early communication to governments (at least two weeks before the opening of the Conference) of a preliminary list of individual cases has been instituted. Since 2007, it has been the practice to follow the adoption of the list of individual cases with an informal briefing session for Governments, hosted by the Employer and Worker Vice-Chairpersons, to explain the criteria used for the selection of cases. Changes have been made to the organization of work so that the discussion of individual cases could begin on the Monday morning of the second week, and improvements have been introduced in the preparation and adoption of the conclusions relating to cases. In June 2008, measures were adopted to address those cases in which Governments were registered

¹ The reports thus published can be found at: http://www.ilo.org/global/standards/WCMS_165970/lang--en/index.htm.

² See documents GB.294/LILS/4 and GB.294/9.

³ See para. 22 of document GB.294/LILS/4.

and present at the Conference, but chose not to appear before the Committee; the Committee now has the ability to discuss the substance of such cases. Specific provisions have also been adopted concerning the respect of parliamentary rules of decorum.⁴

In November 2010, the Working Group discussed the possibility for the Committee to discuss a case of a government which is not accredited or registered to the Conference.

Since June 2010, important arrangements have been implemented to improve time management.⁵ In addition, modalities have been established for discussion of the General Survey in light of the parallel discussion of the recurrent report on the same subject under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization.

Since the 100th Session (June 2011) of the Conference, the tripartite Working Group met once in November 2011 and reached the following main conclusions:

- (i) Adoption of the list of individual cases: It was agreed that the Employer and Worker spokespersons would meet informally before the 101st Session of the Conference to elaborate a process to improve the adoption of the list and would report on the outcome of their consultations.
- (ii) Balance in the types of Conventions among the individual cases selected by the Conference Committee: The importance of this issue was reaffirmed, notwithstanding the difficulties in achieving diversity in the types of Conventions selected for discussion. The issue would be kept under review, including by exploring the option of establishing a quota system which could mandate the selection of cases per each type of Convention.
- (iii) Possibility for the Conference Committee to discuss cases of progress: It was recalled that there had been long-standing consensus on the inclusion of a case of progress in the Conference Committee's report, but that the practice had been temporarily suspended in 2008 due to concerns about time management. The issue would be kept under review.
- (iv) Possible improvements in the interaction between the discussion on the General Survey by the Committee on the Application of Standards and the discussion on the recurrent item report by the Committee for the Recurrent Discussion: It was recognized that until the new discussion modalities which had been agreed upon took effect in 2014,⁶ the process followed during the 100th Session (June 2011) should be continued during the 101st Session (May–June 2012). This process had proved to be satisfactory, although a time management question might arise in light of the comprehensive nature of this year's General Survey, which covers the application of the eight fundamental Conventions.

⁴ See below, Part V, D, footnote 13 and Part V, F.

⁵ See Part V, B – Supply of information and automatic registration – and E.

⁶ At the 309th Session of the Governing Body (November 2010), the Steering Group on the Follow-up to the Social Justice Declaration took the view that the review of the General Survey by the Conference Committee on the Application of Standards should take place one year in advance of the recurrent discussion by the Conference. This required a shift from the existing arrangement under which the General Survey and the recurrent discussion report on the same theme were submitted to the Conference in the same year. As a transition measure, the Governing Body decided in March 2011 that no General Survey on instruments related to employment should be undertaken for the purposes of the next recurrent discussion on employment that should take place in 2014.

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- (v) Automatic registration of individual cases: modalities for selecting the starting letter for the registration of cases: There was consensus to continue the experiment begun in June 2011 when the Committee had used the A + 5 model to undertake the automatic registration of individual cases based on a rotating alphabetical system, to ensure a genuine rotation of countries on the list.
 - (vi) Other questions: the question of the impact of the deliberations of the Working Party of the Governing Body and the International Labour Conference on the work of the tripartite Working Group: It was recalled that the tripartite Working Group reported to the Conference Committee on the Application of Standards. However, the work of the Conference Committee could also be influenced by the Working Party of the Governing Body. In such circumstances, it was decided that although there was no need for the tripartite Working Group to meet in March 2012, it might be useful to retain the option for it to meet in the future, to follow-up as necessary upon questions raised by the Working Party.

II. Terms of reference of the Committee

Under its terms of reference as defined in article 7 of the Standing Orders of the Conference, the Committee is called upon to consider:

- (a) the measures taken by Members to give effect to the provisions of Conventions to which they are parties and the information furnished by Members concerning the results of inspections;
- (b) the information and reports concerning Conventions and Recommendations communicated by Members in accordance with article 19 of the Constitution;
- (c) the measures taken by Members in accordance with article 35 of the Constitution.

III. Working documents

A. Report of the Committee of Experts

The basic working document of the Committee is the report of the Committee of Experts on the Application of Conventions and Recommendations (Report III (Parts 1A and B)), printed in two volumes.

Volume A of this report contains, in Part One, the General Report of the Committee of Experts (pages 5–41), and in Part Two, the observations of the Committee concerning the sending of reports, the application of ratified Conventions and the obligation to submit the Conventions and Recommendations to the competent authorities in member States (pages 43–968). At the beginning of the report there is a list of Conventions by subject (pages v–x), an index of comments by Convention (pages xi–xx), and by country (pages xxi–xxx).

It will be recalled that, as regards ratified Conventions, the work of the Committee of Experts is based on reports sent by the governments.⁷

Certain observations carry footnotes asking the government concerned to report in detail, or earlier than the year in which a report on the Convention in question would normally be due, and/or to supply full particulars to the Conference.⁸ The Conference may also, in accordance with its usual practice, wish to receive information from governments on other observations that the Committee of Experts has made.

In addition to the observations contained in its report, the Committee of Experts has, as in previous years, made direct requests which are communicated to governments by the Office on the Committee's behalf.⁹ A list of these direct requests can be found at the end of Volume A (see Appendix VII, pages 1012–1024).

The Committee of Experts refers in its comments to cases in which it expresses its satisfaction or interest at the progress achieved in the application of the respective Conventions. In 2009, 2010 and again in 2011, the Committee clarified the general approach in this respect that has been developed over the years.¹⁰

In accordance with the decision taken in 2007, the Committee of Experts may also decide to highlight cases of good practices to enable governments to emulate these in advancing social progress and to serve as a model for other countries to assist them in the implementation of ratified Conventions.¹¹ At its session of November–December 2009, the Committee of Experts has provided further explanations on the criteria to be followed in identifying cases of good practices by clarifying the distinction between these cases and cases of progress. No specific cases of good practices have been identified by the Committee of Experts this year.

Furthermore, the Committee of Experts has continued to highlight the cases for which, in its view, technical assistance would be particularly useful in helping member States to address gaps in law and in practice in the implementation of ratified Conventions, following-up on the practice established by the Conference Committee in this regard since 2005.¹²

Volume B of the report contains the General Survey by the Committee of Experts, which this year concerns the eight fundamental Conventions in light of the 2008 Declaration on Social Justice for a Fair Globalization, including the Forced Labour Convention, 1930 (No. 29), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Equal Remuneration Convention, 1951 (No. 100), the Abolition of Forced Labour Convention, 1957 (No. 105), the Discrimination (Employment

⁷ See paras 23–27 of the Committee of Experts' General Report (101st Session of the International Labour Conference, Report III (Part 1A)).

⁸ See paras 52–54 of the Committee of Experts' General Report.

⁹ See para. 44 of the Committee of Experts' General Report.

¹⁰ See paras 59, 60 and 63 of the Committee of Experts' General Report. See also Appendix II of the present document.

¹¹ See paras 65–67 of the Committee of Experts' General Report.

¹² See paras 68–69 of the Committee of Experts' General Report.

and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182).

B. Summaries of reports

At its 267th Session (November 1996), the Governing Body approved new measures for rationalization and simplification of reporting. In this connection, it adopted changes along the following lines:

- (i) information concerning reports supplied by governments on ratified Conventions (articles 22 and 35 of the Constitution), which now appears in simplified form in two tables annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A) (Appendices I and II, pages 971–986);
- (ii) information concerning reports supplied by governments as concerns General Surveys under article 19 of the Constitution (this year concerning the fundamental Conventions) appears in simplified form in a table annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B) (Appendix – pages 397–400);
- (iii) summary of information supplied by governments on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference (article 19 of the Constitution), which now appears as Appendices IV, V and VI to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A) (pages 998–1011).

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

C. Other information

In addition, as and when relevant information is received by the secretariat, documents are prepared and distributed containing the substance of:

- (i) supplementary reports and information which reached the International Labour Office between the meetings of the Committee of Experts and the Conference Committee;
- (ii) written information supplied by governments to the Conference Committee in reply to the observations made by the Committee of Experts.

IV. Composition of the Committee, right to participate in its work and voting procedure

These questions are regulated by the Standing Orders concerning committees of the Conference, which may be found in section H of Part II of the Standing Orders of the International Labour Conference.

Each year, the Committee elects its Chairperson and Vice-Chairpersons as well as its Reporter.

V. Schedule of work

A. General discussion

1. *General Survey.* In accordance with its usual practice, the Committee will discuss the General Survey of the Committee of Experts, Report III (Part 1B). This year, for the third time, the subject of the General Survey has been aligned with the strategic objective that will be discussed in the context of the recurrent report under the follow-up to the 2008 Social Justice Declaration. As a result, the General Survey concerns the eight ILO fundamental Conventions and will be discussed by the Committee on the Application of Standards, while the recurrent report on fundamental principles and rights at work will be discussed by the Committee for the Recurrent Discussion on Fundamental Principles and Rights. In order to ensure the best interaction between the two discussions, and in the light of the experience of last year, it is proposed to maintain the adjustments made in 2011 to the working schedule for the discussion of the General Survey – they are reflected in the document C. App./D.0. As in June 2011, the Selection Committee is expected to take a decision to allow the official transmission of the possible output of the discussion of the Committee on the Application of Standards to the Committee for the Recurrent Discussion on Fundamental Principles and Rights. In addition, the Officers of the Committee on the Application of Standards could present information regarding their discussion of the General Survey to the Committee for the Recurrent Discussion on Fundamental Principles and Rights.

2. *General questions.* The Committee will also hold a brief general discussion which is primarily based on the General Report of the Committee of Experts, Report III (Part 1A) (pages 5–41).

B. Discussion of observations

In Part Two of its report, the Committee of Experts makes observations on the manner in which various governments are fulfilling their obligations. The Conference Committee then discusses some of these observations with the governments concerned.

Cases of serious failure by member States to respect their reporting and other standards-related obligations¹³

Governments are invited to supply information on cases of serious failure to respect reporting or other standards-related obligations for stated periods. These cases are considered in a single sitting. Governments may remove themselves from this list by submitting the required information before the sitting concerned. Information received both before and after this sitting will be reflected in the report of the Conference Committee.

¹³ Formerly “automatic” cases (see *Provisional Record* No. 22, International Labour Conference, 93rd Session, June 2005).

Individual cases

A draft list of observations (individual cases) regarding which Government delegates will be invited to supply information to the Committee is established by the Committee's Officers. The draft list of individual cases is then submitted to the Committee for approval. In the establishment of this list, a need for balance among different categories of Conventions as well as geographical balance is considered. In addition to the abovementioned considerations on balance, criteria for selection have traditionally included the following elements:

- the nature of the comments of the Committee of Experts, in particular the existence of a footnote (see Appendix I);
- the quality and scope of responses provided by the government or the absence of a response on its part;
- the seriousness and persistence of shortcomings in the application of the Convention;
- the urgency of a specific situation;
- comments received by employers' and workers' organizations;
- 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);
- the discussions and conclusions of the Conference Committee of previous sessions and, in particular, the existence of a special paragraph;
- the likelihood that discussing the case would have a tangible impact.

Moreover, there is also the possibility of examining one case of progress as was done in 2006, 2007 and 2008.

Supply of information ¹⁴ and automatic registration

1. *Oral replies.* The Governments which are invited to provide information to the Conference Committee are requested to take note of the preliminary list and prepare for the eventuality that they may be called upon to appear before the Conference Committee. Cases included in the final list will be automatically registered and evenly distributed over the second week by the Office, on the basis of a rotating alphabetical system, following the French alphabetical order. This year, the registration will begin with countries with the letter "K", thus continuing the experiment started in 2011.

Cases will be divided into two groups: the first group of countries to be registered following the above alphabetical order will consist of those cases in which a double footnote was inserted by the Committee of Experts and are found in paragraph 53 of that Committee's report. The second group of countries will constitute all the other cases on the final list and they will be registered by the Office also following the abovementioned alphabetical order. Representatives of Governments *which are not members* of the Committee are kept informed of the agenda of the Committee and of the date on which they may be heard:

¹⁴ See also section E below on time management.

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- (a) through the *Daily Bulletin*;
 - (b) by means of letters sent to them individually by the Chairperson of the Committee.

2. *Written replies.* The written replies of Governments – which are submitted to the Office prior to oral replies – are summarized and reproduced in the documents which are distributed to the Committee (see Part III, C and Part V, E). These written replies are to be provided at least two days before the discussion of the case. *They serve to complement the oral reply and any other information already provided by the Government, without duplicating them.* The total number of pages is not to exceed five pages.

Adoption of conclusions

The conclusions regarding individual cases are proposed by the Chairperson of the Committee, who should have sufficient time for reflection to draft the conclusions and to hold consultations with the Reporter and the Vice-Chairpersons before proposing the conclusions to the Committee. The conclusions should take due account of the elements raised in the discussion and information provided by the Government in writing. The conclusions should be adopted within a reasonable time limit after the discussion of the case and should be succinct.

C. Minutes of the sittings

No minutes are published for the general discussion and the discussion of the General Survey. Minutes of sittings at which Governments are invited to respond to the comments of the Committee of Experts will be produced by the secretariat in English, French and Spanish. It is the Committee's practice to accept corrections to the minutes of previous sittings prior to their approval by the Committee, which should take place 36 hours at the most after the minutes become available. In order to avoid delays in the preparation of the report of the Committee, no corrections may be accepted once the minutes have been approved.

The minutes are a summary of the discussions and are not intended to be a verbatim record. Speakers are therefore requested to restrict corrections to the elimination of errors in the report of their own statements, and not to ask to insert long additional passages. It would be helpful to the secretariat in ensuring the accuracy of the minutes if, wherever possible, delegates would hand in a written copy of their statements to the secretariat.

D. Special problems and cases

For cases in which governments appear to encounter serious difficulties in discharging their obligations, the Committee decided at the 66th Session of the Conference (1980) to proceed in the following manner:

1. *Failure to supply reports and information.* The various forms of failure to supply information will be expressed in narrative form in separate paragraphs at the end of the appropriate sections of the report, and indications will be included concerning any explanations of difficulties provided by the governments concerned. The following criteria were retained by the Committee for deciding which cases were to be included:

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- None of the reports on ratified Conventions has been supplied during the past two years or more.
 - First reports on ratified Conventions have not been supplied for at least two years.
 - None of the reports on unratified Conventions and Recommendations requested under article 19, paragraphs 5, 6 and 7, of the Constitution has been supplied during the past five years.
 - No indication is available on whether steps have been taken to submit the Conventions and Recommendations adopted during the last seven sessions of the Conference ¹⁵ to the competent authorities, in accordance with article 19 of the Constitution.
 - No information has been received as regards all or most of the observations and direct requests of the Committee of Experts to which a reply was requested for the period under consideration.
 - 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 Office under articles 19 and 22 have been communicated.
 - The government has failed, despite repeated invitations by the Conference Committee, to take part in the discussion concerning its country. ¹⁶

¹⁵ This year the sessions involved would be the 90th (2002) to 99th (2010).

¹⁶ In conformity with the decision taken by the Committee at the 73rd Session of the Conference (1987), as amended at the 97th Session of the Conference (2008), for the implementation of this criterion, the following measures will be applied:

- In accordance with the usual practice, after having established the list of cases regarding which Government delegates might be invited to supply information to the Committee, the Committee shall invite the Governments of the countries concerned in writing, and the *Daily Bulletin* shall regularly mention these countries.
- Three days before the end of the discussion of individual cases, the Chairperson of the Committee shall request the Clerk of the Conference to announce every day the names of the countries whose representatives have not yet responded to the Committee's invitation, urging them to do so as soon as possible.
- On the last day of the discussion of individual cases, the Committee shall deal with the cases in which Governments have not responded to the invitation. Given the importance of the Committee's mandate, assigned to it in 1926, to provide a tripartite forum for dialogue on outstanding issues relating to the application of ratified international labour Conventions, a refusal by a Government to participate in the work of the Committee is a significant obstacle to the attainment of the core objectives of the International Labour Organization. For this reason, the Committee may discuss the substance of the cases concerning Governments which are registered and present at the Conference, but which have chosen not to be present before the Committee. The debate which ensues in such cases will be reflected in the appropriate part of the report, concerning both individual cases and participation in the work of the Committee. In the case of governments that are not present at the Conference, the Committee will not discuss the substance of the case, but will bring out in the report the importance of the questions raised. In both situations, a particular emphasis will be put on steps to be taken to resume the dialogue.

2. *Application of ratified Conventions.* The report will contain a section entitled “Application of ratified Conventions”, in which the Committee draws the attention of the Conference to:

- cases of progress (see Appendix II), where governments have introduced changes in their law and practice in order to eliminate divergences previously discussed by the Committee;
- discussions it had regarding certain cases, which are mentioned in special paragraphs of the report;
- continued failure over several years to eliminate serious deficiencies in the application of ratified Conventions which it had previously discussed.

E. Time management

- Every effort will be made so that sessions start on time and the schedule is respected.
- Maximum speaking time for speakers are as follows:
 - Fifteen minutes for the spokespersons of the Workers’ and the Employers’ groups, as well as the Government whose case is being discussed.
 - Ten minutes for the Employer and Worker members, respectively, from the country concerned to be divided between the different speakers of each group.
 - Ten minutes for Government groups.
 - Five minutes for the other members.
 - Concluding remarks are limited to ten minutes for spokespersons of the Workers’ and the Employers’ groups, as well as the Government whose case is being discussed.
- However, the Chairperson, in consultation with the other Officers of the Committee, could decide on reduced time limits where the situation of a case would warrant it, for instance, where there was a very long list of speakers.
- These time limits will be announced by the Chairperson at the beginning of each sitting and will be strictly enforced.
- During interventions, a screen located behind the Chairperson and visible by all speakers will indicate the remaining time available to speakers. Once the maximum speaking time has been reached, the speaker will be interrupted.
- In view of the above limits on speaking time, Governments whose case is to be discussed are invited to complete the information provided, where appropriate, by a written document, not longer than five pages, to be submitted to the Office at least two days before the discussion of the case (see also section B above).
- Before the discussion of each case, the Chairperson will communicate the list of speakers already registered.
- In the eventuality that discussion on individual cases is not completed by the final Friday, there is a possibility of a Saturday sitting at the discretion of the Officers.

**F. Respect of rules of decorum and
role of the Chairperson**

All delegates have an obligation to the Conference to abide by parliamentary language and by the generally accepted procedure. Interventions should be relevant to the subject under discussion and should avoid references to extraneous matters.

It is the role and task of the Chairperson to maintain order and to ensure that the Committee does not deviate from its fundamental purpose to provide an international tripartite forum for full and frank debate within the boundaries of respect and decorum essential to making effective progress towards the aims and objectives of the International Labour Organization.

Appendix I

Criteria for footnotes ¹

At its November–December 2005 session, in the context of examining its working methods, and in response to the requests coming from members of the Committee for clarification concerning the use of footnotes, the Committee of Experts adopted the following criteria (paragraphs 36 and 37):

The Committee wishes to describe its approach to the identification of cases for which it inserts special notes by highlighting the basic criteria below. In so doing, the Committee makes three general comments. First, these criteria are indicative. In exercising its discretion in the application of these criteria, the Committee may also have regard to the specific circumstances of the country and the length of the reporting cycle. Second, these criteria are applicable to cases in which an earlier report is requested, often referred to as a “single footnote”, as well as to cases in which the government is requested to provide detailed information to the Conference, often referred to as “double footnote”. The difference between these two categories is one of degree. The third comment is that a serious case otherwise justifying a special note to provide full particulars to the Conference (double footnote) might only be given a special note to provide an early report (single footnote) in cases where there has been a recent discussion of that case in the Conference Committee on the Application of Standards.

The criteria to which the Committee will have regard are the existence of one or more of the following matters:

- the seriousness of the problem; in this respect, the Committee emphasizes that an important consideration is the necessity to view the problem in the context of a particular Convention and to take into account matters involving fundamental rights, workers’ health, safety and well-being as well as any adverse impact, including at the international level, on workers and other categories of protected persons;
- the persistence of the problem;
- the urgency of the situation; the evaluation of such urgency is necessarily case-specific, according to standard human rights criteria, such as life-threatening situations or problems where irreversible harm is foreseeable; and
- the quality and scope of the government’s response in its reports or the absence of response to the issues raised by the Committee, including cases of clear and repeated refusal on the part of a State to comply with its obligations.

At its 76th Session, the Committee decided that the identification of cases in respect of which a special note (double footnote) is to be attributed will be a two-stage process: the expert initially responsible for a particular group of Conventions may recommend to the Committee the insertion of special notes; in light of all the recommendations made, the Committee will take a final, collegial decision on all the special notes to be inserted, once it has reviewed the application of all the Conventions.

¹ See paras 47, 48, 49, 50 and 51 of the Committee of Experts’ General Report.

Appendix II

Criteria for identifying cases of progress ¹

At its 80th Session (November–December 2009), at its 81st Session (November–December 2010), and at its 82nd Session (November–December 2011), the Committee made the following clarifications on the general approach developed over the years for the identification of cases of progress:

- (1) The expression by the Committee of interest or satisfaction does not mean that it considers that the country in question is in general conformity with the Convention, and in the same comment **the Committee may express its satisfaction or interest at a specific issue while also expressing regret concerning other important matters** which, in its view, have not been addressed in a satisfactory manner.
- (2) The Committee wishes to emphasize that **an indication of progress is limited to a specific issue related to the application of the Convention and the nature of the measure adopted by the government concerned.**
- (3) The Committee exercises its discretion in noting progress, taking into account the particular nature of the Convention and the specific circumstances of the country.
- (4) The expression of progress can refer to different kinds of measures relating to national legislation, policy or practice.
- (5) If the satisfaction or interest relates to the adoption of legislation or to a draft legislation, the Committee may also consider appropriate follow-up measures for its practical application.
- (6) In identifying cases of progress, the Committee takes into account both the information provided by governments in their reports and the comments of employers' and workers' organizations.

Since first identifying cases of **satisfaction** in its report in 1964, ² the Committee has continued to follow the same general criteria. The Committee expresses satisfaction in cases in which, **following comments it has made on a specific issue, governments have taken measures through either the adoption of new legislation, an amendment to the existing legislation or a significant change in the national policy or practice, thus achieving fuller compliance with their obligations under the respective Conventions.** In expressing its satisfaction, the Committee indicates to governments and the social partners that it considers the specific matter resolved. The reason for identifying cases of satisfaction is twofold:

- to place on record the Committee's appreciation of the positive action taken by governments in response to its comments; and
- to provide an example to other governments and social partners which have to address similar issues.

Within cases of progress, the distinction between cases of satisfaction and cases of **interest** was formalized in 1979. ³ In general, cases of interest **cover measures that are sufficiently advanced to justify the expectation that further progress would be achieved in the future and regarding which the Committee would want to continue its dialogue with the government and the social partners.** In comparison to cases of satisfaction, cases of interest relate to progress, which is less significant. The Committee's practice has developed to such an extent that cases in

¹ See paras 59, 60 and 63 of the Committee of Experts' General Report.

² See para. 16 of the report of the Committee of Experts submitted to the 48th Session (1964) of the International Labour Conference.

³ See para. 122 of the report of the Committee of Experts submitted to the 65th Session (1979) of the International Labour Conference.

which it expresses interest may encompass a variety of measures. The paramount consideration is that the measures contribute to the overall achievement of the objectives of a particular Convention. This may include:

- draft legislation that is before parliament, or other proposed legislative changes forwarded or available to the Committee;
- consultations within the government and with the social partners;
- new policies;
- the development and implementation of activities within the framework of a technical cooperation project or following technical assistance or advice from the Office;
- judicial decisions, according to the level of the court, the subject matter and the force of such decisions in a particular legal system, would normally be considered as cases of interest unless there is a compelling reason to note a particular judicial decision as a case of satisfaction; or
- the Committee may also note as cases of interest the progress made by a State, province or territory in the framework of a federal system.

Annex 2

Preliminary list of possible cases to be examined by the Committee on the Application of Standards at the ILC in June 2012

	Country	Convention No.
1	Algeria	87
2	Bangladesh	87
3	Belarus	87
4	Botswana	151
5	Cambodia	87
6	Canada	87
7	China - Hong Kong Special Administrative Region	97
8	Colombia	87
9	Costa Rica	98
10	Cuba	87
11	Democratic Republic of the Congo	29
12	Dominican Republic*	111
13	Egypt	87
14	Ethiopia	87
15	Fiji*	87
16	Georgia	98
17	Greece	98
18	Guatemala*	87
19	Guinea	149
20	Guyana	142
21	Honduras	87
22	Iceland	159
23	India	122
24	Indonesia	87
25	Islamic Republic of Iran	95
26	Iraq	98
27	Republic of Korea	111
28	Kuwait	29
29	Malawi	129
30	Mauritania*	81
31	Mauritius	160
32	Mexico	155
33	Myanmar	87
34	Nigeria	98
35	Pakistan	138

	Country	Convention No.
36	Paraguay	169
37	Romania	95
38	Saudi Arabia	111
39	Senegal*	182
40	Serbia	144
41	Spain	158
42	Sri Lanka	100
43	Swaziland	87
44	Syrian Arab Republic	105
45	Turkey	87
46	United Kingdom	122
47	Uruguay	98
48	Uzbekistan	182
49	Zimbabwe	87

* The double footnoted countries are in para. 53 of the General Report of the Committee of Experts 101 (III 1(A)).

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