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19

PART ONE

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

Report of the Committee on the Application of Standards

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PART ONE

GENERAL REPORT

A. Introduction

1. In accordance with article 7 of the Standing Orders, the Conference set up a Committee to consider and report on item III on the agenda: "Information and reports on the application of Conventions and Recommendations". The Committee was composed of 227 members (122 Government members, 33 Employer members and 72 Worker members). It also included 14 Government deputy members, 54 Employer deputy members and 217 Worker deputy members. In addition, 29 international non-governmental organizations were represented by observers. [1]

2. The Committee elected its Officers as follows:

Chairperson:	Ms Noemí Rial (Government member, Argentina)
Vice-Chairpersons:	Mr Edward E. Potter (Employer member, United States); and Mr Luc Cortebeeck (Worker member, Belgium)
Reporter:	Mr Jinno Nkhambule (Government member, Swaziland)

3. The Committee held 15 sittings.

4. In accordance with its terms of reference, the Committee considered the following: (i) information supplied under article 19 of the Constitution on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference; (ii) reports supplied under articles 22 and 35 of the Constitution on the application of ratified Conventions; and (iii) reports requested by the Governing Body under article 19 of the Constitution on the Labour Clauses (Public Contracts) Convention, 1949 (No. 94), and Recommendation No. 84. [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]

Homage to Mr Janek Kuczkiewicz

5. The Committee set aside time to pay tribute to Mr Janek Kuczkiewicz, adviser to the Workers' group, who had passed away in April 2008. In taking the floor, the representative

[1] For changes in the composition of the Committee, refer to reports of the Selection Committee, *Provisional Records* Nos 6-6H. For the list of international non-governmental organizations, see *Provisional Record* No. 5-1.

[2] Report III to the International Labour Conference – Part 1A: Report of the Committee of Experts on the Application of Conventions and Recommendations; Part 1A(2): Information document on ratifications and standards-related activities; Part 1B: General Survey on labour clauses in public contracts.

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

of the Secretary-General, the Chairperson of the Committee of Experts, the Chairperson of the Committee on the Application of Standards, the Worker and Employer members, as well as individual members of the Committee, particularly from the Workers' group, all described the great loss and immense sadness that they felt at his passing. They described his devotion to social justice and progress, fundamental workers' rights, the trade union movement and the ILO. They recalled his perseverance and integrity in fighting for the cause of human rights, for example in Poland in the days of Solidarnosc, in combating Apartheid in South Africa and particularly his crucial contribution to the work of the Commission of Inquiry on Myanmar. They evoked his great courage in overcoming disability and weak health, his warm and open character to all his colleagues, whatever their beliefs, and his determination through his various hobbies to live life to the full. They sent their deeply felt condolences to his family and friends, and particularly to his daughter who was present at the sitting, and emphasized that he would always be remembered by all those who had been fortunate enough to come into contact with him.

Work of the Committee

6. 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.

7. The second part of the general discussion dealt with the General Survey concerning the labour clauses in public contracts carried out by the Committee of Experts. It is summarized in section C of Part One of this report.

8. 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.

9. The Committee held a special sitting to consider the application of the Forced Labour Convention, 1930 (No. 29), by Myanmar. A summary of the information submitted by the Government, the discussion and conclusion is contained in Part Three of this report.

10. During its second week the Committee considered 23 individual cases from the final list relating to the application of various Conventions. In addition, the Government of Colombia appeared voluntarily before the Committee The subsequent discussions on the individual cases and on Colombia could be found in Part Two of the Committee's report. The examination of the individual cases was based principally on the observations contained in the Committee of Experts' report and the oral and written explanations provided by the governments concerned. As usual, the Committee also referred to its discussions in previous years, comments received from employers' and workers' organizations and, where appropriate, reports of other supervisory bodies of the ILO and other international organizations. Time restrictions once again required the Committee to

[4] Work of the Committee on the Application of Standards, ILC, 97th Session, C.App/D.1.

select a limited number of individual cases among the Committee of Experts' observations. With reference to its examination of these cases, the Committee reiterated the importance it placed on the role of the tripartite dialogue in its work and trusted that the governments of all those countries selected would make every effort to take the measures necessary to fulfil the obligations they had undertaken by ratifying Conventions. A summary of the information submitted by Governments, the discussions, and conclusions of the examination of individual cases were contained in Part Two of this report.

11. With regard to the adoption of the list of individual cases to be discussed by the Committee in the second week, the representative of the Secretary-General announced that the Officers of the Committee had made available a provisional final version (document D.4/Add.1) of the preliminary list of individual cases, which had been sent on 12 May 2008 to all member States. The Employers' and Workers' groups of the Committee had reserved the right to complement this list with a maximum of two additional cases. The Committee intended to examine the cases of 23 member States, in addition to the Special Sitting concerning Myanmar (Convention No. 29). The Committee subsequently adopted a final list (document D.4/Add.1(Rev.)), which contained the same cases as in the provisional final list.

12. Following the adoption of the list by the Committee, the Worker members indicated that the list of individual cases was not exactly as they would have wished. The preparation of the list of cases was not purely opportunistic, nor the occasion to settle old scores, particularly at the political level. The criteria to be taken into account when the list of cases was prepared were: the types of Convention, geographical balance, the nature of the comments of the Committee of Experts, the existence of footnotes, the quality and clarity of replies provided by governments, the urgency of situations and the comments of workers' and employers' organizations. It was, however, necessary to emphasize that it would not be appropriate to formally include a list of criteria in the working methods, as this could lead to the implementation of procedures intended precisely to avoid using these criteria.

13. In 2007, the Worker members, with reference to the procedure for the communication of the preliminary list of individual cases before the Conference, had expressed concern at the possibility that certain countries might reach agreements to the detriment of the system. The difficulties faced, once again this year, in the preparation of the list of individual cases gave grounds for reflecting seriously on the perverse effects of working methods which were originally intended only to improve the work of the Conference Committee. The general climate was becoming increasingly tense, which was regrettable for the future of the Committee's work, especially for the credibility of the supervisory system for standards, the survival of the concept of freedom of association and, over and above that, of tripartism, the cornerstone of the ILO. There would now be a persistent concern in relation to the attitude of certain governments made aware of the inclusion of their name on the preliminary list. The Worker members had indicated that they had been informed of manoeuvres of intimidation and blackmail. In contrast, other governments preferred not to take part in the discussion, thereby endangering the functioning of the supervisory system which was founded on tripartite dialogue. Yet, to enter into dialogue involved discussion with the other members of the Conference Committee. It was a question of learning and, in the final instance, of improving the conditions of workers throughout the world.

14. Even more serious and intolerable was the veto used this year by certain Employers against the inclusion in the list of cases of one country that should have been there, based on the promises made in the record of proceedings of the Committee in 2007. This was the individual case of Colombia. In 2007, the Employer members had accepted that the case of Colombia "could be discussed again in the future if assassinations and impunity continued". Taking account of the current anti-trade union climate, accepting that the case

would not be discussed would have definitively undermined the trade union movement in Colombia. The case of Colombia had become, in the same way as Myanmar, one of the most controversial cases of the Conference Committee. The murders of trade unionists continued with total impunity. To be able to continue debating the situation in Colombia and bring the full severity of the facts to the attention of the entire world, an innovative solution had once again been found. After offering a high-level tripartite mission in 2005, after offering a tripartite agreement in 2006, and after insisting that a report was accepted in 2007, the Colombian Government had offered this year to appear voluntarily before the Committee to be heard in the framework of a "quasi" special sitting, through which it intended to preserve the initiative and control. As it was essential to provide Colombian workers with the help they needed, the Worker members had not lingered on legal or institutional arguments concerning the admissibility of this request. The case of Colombia had therefore been examined outside the context of the list. It was, nevertheless, necessary to be clear; the solution agreed to had been the result of an acceptable compromise. But naivety should be avoided. This acceptance had been exceptional and was justified by the will to find an honourable solution to a problem which, in practice, had not had its origins in the attitude of the Worker members. In no event should this solution, as agreed, constitute a precedent for the future. As the Chairperson had clearly stated, "This way of proceeding on Colombia should not create a precedent." Furthermore, it went without saying that the report of the discussions concerning the case of Colombia would not only cover the entire debate, but would also clearly show the conclusions, in the same manner as any case which featured on the list. With regard to tripartite agreements reached outside the Conference, time should be allowed in future to evaluate the results of such agreements.

15. With regard to the follow-up of agreements reached during the Conference, the Worker members considered that it was appropriate to recall the case of Argentina, which was unfortunately not unique. It was essential to underline that, since the last session of the Conference, nothing had been done in Argentina in response to the conclusions formulated in June 2007 by the Conference Committee. The Government had clearly indicated that it would send a report providing comprehensive answers to all the questions concerning, in particular, the application of Convention No. 87, including the questions raised in preceding years with regard to trade union legislation. The observation made in 2008 by the Committee of Experts unfortunately showed that, although the Government had benefited from the Office's technical assistance on several occasions and much time had elapsed, no progress had yet been made. With regard to the Philippines, the situation also remained very grave. The case had been examined in 2007 as a case of serious failure of application. Again this year, the observation of the Committee of Experts confirmed that the Government persisted in not taking into account the successive conclusions formulated by the Conference Committee for many years. The Conference Committee had requested the Government to accept a high-level ILO mission in order to reach a better understanding of all aspects of the case, but in vain. The Government had taken no steps to eradicate violence against trade unionists. Violence and the murder of trade unionists continued. In March 2008, a union official had been killed in the province of Cavite and a journalist had been killed in April this year. In total, more than 56 people had been killed under the present Government. The Government should be urged to make every effort so that the ILO could help in the application of Convention No. 87 in law and in practice. With regard to the situation in the Bolivarian Republic of Venezuela, it was a matter for regret that progress had not been sufficiently satisfactory since the 2007 session of the Conference. The Government had not respected any of the commitments made with regard to reforming the Organic Labour Act to bring it into conformity with Convention No. 87; neither had it improved the functioning of social dialogue. Moreover, it had not taken steps to eliminate the interference of the National Electoral Board in trade union elections.

16. Preparing the list of individual cases required a choice to be made between cases which were always, by their nature, worrying and worthy of interest because they concerned the fundamental rights of workers. The Worker members said that they welcomed the limited number of footnotes proposed by the Committee of Experts, which left the Employer and Worker members more scope to choose the cases that worried them most, and also enabled the Conference Committee to make good use within the international community of the broad mandate that it enjoyed, with the help of the Committee of Experts and the ILO. The Worker members emphasized that they were committed to making every effort to take footnotes into account in preparing the list of cases, which should not exclude the possibility in future of a particular country being called upon in relation to the application of a Convention other than that mentioned in a footnote.

17. This year, it had been difficult for the Worker members to decide whether Indonesia should be included on the list for Convention No. 105 or Convention No. 182. Convention No. 105 had been chosen. The decision to restrict to 25 the number of individual cases still caused lively discussions among the Worker members. A number of cases could have featured in the list. The Worker members said they would have liked to discuss the case of Cambodia for Convention No. 87 which had been discussed in 2007. Many acts of violence, brutality, intimidation and shootings against trade union leaders and members were still occurring. The Government had not responded to the observations made by either the Committee of Experts or the International Trade Union Confederation (ITUC). Measures should have been taken to carry out in-depth and independent investigations into the murders of Cambodian trade union leaders. Continued vigilance was required in monitoring the case and any progress made.

18. They would also have liked to have discussed Costa Rica for Convention No. 98. The case of Costa Rica had been examined by the Committee on several occasions, namely in 2001, 2002, 2004 and 2006. A high-level mission had visited the country in 2006. In July 2007, the Government had formally requested ILO technical assistance and appeared to wish to resolve the problems of application of Convention No. 98 and to promote tripartite dialogue. Nevertheless, and in spite of the draft legislation that was being drawn up, the major risk in practice was that collective bargaining would be completely sidelined. A recent ruling by the Constitutional Court, indicating that the collective agreements concluded in certain public institutions were unconstitutional, appeared to be in contradiction with the efforts announced by the Government. The Constitutional Court appeared to have very restrictive case law in relation to labour legislation, to the detriment of freedom of association. A reform of the Constitution was being carried out in Costa Rica, which envisaged the creation of solidarity cooperatives to replace trade union organizations. The adoption of such a text, which was the antithesis of the letter and spirit of Convention No. 87, would have an impact on the future of the whole trade union movement in Central America. In view of the request made by the Committee of Experts, it was to be hoped that there would be some good news in 2009.

19. Moreover, they would have liked to discuss the case of Japan for Convention No. 29. Voices had been raised among the Worker members because the delicate issue of the so-called "comfort women", used as sex slaves, had not been included on the list of individual cases. Reference should be made to all the political actions currently being undertaken throughout the world to convince the Government of Japan of the need to accept its responsibility in relation to the system of comfort women, to offer a public apology and to grant appropriate compensation to them and their families. In this respect, reference should be made to the resolution adopted by the European Parliament on 13 December 2007 and the resolutions adopted this year by the House of Representatives in the United States, in Canada and the Netherlands and, in May 2008, by the United Nations Human Rights Council. The situation of the victims was urgent and this case would undoubtedly need to be raised next year so that the ILO could adopt a position on it.

20. The case of Turkey had not been selected, despite the absence of real progress in bringing the legislation respecting trade union and workers' rights into conformity with ILO Conventions. Changes had been announced recently. These promised changes would have to be taken into account later. The case of Pakistan in relation to Convention No. 100 on equal remuneration could also have been discussed. The Committee of Experts noted in its observation that the worker protection policy reflected the will of the Government to promote equal remuneration for men and women. However, this will was not being given effect through tangible measures for the perfect application in law and practice of the principles set out in Convention No. 100. In view of the lack of full information from the Government of Pakistan, there was no indication of the manner in which it intended to ensure, in practice, the application, supervision and enforcement of the principle of equal remuneration for men and women workers for work of equal value. The issue of equality between men and women was a fundamental right without which a society could not operate in a dignified manner. The situation relating to the application of Convention No. 100 in Pakistan required continued attention. In particular, attention also needed to be drawn to the situation in the country in view of the refusal of the Government, despite reiterated promises, to make every effort to comply with its international obligations in relation to Conventions Nos 87 and 98.

21. The Employer members observed that they would usually have simply accepted the list of cases as being selected from the numerous possibilities according to criteria which were not mathematical. However, on this occasion they noted that the Worker members had mentioned at least three cases which had not even featured on the preliminary list. This was unfortunate and reflected a problem with the Conference Committee's methods of work.

22. They noted that the Worker members had referred to the fundamental importance of tripartism and freedom of association. However, the day that the Worker members did not treat with equal importance the rights of employers' organizations to freedom of association was a day of shame in the ILO. During the cold war, the Worker members had opposed double standards for a certain group of countries. Now, they were creating their own special double standards for one particular country. Every one of the 23 cases on the list was a Worker case. The only case that the Employer members had sought to include was that of the Bolivarian Republic of Venezuela, where for 15 years the freedom of association rights of the Venezuelan Chambers of Commerce and Manufacturing Associations (FEDECAMARAS) had not been recognized. There was no more important case for the Employer members. Normally, the discussion of cases led to progress. In the case of the Bolivarian Republic of Venezuela, however, there had been a deterioration. It involved government interference in the affairs of FEDECAMARAS, including the arrest and exile of its former President, Mr Carlos Fernández; the destruction of FEDECAMARAS headquarters; the failure to consult FEDECAMARAS on more than 450 decrees; violations of fundamental civil liberties; and the confiscation of enterprise leaders' private property. In addition, freedom of movement was severely restricted, as 15 FEDECAMARAS leaders were prohibited from leaving the country. The case involved a country that was resisting the ILO's supervisory machinery.

23. The failure of the Worker members to accept the inclusion of the case of the Bolivarian Republic of Venezuela on the list was based on hypocrisy. Each case rested on its merits; to say that a particular case would not be accepted unless another on the list was included was unethical. Not to accept even a single Employer case for discussion had consequences. The success of the supervisory system depended on the cooperation of the Employer and Worker members. Freedom of association and tripartism were the cornerstones of the ILO. By not accepting the case of the Bolivarian Republic of Venezuela, the Worker members had rejected the bedrock of the ILO. Their decision undermined the ILO's values and had consequences for the Conference Committee. There was no principle that could justify the

position of the Worker members other than a destructive double standard. The Employer members warned that there would be no list of cases in the future that did not feature the Bolivarian Republic of Venezuela and this situation would continue until such time as that country met its international obligations to comply with Convention No. 87.

Working methods of the Committee

24. 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. Finally, the Chairperson called on the members of the Committee to make every effort so that sessions started on time and the working schedule was respected.

25. The Employer members recalled that since the June 2007 Conference, there had been two meetings of the Tripartite Working Group on the Working Methods of the Conference Committee that had continued the work begun in June 2006 to update the processes and practices of the Committee, as reflected in document D.1. These improvements included the following: (i) governments were given a preliminary list of cases two weeks prior to the Conference; (ii) the Worker and Employer members were going to hold a separate briefing for governments to explain the criteria for the selection of the final list of cases; (iii) governments were expected to register in order to present their cases by Friday evening of the first week of the Conference; after this deadline, the Office had the authority to set the schedule for the discussion of those governments that had not registered with all work of the Committee to be completed by the following Friday; (iv) in response to requests of governments concerning time management, each member of the Committee was to respect the Chairperson's announced speech time limits; (v) the Committee could discuss the substance of cases on the list in cases where governments were registered and present at the Conference but failed to be present before this Committee; and (vi) there were explicit expectations of decorum for the Committee.

26. While welcoming these improvements in the methods of work, the Employer members considered that there was still some room for progress. First, it was clear that this Committee or the Conference needed to make some accommodation every three years due to the scheduled elections of the members of the Governing Body. As was the case this year, the elections led to losing an entire day of work. This could have a catastrophic impact on the workload of this Committee and ultimately on the quality of its report. Thus, in its methods of work, the Committee should be allowed to proceed with its work during the Governing Body elections. Otherwise, fewer cases should be examined in years when elections were taking place.

27. Second, although the list of cases had not been adopted yet, it was clear that there was a need for greater diversification of cases. As in previous years, about half of this year's cases would address freedom of association. A substantially larger number of cases should address forced labour, child labour and discrimination because, by placing emphasis on freedom of association, the Committee risked missing over half of the world's workers who were not covered through the ratification of Convention No. 87. The exercise of freedom of association and collective bargaining was dependent on the maintenance of fundamental civil liberties and democracy, in particular, the right to freedom and security of the person, freedom of opinion and expression, freedom of assembly, the right to a fair trial by an independent and impartial tribunal and protection for private property. These were the root causes of forced labour, child labour and discrimination on a large scale. These concerned the poorest of the poor. Information from this year's Conference report on rural employment indicated that the size of the informal economy was over 90 per cent of the labour force in sub-Saharan Africa, 75 per cent in Latin America, 50 per cent in East

Asia and over 90 per cent in some countries in South Asia. Moreover, the majority of these workers were mainly women and young persons among the poorest in society facing a total lack of legal protection and a gap in application of labour standards leading in many cases to lower wages, lower productivity, longer working hours, hazardous conditions and the abuse of workers. Report III (1A) contained an exceptionally large number of detailed observations on forced labour, child labour and discrimination that cried out for discussion. This was not to minimize freedom of association or the relevant cases on the list, but to highlight that there were very serious problems affecting women and children that freedom of association was not equipped to solve. A way to facilitate diversification included: setting an absolute maximum of freedom of association cases; setting out a schedule to ensure that all categories of conventions were discussed at least every four years; fixing the distribution of cases among the four regions; and no longer discussing cases for a period of time in circumstances when countries continued to show progress in implementing their international obligations in law and in practice. Finally, the Employer members pointed out that this year marked the 50th anniversary of Convention No. 111, the 60th anniversary of the Universal Declaration of Human Rights and Convention No. 87, and finally, the 10th anniversary of the 1998 Declaration on Fundamental Principles and Rights at Work.

28. The Worker members emphasized the fact that the informal tripartite consultations which had taken place in the past within the Tripartite Working Group on the Working Methods of the Conference Committee on the Application of Standards had resolved various problems and had resulted in an open and transparent mechanism. It was therefore important to pursue consultations within this forum. Regarding the preliminary list of individual cases for discussion, there were both advantages and shortcomings. It allowed governments to gain awareness of their deficiencies and take the appropriate remedial steps, including the signing of tripartite agreements. The communication preceding this list should not, however, be uniquely considered as a tool that allowed governments to prepare their "defence". It should allow for in-depth work that would anchor standards in daily practice, not something improvised just before the Conference. In the future, the results obtained from the last minute conclusion of tripartite agreements should be evaluated.

29. The Government member of Germany, also speaking on behalf of the Government members of the Industrialized Market Economy Countries (IMEC), expressed appreciation for the Tripartite Working Group's efforts to facilitate productive discussions and make the effective use of the Committee's limited time. She further welcomed the recommendations that had been introduced to date, in particular the early communication to governments of a preliminary list of cases as well as the guidelines for improving time management in the Committee. Moreover, the process of selecting cases was becoming more efficient and transparent. In spite of these positive developments further improvements were necessary, especially with respect to time management. Last year, she noted, the Committee lost many hours simply to the failure of meetings to start on time. As the entire second week would be devoted to the examination of individual cases, she expressed the hope that evening sittings would be kept to an absolute minimum this year, and preferably avoided altogether. To this end, she strongly encouraged all Committee members to respect the designated time limits for interventions and, more importantly, to make it possible to start meetings promptly. Notwithstanding these positive developments, she voiced concern with the fact that, during last year's Committee, there had been cases where Governments either attempted to influence the final listing of cases, or failed to take part in the discussion concerning their respective countries. As IMEC considered that such behaviour undermined the integrity and credibility of the Committee's work, she supported without reservation the excellent recommendations that were made by the Tripartite Working Group at its last meeting in March 2008, set out in document D.1, regarding the refusal of Governments to participate in the work of the Committee and concerning the respect for parliamentary rules of decorum. As there were further improvements to be made to the Committee's methods of work, IMEC expressed full support for the continuation of the

Tripartite Working Group. This would ensure ongoing, open and transparent discussion of these important issues without sacrificing the limited time available to the Committee.

30. The Government member of Italy expressed support for all the points contained in the statement by the IMEC group. He recognized the efforts made by the Conference Committee to improve its working methods through the Tripartite Working Group. He emphasized the importance for the smooth functioning of the Conference Committee of the agreements reached on transparency and governance and all the changes made to enhance the efficiency, effectiveness and objectivity of the Committee. He referred, in particular, to the changes intended to improve time management in the Committee's work, the advanced publication of a provisional list of individual cases and the information meeting for Governments on the way in which the selection criteria had been applied to those cases. He expressed the hope that the selection process would be increasingly transparent and participatory.

31. The Government member of Zimbabwe outlined the history of the ongoing review of the working methods of the Conference Committee since 2004, recalling that it had been the manner in which some developing countries had been treated in the Committee that had motivated calls for the review from the Non-Aligned Movement. The review process, which was supported by many Governments and some social partners, should result in the adoption of measures to prevent abuse of the Conference Committee by any government, directly or indirectly, in the pursuit of political agendas against targeted developing countries. He therefore called for reforms which did not penalize those governments which felt they were being victimized for matters which fell outside the purview of labour administration. The working methods of the Conference Committee should be universal, non-selective and transparent, and should not be targeted to deal with particular countries or groups of countries which, because of other considerations, were deemed not to be cooperative at a given time. Coercing governments to behave or to respond in a prescribed manner defeated the essence of social dialogue and ultimately the achievement of social justice. He pointed out that, for the Conference Committee to remain both focused and dynamic, it should refrain from adopting working methods which were deemed to be punitive to member States and which also went against the informal nature of appearances by governments before the Committee.

32. The Government member of Kuwait, also speaking on behalf of the Government members of the Council of Ministers of Labour and Social Affairs of the Gulf Cooperation Council, comprising Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates and Yemen, welcomed the serious effort by the Conference Committee to review its methods of work and to seek an appropriate formula to ensure the balanced participation by the tripartite constituents. She called for the inclusion of Government representatives in reviewing the criteria for the selection of individual cases, in collaboration with Employer and Worker members. In this respect, it was necessary for Government representatives to attend the meetings in which the individual cases were selected, as observers. She also reiterated the need for the list of individual cases to be submitted well in advance of the start of the Conference Committee, which would allow the countries on the list to prepare their responses and provide the necessary information, so that their names could be removed from the list. She reaffirmed the importance of the request made by the Gulf Cooperation Council and other countries that the attendance of the regional standards specialists should be ensured during the deliberations of the Conference Committee so that they were fully aware of the issues raised.

B. General questions relating to international labour standards

General aspects of the supervisory procedure

33. First of all, the representative of the Secretary-General provided information on the state of international labour standards and the overall responsibility of this Committee for considering the extent to which such standards were implemented. She pointed out that the Standing Orders of the International Labour Conference did not specify how the Committee was to perform its work and had thus given it a dynamic mandate with considerable discretion to adapt its action to the changing needs of the international environment. With this overall objective in mind, the Committee had had to adapt its methods of work over the years. The Committee had thus been able to review its methods of work in a pragmatic manner, as and when important issues arose, notably at the initiative of its members, on the basis of tripartite dialogue and consensus. The achievements of the Tripartite Working Group on the Working Methods of the Conference Committee were further proof of this. To enhance the clarity and efficacy of the supervisory system, the Tripartite Working Group had held five tripartite meetings since its establishment in June 2006 during the course of which it successfully dealt with all the issues referred to it. These issues, which were summarized in Document D.1, included proposals to improve time management, to include early scheduling of cases, and to adhere to the schedule of meetings. The early publication of a preliminary list of cases and the early decision on a final list also constituted improvements in the procedures of the Committee. An information session for governments by the Employer and Worker Vice-Chairpersons to explain the criteria used for the selection of cases had also been proposed. In addition, the Office would be able to schedule cases when the governments themselves had not registered by the deadline. These recommendations should continue to enhance the functioning of the Committee on the Application of Standards. In addition, two new measures were being proposed this year by the Tripartite Working Group in relation to cases in which governments had failed, despite repeated invitations by the Committee, to take part in the discussion concerning their countries and concerning respect of parliamentary rules of decorum. These new measures were set forth in document D.1. Finally, the speaker pointed out that at its last meeting in March 2008, a consensus had emerged on the continued functioning of the Tripartite Working Group. It was felt that the Tripartite Working Group had addressed a number of important issues which had enabled the Conference Committee to work more efficiently and effectively, in particular due to increased transparency.

34. Turning to the issue of the functioning of the supervisory system, the representative of the Secretary-General pointed out that the submission of reports under articles 19 and 22 of the ILO Constitution had become a matter of great concern over recent years both for the Committee of Experts and this Committee. This year was unfortunately no exception to the regular decrease of the total number of reports submitted. This was despite the strengthened follow-up, undertaken by the Committee of Experts and this Committee, with the assistance of the Office, of cases of serious failure by member States to fulfil reporting and other standards-related obligations. The overall philosophy of this follow-up lay in two core considerations: on the one hand, compliance with the reporting obligations was of paramount importance for the efficient functioning of the supervisory system and, on the other hand, non-compliance was due to difficulties encountered at the national level. The Office had also taken action on the conclusions of the Conference Committee, by undertaking nine missions to countries where such a follow-up was recommended. Finally, the Office had also given effect to the request made by this Committee for greater visibility of the results of its work. It had published the proceedings of this Committee as a separate publication and would integrate any further improvements to it proposed by the Committee.

35. The representative of the Secretary-General then went on to describe the work of the supervisory system at the heart of the Decent Work Agenda. She recalled that the Governing Body had been discussing since November 2005, actions to implement a standards strategy with a view to enhancing the impact of the ILO standards system. This strategy contained four interrelated components: enhancing the impact of the ILO's standards policy, its supervisory system, a better integration of international labour standards into technical cooperation activities, and an effective communication strategy on standards. The main common theme of the four components of the strategy related to the efficient use of resources with a view to obtaining the greatest possible impact. In November 2007, the Governing Body adopted an interim plan of action aimed at: (1) raising the coherence and impact of the body of international labour standards as a crucial component of the Decent Work Strategy; (2) enhancing the standards system integration, coherence and relevance; and (3) building a new tripartite consensus on the ILO standards system as a whole. The Governing Body also approved the launch of a ratification campaign, supplementing the existing one, on the eight fundamental Conventions and extending it to include the four priority Conventions: the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129); the Employment Policy Convention, 1964 (No. 122); and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). This new campaign will also include the four recently adopted Conventions: the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185); the Maritime Labour Convention, 2006; the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187); and the Work in Fishing Convention, 2007 (No. 188).

36. Concerning the issue of extending social protection, the speaker underlined that most people entered the informal economy not by choice but out of a need to survive. Especially in circumstances of high unemployment, underemployment and poverty, the informal economy provided many with jobs and income generation outlets because of the relative ease of entry and low requirements for education, skills, technology and capital, but the jobs thus created often failed to meet the criteria of decent work. In many countries, both developing and industrialized, there were linkages between changes in the organization of work and the growth of the informal economy. Workers and economic units were increasingly engaged in flexible work arrangements, including outsourcing and subcontracting; some were found at the periphery of the core enterprise or at the lowest end of the production chain, and had decent work deficits. Workers in the informal economy had little or no social protection and received little or no social security, either from their employer or from the government. Beyond traditional social security coverage, workers in the informal economy were without benefits in areas such as education, skill-building, training, health care and childcare, which were particularly important for women workers. To promote decent work, it was necessary to eliminate the negative aspects of informality while at the same time ensuring that opportunities for livelihood and entrepreneurship were not destroyed, and promoting the protection and incorporation of workers and economic units in the informal economy into the mainstream economy. For the above reasons, the International Labour Standards Department had decided, with the ILO International Institute for Labour Studies, to launch next year a research project to better understand the policies that facilitated the integration of standards in the informal economy.

37. In conclusion, the speaker pointed out that this year marked the 50th anniversary of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which was the most comprehensive, dedicated instrument on discrimination in the world of work. She invited those member States, which had not yet done so, to ratify and implement this fundamental Convention. This year also marked the 60th anniversary of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). This core Convention's impact had crossed the workplace frontier and enabled democracies to

flourish. Yet, regrettably, with 148 ratifications, Convention No. 87 remained the least ratified of the fundamental Conventions. This had created a protection void for more than 55 per cent of the world's workers, given the significant working population in non-ratifying States. She therefore called upon all member States, which had not yet done so, to ratify and implement Convention No. 87.

38. The Committee welcomed Justice Robyn Layton, Chairperson of the Committee of Experts. She indicated that it was the last occasion on which she had the privilege of addressing the Conference Committee, as her term as Chairperson of the Committee of Experts had come to an end. The Committee's new Chairperson was Professor Janice Bellace, a highly respected Professor from Wharton University in Pennsylvania in the United States. She also paid tribute to Judge Sô of Senegal a long-standing member of the Committee of Experts whose term had come to an end.

39. The speaker also stated that in the context of the Committee of Experts' last session, as in previous years, a special sitting with the two Vice-Chairpersons of the Conference Committee had taken place. Like the previous year, an interactive format was followed to discuss matters of mutual interest. The two Vice-Chairpersons had provided information on the recent changes in the Conference Committee's working methods in order to improve the transparency and effectiveness of its work. The Workers' Vice-Chairperson raised the possibility of the Committee of Experts reproducing certain comments the following year, being a non-reporting year when, for example, an important issue was not able to be taken up during the Conference Committee session due, for instance, to time constraints. Furthermore, the inclusion of trends and highlights in the General Report was discussed, as well as ways to improve the distinction between reporting by the Committee of Experts of the assertions made by the social partners and setting out the bases for the Experts' conclusions on compliance. The discussion gave members of Committee of Experts a better appreciation of some of the complex issues and concerns arising in the Conference Committee. Likewise, it was hoped that the special sitting provided the Vice-Chairpersons with a more detailed and specific understanding of the difficulties experienced by the Committee of Experts in its work.

40. The Chairperson of the Committee of Experts then pointed to areas of progress and concern in the reporting process. She indicated that there were some encouraging signs of improvement in the 45 member States who had been the subject of persistent and serious failure to report in the past. Such lack of reporting was also associated with failure to comply with other standards-related obligations. As a result of the concerted efforts of the Office to identify the reasons for non-compliance and to provide targeted assistance to these member States, some headway had been made as set out in footnotes 4 and 5 of the General Report. However, the Committee of Experts had expressed its deep dismay that the total number of reports received from member States decreased even further in 2007 to 65.04 per cent from 66.4 per cent the year before. The situation concerning reports from non-metropolitan territories was even worse, with the reporting rate dropping to a meagre 35.86 per cent from 66.71 per cent the year before. The reasons for non-reporting were overwhelmingly matters of an institutional nature, such as lack of resources and inadequate coordination, rather than more deeply rooted particular national circumstances. These reasons for non-compliance were therefore, in theory, soluble but they required the will and commitment of the member States in combination with appropriate targeted assistance from the Office. The Committee of Experts therefore highlighted the need for the Office to further address the problems of non-reporting through targeted measures such as incorporating reporting assistance into the broader technical cooperation programmes. The Chairperson of the Committee of Experts then pointed to the continuing problem of late reception of reports from governments, although there had been a marginal improvement from the previous year, namely 34.2 per cent instead of 28.8 per cent. Another concern was the lack of response by governments to the observations and direct requests made by the

Committee of Experts. Of the 49 governments to whom the Office had sent follow-up letters requesting further information in reply to comments, only eight had responded, which was a decrease from last year.

41. The speaker also explained that the Committee of Experts had agreed on a number of matters based on the work of its Subcommittee on Working Methods. The importance of suggesting measures to assist governments to follow up on particular comments made by the Committee was recognized and it was decided to revisit the matter at the Committee of Expert's upcoming session. The Committee of Experts also provided guidance to the secretariat for the initial preparation of its work, including concerning a more consistent implementation of the existing criteria so as to more clearly distinguish observations from direct requests, and concerning ways to assist member States in responding to lengthy comments of the Committee of Experts. The Committee of Experts also agreed to insert a new section in its General Report highlighting cases which are examples of "good practices", to enable governments to emulate these in advancing social progress, and to serve as a model for other countries in the implementation of ratified Conventions. It also decided to resume publication of a section identifying highlights and major trends on topical issues arising from the Committee of Experts' examination of reports, when such issues emerged. With regard to the request from the Worker members regarding the reproduction of certain previous comments in a non-reporting year, Committee members expressed concern about the impact of such a request on governments and whether such a request would need to come from the Conference Committee as a whole. Further, if such a request was made, the Committee of Experts was concerned as to how the request could be considered by it and, importantly, whether it would include a process whereby a government could submit any additional elements. Finally, the Committee of Experts took note of the Governing Body's request that the Office review existing report forms and designated three of its members to contribute their expertise on Conventions for which they were responsible, in order to assist the Office's review.

42. 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.

43. 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. It should be noted with concern that only 16 of the 20 Experts were currently appointed. Given the significant workload of the Committee of Experts, the Employer members encouraged the Director-General to propose as a matter of urgency to the Governing Body a number of candidates for the vacancies so they could be appointed without delay to ensure the effective and efficient operation of the Committee of Experts. The Experts should come from a diverse professional background given the various economic and legal considerations which had a bearing on the work of the Committee of Experts.

44. The Employer members once again expressed appreciation of the Experts' invitation to exchange views with them during the December 2007 Session of the Committee of Experts, as well as of the continued use of the format of dialogue on issues rather than statements of position. They also recognized and continued to appreciate the work of the Director of the Standards Department and her staff who served as the secretariat to this Committee. They were especially appreciative of the new bound report of this Committee's 2007 report, which they had been asking for some time. It was in keeping with the stature of this Committee, which had been the only standing committee of the ILO Conference since 1926, as reflected in article 7 of the Standing Orders of the Conference. One immediate way in which the quality of this report could be improved would be to

either reproduce the observations of the Committee of Experts that served as the basis for the Committee's discussion or at a minimum, cross reference the discussion to the appropriate page in Report III (1A) of the Committee of Experts.

45. While expressing appreciation at the clarity of the report of the Committee of Experts on the status of the reform of its working methods and the information provided by its Chairperson in this regard, the Employer members also expressed caution as to the issue of highlighting "good practices". More information was needed as to what was meant as a "good practice" and what was the relationship of "good practices" to the standards set out in a particular Convention. The word "good" implied something above the minimum standard of a Convention, possibly an ideal practice. It was possible that by highlighting "good practices" the highlighted practice might deter implementation of Conventions by other Members. As in previous years, the Employer members had a number of suggestions which included: the expansion of the country profiles in Report III (Part 2) to provide a longitudinal picture of Conventions ratified; references to the years of the Experts' observations and this Committee's consideration of them; years in which a special or continued failure paragraph was adopted; and current Committee on Freedom of Association cases involving the country. The Employer members considered the number of footnotes – seven this year – to be a reasonable number. However, in view of the importance of both double and single footnotes, the Employer members proposed that they be rendered more visible by placing them under a heading in a distinct paragraph or in a "box" rather than reducing them to a footnote accessible only to those who had specialized knowledge of this Committee. They reiterated their request that the section of the Committee of Experts' report on collaboration with other international organizations be shifted to the Information document on ratifications and standards-related activities, as being a closer reflection of the materials contained in that report. Furthermore, the Employer members questioned the purpose of the first 26 pages of this year's Information document as well as their relevance to the mandate of the Committee of Experts which had been to pronounce itself on the facts with respect to the application of ratified Conventions.

46. Finally, certain comments were to be made with regard to the application of specific Conventions. With regard to the general observation made by the Committee of Experts on the Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27), requesting information on the manner in which the Convention was applied in relation to modern methods of cargo handling (page 685), the Employer members, although not opposing this request in substance, inquired whether it was covered by the mandate of the Committee of Experts or whether it was the Governing Body, through the LILS Committee, which had the competence to define the scope of article 22 reporting through its approval of report forms. Moreover, while placing emphasis on the eradication of forced labour as a priority, the Employer members also expressed concern at the observation made by the Committee of Experts with regard to the application by Guatemala of the Forced Labour Convention, 1930 (No. 29) (page 211). The Employer members stated that the Committee of Experts reiterated a view already expressed in last year's General Survey on forced labour with regard to the obligation to do overtime outside normal daily working hours, which could be considered, according to the Committee of Experts, as forced labour where a worker might face dismissal. The Employer members considered that, irrespective of the factual context of the Guatemala case, this interpretation marginalized the Convention's central purpose of eradicating forced labour. While agreeing that overtime should be in line with national legislation and collective bargaining agreements, the Employer members could not see why something which was permitted in a collective bargaining context was not permitted in an individual worker context. In their view, where a worker understood and voluntarily accepted that, in case employment was accepted, overtime would be required and, where the issue was not a survival wage, such subsequent overtime was not forced labour even if it exceeded the normal hours of work. Overtime was a regular condition of employment. The Employer

members therefore requested the Committee of Experts to reconsider this view of forced labour and overtime.

47. While recognizing the excellent work accomplished by the Committee of Experts, the Worker members considered it imperative that the composition of this supervisory body be such as to allow it to fully accomplish its mission. Indeed, the strength of the supervisory system of the ILO lay within the synergy between the Committee of Experts, endowed with a juridical competence and independence which were internationally renowned, and the Conference Committee on the Application of Standards. Hence, it was necessary for the International Labour Standards Department and the Committee of Experts to command all the human and financial resources necessary for the promotion of standards-related and supervisory activities exercised by the ILO. Indeed, the report of the Committee of Experts was not a text destined to be read only by the elite, but also a tool for all interested parties, be they workers, employers or persons working in the field. In this regard, the Worker members welcomed the decision of the Committee of Experts to focus on measures to be taken to help governments with the follow-up to the Experts' comments, as well as the decision to incorporate, starting next year, a new section highlighting certain good practices which could serve as examples for other countries. Moreover, the insertion of another section, dedicated to highlights and major trends concerning current events, also deserved to be commended, as this would give a social dimension to globalization at a time when only economic and financial criteria seemed to be privileged. Finally, the Committee of Experts had looked at the possibility of reproducing, in the report for the current year, the comments featured in the reports of the preceding years following a request to that effect from the Worker members. The Worker members referred to the opinion of the Committee of Experts, according to which such a demand should emanate from the whole of the Conference Committee. They indicated that they would like to return to study this issue at a later stage with the legal assistance of the Office.

48. Moreover, employers' and workers' organizations had a role to play in communicating information that was useful for evaluating the application of standards and governments should include the social partners in the supervisory process. This year, the number of comments received by the social partners had increased slightly. It was important that these comments arrived on time, featured up to date information targeting the real problems, and provided added value. In addition, workers' organizations would be made aware of the logic behind reporting cycles, which would permit account to be taken of serious allegations of non-respect of Conventions. In addition, Governments should not only supply information on legislation, but also on the practical application of Conventions by providing, in particular, labour inspection reports and judicial decisions. Cases of progress by the Committee of Experts should be based on an evaluation of the legal and factual analysis of the national situation. Account should also be taken of the fact that social progress, in a globalized world marked by the policies of international financial institutions, required States to adopt a proactive attitude and to seek to continue to achieve the best application possible of ILO instruments in order to advance workers' rights.

49. The Government member of Germany, speaking on behalf of the IMEC countries, expressed IMEC's appreciation of the continued efforts of the Committee of Experts to enhance the quality and impact of its report through its improved presentation and structure. Nevertheless, the speaker pointed out that the Committee's observations were not always easy to understand, and encouraged it to continue to find ways to clarify the language in order to better capture significant situations. She expressed appreciation for the Committee of Experts' decision to insert a new section highlighting cases of "good practices" in their General Report. As the Experts themselves had noted, this information would provide a model for other countries to assist them in the implementation of ratified Conventions; it would also provide an important opportunity for dialogue within the Conference Committee. IMEC remained concerned that, despite an ever-increasing

workload, the Committee of Experts was still operating at less than full capacity as it had, almost continually, for the past decade. Given that currently, there were only 16 out of 20 Experts appointed, she again appealed to the Director-General to fill all vacancies on the Committee of Experts without further delay. She thanked the Office for the support provided to the supervisory bodies and called upon the Director-General to continue to ensure that the essential work of the Standards Department ranked among his top priorities.

50. The Government member of Cuba indicated that paragraph 8 of the General Report of the Committee of Experts, in which some results were noted of the work undertaken in recent years by the Committee of Experts to study its working methods, was interesting to read. She doubted that it would be possible to reproduce comments of the Committee of Experts in its report the following year (i.e. a non-reporting year). In any event, governments should be consulted on this matter. It was satisfying to note how the Committee of Experts had applied more consistent criteria in order to distinguish the observations from the direct requests. It would also be most useful if the Committee reflected on the possibility of achieving greater rationalization in the use of observations and direct requests. Moreover, it was important that the Committee of Experts be able to evaluate the application of Conventions in law and practice using verifiable information from reliable sources, in particular reports from governments that were the basis of the work of the Committee of Experts. It was encouraging that an approach had been developed in order to identify cases of progress and that the Committee of Experts had expressed satisfaction or interest with the measures adopted by some countries. The Government of Cuba once again appeared in the list of cases of progress in relation to the Maternity Protection Convention, 2000 (No. 183), and the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152). The speaker concluded by stating that a constructive approach in the analysis and evaluation by the Committee of Experts had produced encouraging effects in continuing efforts, in cooperation with Cuban employers' and workers' organizations, to improve legislation and practice linked to compliance with the Conventions.

51. The Worker member of Pakistan expressed appreciation of the work carried out by the Office and recalled the essential role of the Conference Committee, which was the heart of the International Labour Conference and was dedicated to defending the rights of the working class. He further recalled the essential principles underlying the ILO in its quest for social justice, freedom of association and the fact that labour was not a commodity. In view of the 60th anniversary of the adoption of Convention No. 87, it was right to call upon those countries that had not yet not done so to ratify the Convention, particularly in the case of States of chief industrial importance. As the 90th anniversary of the ILO would be celebrated next year, it was of particular importance for the countries concerned to set a good example that could be followed by developing countries, where the working classes continued to be confronted by multiple challenges. These included high rates of inflation, the harsh conditions imposed by the international financial institutions, the deregulation of markets and the obligation to establish export processing zones in which the fundamental rights of workers were denied. He called on the members of the Committee to remember the 1.3 billion workers throughout the world who had to survive on less than $2 a day. He also emphasized the importance for governments which ratified Conventions to ensure that they were fully applied. This could only be achieved through tripartite consultation involving employers' and workers' organizations, as well as through discussion involving balanced delegations to the International Labour Conference. The strategic objectives of the Decent Work Agenda could only be achieved if the four fundamental rights of workers were fully enforced, with the participation of labour inspection systems. He called upon the ILO to strengthen the resources of the International Labour Standards Department so that it could provide an appropriate level of technical assistance to help constituents apply Conventions at the national level. He also expected the Office to help workers' organizations play an effective role in promoting and protecting the basic rights of workers. Finally, he called on those governments whose cases could not be discussed by

the Conference Committee due to lack of time to make every effort to give effect to the Conventions they had ratified.

52. The Government member of Italy thanked the Committee of Experts and its Subcommittee for their efforts to increase the impact of its report by making it more readable and welcomed the decision to introduce a new section highlighting "good practices". He expressed the hope that dialogue between the Committee of Experts and the Conference Committee on the Application of Standards would continue, as the smooth functioning of the two committees was essential to the success of the ILO's supervisory system. With regard to the improvement of the ILO's standards activities, his Government welcomed all the elements of the action plan proposed by the Office and supported the standards strategy approved by the Governing Body. The application of this strategy was fundamental to achieving decent work for all. In conclusion, he emphasized the importance of the universal ratification and effective application of Convention No. 87, which was celebrating the 60th anniversary of its adoption, for the promotion of democracy and decent working conditions.

53. The Government member of Kuwait, also speaking on behalf of the Government members of the Gulf Cooperation Council, reaffirmed the will of the members of the Gulf Cooperation Council to collaborate in the achievement of decent work and the improved implementation of international labour standards. She observed that there had been an increase in the number of ratifications of the ILO's fundamental Conventions by the Gulf countries since the adoption of the ILO Declaration on Fundamental Principles and Rights at Work in 1998. Of the 39 ratifications of the fundamental Conventions by the Gulf countries, 20 had been registered since 1998. Some of the countries of the Gulf Cooperation Council had now ratified all of the fundamental Conventions and she emphasized that these countries were prepared to develop their legislation in accordance with the principles set out in international labour Conventions, with a view to achieving economic, political and social development.

54. The Government member of Norway, also speaking on behalf of the Government of Iceland, said that the two Governments fully supported the statement made by the Government member of Germany on behalf of the IMEC group. She then underlined the importance of the ILO's standards system for the world of work, particularly in a globalized world where labour and capital moved across borders. The Decent Work Agenda was important in the way it focused on and promoted the obvious human right to a decent workplace and an income to live on, while the core Conventions were universally recognized and had been ratified by most ILO member States. Nevertheless, the Committee's work demonstrated that, in many countries, those Conventions were far from being implemented. Furthermore, to a great extent the same countries appeared before the Committee year after year. Despite comprehensive assessments, repeated discussions and frequent calls for improvements, together with a sophisticated system of analysis and technical assistance to address the most serious problems of application, a number of countries seemed to make little, if any, progress in applying ratified Conventions. While she recognized that a number of countries might face difficulties in fulfilling their obligations through a lack of developed mechanisms and resources, the lack of political will to comply with ILO Conventions on fundamental rights at work also played a part. That was a matter of regret not only for workers in the countries concerned, but also for the globalized world economy, characterized as it was by transnational integration and interdependence. The continuous lack of application of ratified ILO Conventions in a number of countries posed a challenge to the promotion of decent work. Neither the conclusions of the Conference Committee, technical cooperation nor high-level missions seemed to have the desired effect. She expressed the hope that the 97th Session of the International Labour Conference would make serious progress in discussing and addressing the problem within both the Committee on the Application of Standards and

other relevant committees, particularly the Committee on Strengthening the ILO's Capacity.

55. The Government member of France said that his Government fully supported the statement made by the Government member of Germany on behalf of the IMEC group. He then drew the Conference Committee's attention to the procedure for the examination of comments from employers' and workers' organizations by the Committee of Experts. That procedure, established by the Committee of Experts and outlined in paragraphs 59 and 60 of its report, guaranteed an adversarial examination of position. It ensured that government replies to comments were brought to the attention of the Committee of Experts before it examined the comments made by a workers' or employers' organization. This was why it was envisaged that, if such comments reached the Office late in the year (after 1 September), examination of the case by the Committee of Experts was postponed until the following year to give the Government time to respond. The practice was outlined in paragraph 59 of the report. Paragraph 60 of the report illustrated the normal application of the procedure. Under these conditions, it was surprising to note that the procedure had not been followed in the case of comments by a workers' organization concerning the application of Convention No. 87 with regard to the Act on the continuity of public service in the transport sector. The Government had been informed of the existence of the comments in mid-September 2007, but had not been in a position to reply before the meeting of the Committee of Experts in November. The Committee of Experts had, nevertheless, examined the comments without waiting for the Government's reply. Furthermore, it had issued a substantive opinion requesting France to amend the Act without having taken into account the viewpoint of the French authorities. The fact that all the parties had not been able to make their views known before a legal opinion was given was the more regrettable in that the opinion of the Committee of Experts had been presented in certain media as final. He called on the Committee of Experts to re-examine the case in the light of the detailed legal response it had provided to the comments of the workers' organization.

56. The Government member of Lebanon commended the report of the Committee of Experts for its substantive and scientific approach. In her view, the continued increase in the length of the report was indicative, on the one hand, of the depth of analysis by the Committee of Experts and, on the other, of the quality of the reports submitted by member States in reply to the comments of the Committee of Experts and in accordance with their constitutional obligations. She noted the references made in the report of the Committee of Experts to the meetings held between members of the Committee, as well as with the Employer and Worker Vice-Chairpersons of the Conference Committee, to discuss issues of common concern. In this respect, she emphasized that it was necessary for governments to know the outcome of such meetings in view of their repercussions on standards-related obligations. With a view to strengthening tripartism and social dialogue, she emphasized the need to revive tripartite meetings held in parallel to the meetings of the supervisory bodies with the aim of clarifying the concerns of the social partners in relation to the current discussions on changes in standards policy, for example in the context of the current discussions in the Conference on strengthening the ILO's capacity. She also noted the greater emphasis that was currently being placed on non-fundamental and non-priority Conventions. While this strengthened the integrated approach to standards, which was both useful and comprehensive, there was a risk that the resulting standards could be lengthy and burdensome to follow up. Consideration therefore needed to be given to the additional burden on Governments in preparing their reports, and she therefore called for a review of deadlines for the submission of such reports. In addition, she requested clarification of the meaning of the sentence "the reproduction of certain previous comments" in the report of the Committee of Experts the following year and its impact on the reporting cycle and the obligations of member States. She also hoped that the discussions on reviewing the report forms could simplify the replies to be prepared by governments and she requested further clarification on the significance of the new plan of action to improve the impact of the

standards system. She recalled that the current number of members of the Committee of Experts was still 16 and she raised the issue of the reasons behind the delay in filling the additional four vacancies on the Committee. She reiterated the need in this context to increase the Arab membership of the Committee. Finally, she indicated that she found the Information document on standards was interesting. It covered the issues of streamlining the submission and examination of information and reports due under article 22 of the Constitution, the action plan to achieve rapid and widespread ratification and effective implementation of the Maritime Labour Convention, 2006, as well as other issues to be addressed at the start of work of the Conference Committee. She also called for the translation of article 24 of the Constitution into Arabic, a matter raised during previous years.

Fulfilment of standards-related obligations

57. The Employer members appreciated the analysis by the Committee of Experts, in paragraph 14 of its report, of the specific difficulties faced by governments in meeting their reporting obligations. They agreed with the exhortation of the Committee of Experts that the broader technical cooperation programmes should enhance the impact of the standards system as decided by the Governing Body at its November 2007 session. This decision should be implemented fully. Notwithstanding the Office's efforts, there was a continued decline in article 22 reports which threatened the functioning and eventually the credibility of the ILO supervisory system. The technical cooperation programmes mentioned earlier would hopefully result in a sustainable long-term approach to reverse the decline in reporting.

58. The Worker members had followed with interest the process of revision of report forms, the aim of which should be to allow governments to more easily meet their obligations in reporting. Regarding statistics on reports received for ratified Conventions, they noted that the percentage of reports received before the deadline had increased. Reports received late were a hindrance to the smooth functioning of the supervisory system and this percentage had to be improved upon by increasing technical assistance from the Office and simplifying the report forms. Regarding the small number of reports received on Conventions applicable in non-metropolitan territories, the Committee of Experts' appeal that member States remedy this situation should be supported. Economically developed European countries should lead by example, especially as member States experiencing major economic difficulties and faced with the demands of international financial institutions were being singled out for criticism.

59. The Government member of Cuba noted with concern that this year the number of reports received had declined yet again, without any halt to the trend being noted over the years. The small number of reports received on Conventions applicable in metropolitan territories was also a concern. This trend was a hindrance to the supervisory mechanism and allowed those who failed in this obligation to avoid their responsibilities in respect of ratified Conventions. This trend could be corrected in some cases through efficient technical cooperation and in other cases by a broader dissemination of the reasons behind non-compliance.

60. The Worker member of France emphasized that compliance by Governments with their reporting obligations and the time limits for the submission of reports was essential for the effectiveness of the supervisory system and the capacity of workers' organizations to participate in it. The role of labour administrations, whose functioning affected application and compliance with labour legislation, was essential to the effective implementation of ILO Conventions. This mission required such administrations to have at their disposal the material and human resources to discharge their functions. It was important to emphasize that Employers needed to give their support in this regard.

61. With regard to the constitutional obligations to send reports and submit the instruments adopted, the Government member of Italy said that the Italian Government had sent all the required reports within the established time limits and had fulfilled its obligation to submit the Maritime Labour Convention, 2006, and the Promotional Framework for Occupational Safety and Health Convention, (No. 187), and the Promotional Framework for Occupational Safety and Health Recommendation, 2006 (No. 197), to the competent authorities. He emphasized the important work and numerous technical assistance activities undertaken by the Office, collaborating closely with its experts in the field, to follow up the conclusions of the Conference Committee. He shared the concern of the Committee of Experts with regard to the submission of reports: late reports, the fall in the number of reports received, and failure to submit first reports and to reply to the comments of the Committee of Experts threatened the operation and credibility of the ILO's supervisory system. He emphasized that, in order to deal with such problems, it was essential to strengthen technical assistance activities within the framework of an individualized follow-up. The Italian Government supported this innovative and valuable system which was based on identifying the reasons for persistent failure to comply and of devising special technical assistance for member States with the aim of dealing with their problems and training officials in the preparation of reports. He hoped that problems related to the submission of reports could be integrated into technical cooperation programmes. His Government supported the proposal being discussed by the Governing Body to rationalize the submission of reports, revise report forms and submit reports online.

62. The Government member of Kuwait, also speaking on behalf of the Government members of the Gulf Cooperation Council, highlighted the urgent need for the appointment of Arabic-speaking labour standards specialists in both the Regional Office for the Arab States and at ILO headquarters in Geneva so that they could provide technical assistance to member States with a view to improving their capacity to prepare reports and train national officials responsible for labour standards. She also called for the report forms to be reviewed and both observations and direct requests to be simplified to help member States meet their reporting obligations and facilitate the channels of communication between the ILO and member States. Efforts should be made to provide an Arabic version of all documents distributed to the members of the Conference Committee, as Arabic was one of the official languages of the ILO.

63. The Government member of Lebanon emphasized that her country had fulfilled its constitutional obligations under articles 19 and 22 and added that the Ministry of Labour was currently examining the Work in Fishing Convention, 2007 (No. 188), in preparation for its submission to the competent authorities. She commended the ILO Regional Office for Arab States and the efforts made to provide technical assistance to the Arab States.

The reply of the Chairperson of the Committee of Experts

64. The Chairperson of the Committee of Experts, responding to points made, expressed the hope that the cautionary view of good practice put forward by the Employer members would not apply to the cases and examples given by the Committee of Experts. She therefore welcomed the other, positive comments that had been made. With regard to the suggestions made, she said that the Committee of Experts would examine the possibility of expanding the country profiles. She also welcomed the helpful suggestion to highlight the "double footnoted" cases more visibly.

65. With regard to the issue raised by the Employer members of whether the obligation to do overtime work could constitute forced labour, she recalled that the General Survey on forced labour, discussed at the previous session of the Conference, had indicated that "…

the Committee considered that the imposition of overtime did not affect the application of the Convention so long as it was within the limits permitted by national legislation or collective agreements. Above those limits, the Committee has considered it appropriate to examine the circumstances in which a link arises between an obligation to perform overtime work and the protection provided by the Convention." The matter was different when overtime work regularly went beyond the provisions of collective agreements and of national legislation and workers were in practice forced to work excessive hours of work to earn enough to support their families, and there was effectively no choice for them, or where they were under threat of dismissal unless they worked unreasonable hours of overtime. In each case it would then be a question of the time worked, the frequency of overtime, any particular circumstances in which the obligation to perform overtime arose, whether overtime work was genuinely voluntary, and the effect of non-performance on a worker's ability to earn a survival wage. The hypothetical example to which reference had been made concerned overtime work to be performed in emergency situations, which, by their nature, had certain characteristics. Rather than examining hypothetical situations, however, the Committee of Experts would have to examine specific cases as they arose in order to provide further clarification as appropriate.

66. With regard to the comments made by the Government member of Lebanon concerning the difficulties experienced by governments in complying with their reporting obligations, she said that the Committee of Experts would look at certain aspects of the report forms with a view to simplifying them.

The reply of the representative of the Secretary-General

67. At the very outset, the representative of the Secretary-General wished to thank all those who had participated in this discussion and to underline its importance for the secretariat. Indeed, the general discussion had provided an opportunity to have comments and suggestions made by the constituents for the secretariat to carry its core responsibilities in supporting the work of the supervisory bodies. The Chairperson of the Committee of Experts had already responded to the issues raised concerning the report of the Committee of Experts. She would therefore address the following matters: (i) the percentage of replies for the General Survey; (ii) fulfilment of reporting obligations; (iii) processing by the Office of the comments received from employers' and workers' organizations on the application of ratified Conventions; (iv) the filling of vacancies within the Committee of Experts; and (v) other issues.

68. Regarding the first point, the speaker indicated that the percentage of replies under article 19 of the ILO Constitution for the General Surveys had remained stable over the past years and were as follows: 48.5 per cent for the 2008 General Survey on public procurement; 44 per cent for the 2007 General Survey on forced labour; 51 per cent for the 2006 General Survey on labour inspection; 52.5 per cent for the 2005 General Survey on hours of work; and 52 per cent for the 2004 General Survey on employment policy. The low percentage in 2007 for Forced Labour could be due to the high rate of ratification and the low number of reports requested from States that had not ratified.

69. Turning to the concerns expressed by the Employer and Worker members over the number of reports received and the lateness of receipt of the majority of reports, she pointed out that two years ago, the Office had launched an innovative "personalized" follow-up to identify the reasons for persistent failures in order to target assistance designed for member States to address these difficulties. The Office had contacted each of the countries mentioned in the reports of the Conference Committee and, in light of the replies received, organized a number of technical assistance activities. In addition, over the past two years, the Department had provided financial support to technical assistance activities directly

undertaken by the sub-regional offices in relation to cases of serious failures. This had begun to bear fruit, and with close coordination between headquarters and the field, there were now cases of States resuming fulfilment of their reporting obligations. More importantly, there would now be systematic integration of reporting obligations in the Decent Work Country Programmes (DWCPs) with follow-up by specialists in the field.

70. Concerning the statement made by the Government member of France in relation to comments sent to the ILO by Force Ouvrière dated 31 August 2007, the speaker explained that 31 August was a Friday and the registry dated receipt of this communication on the next working day, Monday, 3 September 2007. A letter was sent to the Government on 11 September 2007 informing it that this communication would be brought to the attention of the Committee of Experts at its next session and inviting it to respond. In terms of both procedure and due process, all deadlines were respected and the Government was provided with ample time to respond.

71. In respect of the concerns raised by certain speakers that the Committee of Experts was still not functioning to its full operating capacity, the representative of the Secretary-General underlined that the Secretary-General would make nominations to the Governing Body in June and November 2008 to fill these vacancies. To maintain geographic balance, it was planned to recommend two experts from Africa, one from Asia and one or two from Europe.

72. Finally, concerning the recruitment of Arabic-speaking officials both in the Beirut office and at headquarters, there was an Arabic-speaking senior standards specialist in the region, and there was an ongoing competition for an Arabic-speaking standards specialist in the department.

C. Reports requested under article 19 of the Constitution

Labour Clauses (Public Contracts) Convention (No. 94) and Recommendation (No. 84), 1949

73. The Committee devoted part of its general discussion to the examination of the first comprehensive General Survey carried out by the Committee of Experts on the application of the Labour Clauses (Public Contracts) Convention, 1949 (No. 94), and the Labour Clauses (Public Contracts) Recommendation, 1949 (No. 84). In accordance with the usual practice, this General Survey took into account information supplied by 85 member States under article 19 of the ILO Constitution as well as information communicated by member States which have ratified the Convention in their regular reports under articles 22 and 35 of the Constitution. Observations and comments received from 30 employers' and workers' organizations to which the government reports were communicated in accordance with article 23(2) of the Constitution were also reflected in the General Survey.

Integrating labour clauses into public procurement contracts: Standards and challenges for national law and policy

74. The Employer members welcomed the General Survey as an opportunity to clarify the meaning and relevance of Convention No. 94 and Recommendation No. 84 concerning labour clauses in public contracts which touched upon complex issues regarding the social dimension of public procurement. Convention No. 94 established the requirement for labour clauses to be inserted in contracts awarded by central public authorities for certain

construction works, the manufacture of goods, the shipment of supplies or equipment, and the supply of services. The Convention required that, in the performance of those contracts workers should be provided with wages, hours of work and other conditions of labour which were not less favourable than those established by collective agreement, arbitration award or national laws for work of the same character in the trade or industry concerned in the district where the work was performed. The Convention also required the establishment and maintenance of an adequate system of inspection and the imposition of remedies and sanctions in case of non-compliance with the terms of the labour clauses.

75. The Committee of Experts indicated that clauses in public contracts that restated the applicability and binding nature of national laws, including those dealing with wages, hours of work and other conditions of employment, were not sufficient to meet the requirements of the Convention. Indeed, the Committee of Experts emphasized that the Convention required governments to ensure that the most advantageous local labour conditions were secured for workers performing work under public procurement contracts, which placed the contractor under the obligation to apply the most favourable pay rates, including overtime pay, and other working conditions established in the industrial sector and geographical region concerned. Referring to the Committee of Experts' interpretation of the Convention as requiring the most advantageous wages and other working conditions for workers engaged in the execution of public contracts, the Employer members recalled that international labour standards usually prescribed universal minimum standards and, in this sense, Convention No. 94 was somewhat different since it went beyond minimum standards. They were concerned that, in prescribing the most advantageous local conditions, the ILO might have exceeded its mandate with respect to this Convention.

76. The Employer members addressed what appeared to be the basic assumption by the Committee of Experts, which was also an assumption upon which the two instruments appeared to be based, namely that competition on the basis of labour costs was socially unhealthy and should always be avoided. In essence, this assumption was that it was desirable to insulate labour costs from the competitive pressure inherent in any bidding or tendering process. In the view of the Employer members, this assumption was faulty. The value of competition should be evaluated by measuring the advantages versus the disadvantages. Moreover, certain questions needed to be considered, such as whether competition eliminated corruption, whether it increased productivity and transparency, and whether it procured goods and services at the best value for money or the best quality for the price. The Employer members considered that the proper functioning of labour markets was based on competitiveness, which could include competition regarding labour costs, as well as other costs.

77. With regard to the Committee of Experts' view that in accordance with the Convention governments should be seen as setting an example by acting as "model employers", the Employer members stated that they were not opposed to governments aspiring to be "model employers" or promoting model contractors, but wished to point out that what constituted a model employer could only be determined with reference to the various stakeholders, which included not only workers, but also the public at large, including tax payers, the unemployed and other groups. Being a model employer required compliance with national labour and employment laws, but did not necessarily involve, for example, paying workers the most advantageous local rate of pay. Furthermore, economic realities meant that public administrations in many States were no longer in a position to provide the best working conditions available. Therefore, if the public sector in many countries did not provide the most advantageous local working conditions, what justification was there for a government to impose such standards on a third-party contractor?

78. Commenting on the Committee of Experts' reference to the issue of avoiding social and wage dumping in public procurement operations, the Employer members observed that

wage competition was a complex issue with various facets. Moreover, the terms "social dumping" and "wage dumping" had a negative connotation and had been used inappropriately. In the context of international trade law, the term "dumping" was generally defined as the act of a manufacturer in one country exporting a product to another country at a price that was below the price it charged in its home market or was below its production cost. In the field of labour law and social policy, the terms denoted the export of goods from a country with weak or poorly enforced labour standards, reflecting the idea that the exporter had costs that were artificially lower than its competitors in countries with higher labour standards and constituted an unfair advantage. The Employer members expressed the view that non-compliance with the Convention did not necessarily amount to social or wage dumping and therefore the two concepts should be kept distinct. They accordingly suggested that the Committee of Experts should be more careful in the language used in the General Survey.

79. In the understanding of the Employer members, the broader purpose of the Convention was that public authorities should concern themselves with the working conditions of workers employed under public contracts and paid for by public funds. Although they agreed that this interest might in principle be reasonable, they raised a number of concerns relating to the instruments under examination. Firstly, the Convention did not appear to have widespread support. Of the 60 countries that had ratified it, only one quarter were substantially applying it. Secondly, the General Survey demonstrated that the prevailing view of governments was that workers employed under procurement contracts were not in need of special protection over and above national labour and employment laws. Indeed, the Committee of Experts concluded that, based on the review of national law and practice, the idea of including labour clauses in public contracts was not widely accepted among member States. In fact, the Committee of Experts noted that member States were unwilling to take the necessary action to implement the Convention. It also noted that the principle that the State should act as a model employer by offering the most advantageous conditions to workers paid indirectly through public funds did not appear to enjoy popularity. Uniformity and coherence in the application of the Convention was lacking in the countries which had ratified it. Moreover, certain countries which had previously given effect to the Convention had now amended their legislation and no longer applied its provisions. And yet, despite all these observations, the Committee of Experts still claimed that the Convention provided a clear, concrete and effective solution to the problem of how to ensure fair wages and working conditions to workers engaged in the execution of public contracts.

80. The Employer members disagreed with this conclusion. The overall picture was very clear. Most countries had determined that ratification of the Convention was not possible or desirable. Countries appeared to consider that the Convention was outdated or in contravention of EU rules, that its application was too costly or overly bureaucratic, or that national labour legislation provided adequate protection. The Employer members therefore believed that there was no need to engage in promotional efforts to try and attract new ratifications in the foreseeable future. Moreover, they considered that it was not for the Committee of Experts to assess whether the Convention provided an effective solution, as such determinations could only be made by the tripartite constituents. Finally, they disagreed with the assertion that the Convention was up to date and should be partially revised to take into account major developments in the area of public procurement, as well as developments at the ILO, such as the adoption of the 1998 Declaration on Fundamental Principles and Rights at Work. In maintaining this view, the Committee of Experts refused to take note of the increasing and clear opposition by governments, regional organizations and other constituents to the approach articulated in the Convention.

81. The Worker members, while emphasizing the importance of the discussion of the General Survey in the Conference Committee, recalled that Convention No. 94 and

Recommendation No. 84 had a twofold objective, namely to ensure that labour costs were not used as an element of competition when bidding for public contracts, and to guarantee that public contracts did not exert a downward pressure on wages and working conditions. According to the General Survey, a lack of interest in the two instruments had been observed in recent years. This lack of interest was related to modern policies applied to public procurement which were more geared towards unrestricted competition and "best value for money" than to raising the bar and applying best local practice. This was also connected with the general trend for the dismantling of public services observed globally and the rampant privatization that prevailed almost everywhere. Public authorities were constantly developing their tendering procedures, but no longer paid attention to the negative effects on the fundamental rights of workers.

82. Convention No. 94 covered in its scope public authorities that awarded contracts involving the expenditure of funds and the employment of workers for the implementation of public policy, which might be intended to achieve economic recovery or to provide public infrastructure or public services to the population. At the time of its adoption, therefore, the Convention was seen as an instrument that was in line with the different roles of a modern democratic State. In 1949, two principles of great importance had been established. First, the State was under the obligation, through the inclusion of labour clauses in public contracts, to prevent any downward pressure on workers' rights; and second, public funds should be used in a socially responsible manner, including by facilitating the achievement of good working conditions through the exercise of the fundamental right to freedom of association and collective bargaining. As regards the role of the State, the focus was on economic and social development policies in which public works were seen as a means of combating unemployment, particularly at times of economic depression, while ensuring that wages were at a level that safeguarded the living standards of workers.

83. The situation had considerably evolved over time and was now being transformed by several factors such as: the growing importance of subcontracting in an internationalized context, which raised the question of disparities between the wages and working conditions of workers in geographically distant areas; the proliferation of public contracting with a cross-border dimension; the impact on public contracts of the general trend for the financialization of the economy; decentralization and the intervention of local authorities; the expanding use of public–private partnerships; and the practise of service-only or labour-only contracting. The aim of the General Survey was to call upon public authorities and international financial institutions (IFIs) to place Convention No. 94 and Recommendation No. 84 once again at the heart of their procurement practices. Convention No. 94 was the only appropriate instrument because it was universal, binding and effectively supervised, and should be promoted as such.

84. Convention No. 94 addressed three principal aspects of public procurement: (i) the types of public contracts in which labour clauses were to be included; (ii) the prescriptive content of the labour clauses; and (iii) the means for ensuring compliance with the provisions of labour clauses. Recommendation No. 84 contained two substantive paragraphs, one advocating that labour clauses substantially similar to those in public contracts should be applied where private employers were granted subsidies or were licensed to operate a public utility, and the other specifying the details of working conditions that should be prescribed in labour clauses. These two instruments were the main international instruments concerning labour clauses in public contracts. It was difficult to overestimate their importance in view of the scale of modern public procurement and the facts and figures presented in the General Survey were very telling in this regard.

85. Turning to the implementation of the Convention, four conditions needed to be met. First, a public authority. In the absence of a definition, some member States had interpreted this concept in a broad manner, which was very positive. However, the question arose as to

whether this lack of a definition constituted a problem when endeavouring to address the issue of public–private partnerships in which new forms of public regulation and participation were emerging. Second, the Convention gave equal weight to two elements, namely the expenditure of funds and the employment of workers. However, it was an open question whether a financial investment by a public authority could be considered as an expenditure of funds within the meaning of the Convention. Third, the Convention referred to contracts for works, supplies and services. This approach was very broad and appropriate to the modern development of public procurement. However, concerns were raised with respect to "turnkey" contracts, such as those that were becoming most common in Africa, whereby service providers would bring goods and labour, unconcerned about destabilizing the local market. Finally, the Convention only applied to central authorities. Nevertheless, the extent to which federate institutions operating around a central entity were concerned would depend on the specific sharing of responsibilities as determined by each State. In certain cases of decentralization, some public contracts could thus be excluded from the scope of the Convention, whether or not this was intentional.

86. Convention No. 94 applied equally to subcontractors and assignees of contracts. Subcontracting was becoming generalized in many sectors. It was all too common in the construction industry, but also in sectors that were more sensitive to the informal economy, such as the cleaning services sector. Even though the rule was clear, its application was less clear since, in practice, enforcement was left to the national legislator. The only labour clauses which were in conformity with Convention No. 94 were those which imposed on the employer the obligation to comply with the highest standards at local level, and the conditions guaranteed needed to be those that were most favourable among those established by collective agreement, arbitration award or national legislation.

87. With a view to addressing the practical difficulties of application, the Worker members believed that it was necessary to emphasize the significance of social dialogue in all forms and at all levels. They therefore supported the emphasis placed by the Committee of Experts on the importance of compliance with appropriate provisions in the field of safety and health, with a view to effective prevention. The Committee of Experts had found that in general the idea of including social clauses in public contracts was not widely accepted by member States, even though States should act as models in this respect. However, the Convention was simple in conception and offered a clear, specific and effective mechanism that could be adapted to modern realities and ensure that the rights of workers were protected. The Committee of Experts also observed that the legislative models on public procurement recommended to developing countries, mainly with a view to promoting international competition in a transparent and corruption-free environment, never addressed the social aspects of public contracts, or only referred to marginal aspects which were far from the firm principles set out in the Convention. The Worker members could only echo the concerns of the Committee of Experts when it highlighted that certain technical guidelines used by international organizations operating in the field of public procurement might lead countries to disregard their obligations deriving from ILO Conventions.

88. A Worker member, speaking on behalf of the Building and Wood Workers' International (BWI), indicated that the construction sector was very familiar with the Convention. The BWI had submitted detailed comments on the General Survey. She supported the remarks made by the Worker members and expressed her disappointment with the unduly negative attitude of the Employer members. She commented that BWI had never heard this opinion from the construction employers or contractors' organizations. The number of ratifications of Convention No. 94 was higher than the average ratification rate. The Convention had been very relevant during the construction boom of the 1950s and 1960s and was still a very relevant and widely used instrument in the present construction boom, given that 70 per cent of investment in construction came from the public sector. Furthermore, it should

be recalled that the requirements and principles of Convention No. 94 were included in a large number of bidding documents for the procurement of works, including those of the World Bank and 13 multilateral development banks (MDBs), as well as in construction contracts, many national employment and procurement laws and collective agreements.

89. The speaker added that the construction industry was a US$3.5 trillion industry (50 per cent of capital investment) employing around 150 million persons worldwide (75 per cent from developing countries). Workers were, however, no longer directly employed by entities within the public sector or by large general contractors but rather by micro-enterprises with less than ten workers. There were large numbers of people in the informal economy and large numbers who were not genuinely "self-employed". Due to the extremely high competition in the construction industry, contractors won bids by lowering their costs, of which labour was a major component. The winning tender was mostly the one who paid the lowest wages, did not provide safety equipment or accident coverage, and had the largest number of informal workers without any legal or social protection. The BWI was appalled by the poor quality of employment offered in construction and the high fatal accident rates were the most visible consequence of that exploitative environment.

90. In the BWI's view, "best value" was quite different from "lowest price". The construction industry today sought to avoid the lowest-price culture and the economy of evasion created by informal contractual conditions, weak employment policies and exploitative labour practices. There were long chains of employers in the industry, from the client (i.e. the public authorities) to the prime contractor, specialized subcontractors, many labour-only subcontractors and tremendous numbers of informal workers. In this context, the construction contract was crucially important to ensure a level playing field and safeguard the practical implementation of labour standards. Contract clauses relating specifically to labour standards needed to be included in public contracts and should be expanded and strengthened.

91. The Government member of Denmark, also speaking on behalf of the Government of Norway, commended the Committee of Experts for the high quality of the analysis of the General Survey. She also noted that it was user-friendly, as it contained diagrams, and encouraged the Office to continue this approach, where relevant. Although each of the issues addressed in the General Survey deserved detailed attention, the question remained as to why Convention No. 94 did not play a more central role. The Convention was the only international instrument to prevent social dumping and to ensure for the workers concerned wages and other working conditions not less favourable than those established by the national legislation or collective agreements for work of the same nature in the trade or industry concerned. She hoped that the present discussion in the Conference Committee would become an important milestone in making public procurement socially responsible. She therefore looked forward to a practical outcome from the debate.

92. The Government member of the Netherlands welcomed the General Survey and stated that her Government supported the conclusion that the Convention was most relevant in times of globalization. Greater awareness was, however, needed as public procurement had become a highly specialized field with considerable financial implications. She indicated that her Government had high ambitions for sustainable procurement. Utilizing its large purchasing power, it had decided to make all purchases at the central level and a considerable amount of purchases at the local and provincial levels socially and environmentally sustainable. As part of the broader sustainability agenda, the Government encouraged enterprises to take their responsibility. At the same time, acting as a powerful consumer, the Government decided that the core labour standards would have to be subscribed to by suppliers in their production chains. In the initial stages, suppliers did not have to guarantee compliance with ILO standards, but had to make an effort, including bringing their subcontractors into line. For larger contracts, it would be necessary to show

the results of the efforts made, which would have to be supported by an external audit. Regarding the question of transnational application of Convention No. 94, she stated that the Convention had been adopted long before globalization and therefore its context was national. She added that, while admittedly there were very important international labour standards other than the core labour standards, especially those on minimum wages, safety and health at the workplace and reasonable working time, it had been decided that sustainable public procurement should primarily focus on core labour standards. Other standards might of course be added, if needed, in certain cases. Moreover, discussion was under way concerning the knowledge that procuring entities needed to have to comply with the core labour standards. While the responsibility for compliance lay primarily with the suppliers, the procuring entities did have a role to play and therefore needed to be trained. It was very important that the parties concerned had better access to specialized auditors and advisers on social criteria. In this connection, the ILO could help in developing the market of such auditing companies.

93. The Worker member of Sweden congratulated the Committee of Experts on an excellent General Survey. In fact, the General Survey should have been prepared a long time ago, because the Committee of Experts had expressed its concern that the Convention, which was the world's only binding, universal and systematically supervised instrument on the subject, seemed to be neglected and not properly used. He said that the General Survey encouraged everyone not only to understand the situation at the national level better, but also to see the broader picture of relevant developments in other international and regional organizations. It also gave an indication of how the Decent Work Agenda could be promoted through public procurement policies.

94. While noting that some positive developments were taking place in certain international organizations, the speaker called on ministries of labour and the social partners to engage more actively in dialogue with other ministries responsible for public procurement policies and with regional and international organizations to ensure that public procurement was used as a tool to promote decent work and the social dimension of globalization. He observed that some of those responsible for public procurement policies were not aware of the relevant ILO standards and he took the view that perhaps the public sector should try to catch up with the developments in many private enterprises in making social and ethical commitments, such as the signing of international framework agreements. He referred to the point raised by the Committee of Experts that the scope of Convention No. 94 principally covered contracts concluded by central authorities. member States should be reminded, however, of the possibility afforded by the Convention to extend its coverage to contracts awarded by local authorities. A similar mechanism was to be found in the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), under which countries were free to add additional grounds on which discrimination was to be prohibited while the accompanying Recommendation No. 111 called for the principles of non-discrimination to be included among the eligibility criteria for public contracts. Moreover, Recommendation No. 90, which accompanied the Equal Remuneration Convention, 1951 (No. 100), suggested that the principle of equal remuneration for men and women for work of equal value should be applied in work executed under public contracts.

95. The Government member of Morocco observed that the General Survey was published in a context characterized by the increasing use of concession agreements, privatization and recourse to subcontracting in public procurement. At the same time, a certain disengagement of the State to the benefit of private enterprises was observed, in particular, through the development of public–private partnerships. The General Survey demonstrated, on the one hand, that Convention No. 94 was not widely ratified, and on the other, that it was important to integrate social criteria into public procurement contracts. In this regard, the Government of Morocco had made efforts to improve national law and practice, for instance, through Decree No. 2-98-482 which guaranteed equality between

workers with regard to conditions of employment, the Labour Code which contained provisions guaranteeing respect of this principle, and the Instructions issued by the Prime Minister in April 2008 which reaffirmed this principle. These instruments were supplemented by the provisions of the Code of Contracts and the Code of Civil Procedure.

96. The Government member of Italy thanked the Committee of Experts for having prepared an important General Survey which was a detailed analysis of national law and practice, taking into account the latest developments in public procurement and the problems relating to the application of the two instruments under discussion. Italy had ratified and applied Convention No. 94. In conformity with the two EU Public Procurement Directives of 2004, a new Code on public contracts was adopted in 2006. A single legal text, henceforth, covered all provisions on contracts entered into by public authorities. An important aspect of the General Survey was that it had made clear that the principles of the European Directives were not in contradiction with those contained in Convention No. 94. It would be helpful if the consequences of the latest decisions rendered by the Court of Justice of the European Communities (ECJ) were further analysed.

97. The Government member of Egypt stated that, since Convention No. 94 was ratified in 1960, the Committee of Experts had addressed observations to her Government on several occasions. Even though specific legislation had been adopted to implement the principle of equal remuneration for all workers without any discrimination, the Committee of Experts continued to consider that this was not sufficient to give effect to the requirements of the Convention. She reiterated that her Government ensured to all workers the greatest degree of fairness and non-discrimination possible, and that it would continue to follow to the letter the provisions of Convention No. 94.

98. The Government member of Canada welcomed the General Survey and expressed appreciation for the balanced views presented on the Convention and the Recommendation. The issue of labour clauses in public contracts did not lend itself to an easy consensus. With respect to the ratification record, he wondered why so few member States had ratified Convention No. 94 and even fewer were substantially implementing it. As noted in the General Survey, Canada had not ratified Convention No. 94 for a number of reasons and took the view that further promotion of the Convention would not change this situation.

99. The Worker member of India indicated that the main objective of Convention No. 94 was for public authorities, while awarding contracts for the execution of construction works, or for the supply of goods and services, to ensure that ILO standards relating to working conditions and wages were observed appropriately, and that contractors who participated in the tendering process did not compromise working conditions and wages by curtailing costs in those areas in order to become the lowest bidders. With the advancement of globalization and open markets, the provisions of the Convention on labour clauses in public contracts were increasingly ignored and violated by public authorities. Economic interests led to the establishment of an economic hegemony to the detriment of underdeveloped countries by exploiting the cheap labour available in these countries. The capitalist world wanted to exploit this situation and hence the ruling class of the advanced industrialized countries would never wish to honour the Convention. Subsumed under the term of "globalization", education, health, construction of roads and rails, were all being transferred to the private sector and thus out of the orbit of public contracts. There was no doubt that the values of all ILO standards, including Convention No. 94, gradually eroded in an era when competitiveness and profits were maximized through a decrease of labour costs.

100. The Government member of the United Kingdom stated that his Government was committed to improving the quality of working life for individuals so that they could

expect a certain standard of working conditions and protection in the workplace. The United Kingdom's procurement policy was such that all public procurement was to be based on value for money, having due regard to propriety and regularity. There was scope to incorporate social considerations, such as the ILO labour standards, in the procurement process provided they were compatible with EU legislation. Under the European Union procurement rules, requirements in the selection or award criteria that were not relevant to the subject matter of the contract were not permitted and any special contract conditions should relate to the performance of the contract in question and be compatible with EU legislation. Contract clauses requiring compliance with minimum working conditions would not always be relevant to the performance of the contract and could, in some instances, be indirectly discriminatory. Therefore, the inclusion of such clauses required consideration on a case-by-case basis. In addition, the speaker considered that a blanket approach to insert references to legislative provisions in public contracts would add to the length and bureaucracy of the procurement process. In some cases these burdens could be disproportionate to the benefits to be gained and might potentially deter small businesses – including those owned by women, black, minority ethnic groups or other disadvantaged groups – from tendering for public contracts. He concluded by stating that his Government's decision to denounce Convention No. 94 was consistent with the United Kingdom's procurement policy and position on national employment legislation, whilst remaining committed to the principles of the ILO labour standards and Convention No. 94.

101. The Government member of Mauritius indicated that his country was among the 60 countries that had ratified Convention No. 94. He welcomed the General Survey because it shed light on the essential purpose of the instruments under discussion and contributed to a better understanding of their normative requirements. Non-compliance with the Convention, as rightly pointed out in the General Survey, was mainly due to significant misunderstandings of the Convention's core requirements and also to the fact that the Convention was situated halfway between labour and administrative law. In his country, the provisions of Convention No. 94 had been fully complied with until 1975 but they were somehow not fully integrated in the 1975 Labour Act during the labour law consolidation process. Nevertheless, by the very definition of "employer" in the national legislation, the workers employed by contractors and subcontractors were ensured wages, hours of work, and other conditions of labour – including occupational safety and health and social security protection – which were not less favourable than those established for work of the same character in the trade or industry concerned. In addition, amendments to the Public Procurement Act of 2006 were under preparation in order to put in place a new legal framework for public procurement which was expected to be in full compliance with Convention No. 94. For this purpose, his Government also drew on other relevant international instruments and model laws.

102. The Government member of the Democratic Republic of the Congo stated that his country, although having ratified Convention No. 94 in 1960, had not yet been able to implement it effectively in practice. The national authorities had not yet enabled the Ministry of Employment, Work and Social Security (METPS) to take appropriate action with a view to ensuring that labour clauses in public contracts were based on the principle of equality between national and foreign workers regarding conditions of recruitment, remuneration and social security. He mentioned, however, that in the context of a public contract for road construction, which had recently been concluded between the Government and a private Chinese company, the METPS had taken concrete action, and as a result, the contract did not only make reference to the provisions of Convention No. 94 but also guaranteed decent working conditions for both national and expatriate workers alike.

The social dimension of public procurement and present-day relevance of Convention No. 94

103. The Employer members recalled that, almost 60 years after its adoption, Convention No. 94 had received only 60 ratifications, of which 36 had been registered in the first 15 years following its adoption. Only three countries had ratified it over the past decade. The Convention had been denounced by the United Kingdom in 1982 as it had concluded that its provisions had become inappropriate for the country. Furthermore, the response rate to the questionnaire for the General Survey had been relatively poor, with slightly under half of the member States providing replies. Only 29 national workers' and employers' organizations from 17 countries had expressed their views on the instruments. The Employer members concluded that Convention No. 94 was an outdated and ill-conceived instrument which had never enjoyed wide support and the ratification record of which had long stagnated. In addition, the Convention was protectionist in nature and unduly interfered with sound public procurement policies and the most effective functioning of markets. By making mandatory the most favourable local wages and working conditions, it protected the conditions of a specific group of workers at the cost of the taxpayer and could compromise the quality of publicly procured goods and services. Moreover, it could actually have the effect of excluding from public contracts workers who enjoyed decent, though not necessarily the most advantageous, working conditions. Commenting on the Committee of Experts' view that the Convention was an up to date instrument and that a similar conclusion was reached by the ILO Governing Body's Working Party on Policy regarding the Revision of Standards, the Employer members observed that although the Working Party had classified the instrument as being up to date ten years ago, this decision had in part been based on the premise that significant ratifications were expected. This had not been the case. Furthermore, the discussion of the General Survey provided an opportunity to assess the instrument in much greater depth than the Working Party had been able to do, and should therefore be seen as updating the findings of the Working Party.

104. The Worker members concurred with the view of the Committee of Experts that Convention No. 94 was an underused instrument. However, rather than affirming that the Convention might need to be partially revised in order to keep pace with sweeping changes in the public procurement sector, its content and underlying philosophy should be the subject of an awareness-raising campaign to achieve better understanding of its objectives with a view to strengthening its principles, which were still relevant. Convention No. 94 needed to be placed at the heart of the institutional debate at the national and international levels, and neither the European Union, nor the IFIs should disregard this debate. The core issue was the role of social justice and the promotion of workers' rights, which was essential to any democratic State. Well-known cases examined by the Committee of Experts showed that a State which undervalued workers' rights either denuded itself of its vital forces or plunged its population into despair.

105. A Worker member, speaking on behalf of the European Trade Union Confederation (ETUC), stressed that Convention No. 94 was an up to date and indispensable instrument in a globalizing world. Its aim was to ensure that wages and working conditions were not used as an element of competition for public contracts, thus exerting downward pressure. The issue at stake was not whether minimum or any other standards should be applied under public contracts, but rather that the State, as the single biggest buyer in any given market, should not remain neutral. By insisting on a level of wages similar to the one agreed collectively, the Convention supported collective bargaining and strengthened the industrial relations system. The importance of including all subcontractors in the chain was to prevent the creation of a loophole for both the contractor and the State that would be an enormous disincentive for collective bargaining. The objectives of Convention No. 94 were recognized in the treaties establishing the European Union. In addition, the European

Commission considered that it was important and legitimate to pursue environmental and social objectives through public procurement. The 2004 Public Procurement Directives recognized the respect for collective agreements while in 2006, the European Commission and the European Council called on EU Member States to ratify up to date ILO Conventions, including Convention No. 94.

106. Another Worker member, speaking on behalf of the BWI, recalled that in December 2001, a clear, international consensus had emerged among Governments, construction employers or contractors associations and construction trade unions participating in the ILO Tripartite Meeting on the Construction Industry in the Twenty-First Century. This consensus was aimed to offer fair and reasonable working conditions and to implement international labour standards in the construction industry in order to create a level playing field and eliminate unfair competition. Convention No. 94 was highlighted as an important instrument to achieve this objective. In the conclusions, it was proposed that governments should use their procurement procedures to ensure that contractors and subcontractors complied fully with national labour legislation, and specifically with health and safety legislation. It was recommended that these obligations be included in the contract as labour clauses, and that there should be an immediate sanction in the form of exclusion from tender lists for those not fulfilling their obligations. It was further agreed that IFIs should encourage socially responsible business practices promoting and protecting workers' rights in accordance with the 1998 Declaration on Fundamental Principles and Rights at Work. Following the ILO meeting, the Confederation of International Contractors' Associations (CICA) and the BWI developed some joint approaches towards labour clauses in public contracts and had actively been promoting these clauses together with MDBs. This had resulted in the development of new labour clauses in the Standard Bidding Documents for procurement of works used by the World Bank and copyright of FIDIC. These clauses covered workers' organizations, discrimination, child labour, forced labour, health and safety, HIV/AIDS and record-keeping requirements.

107. The Government member of Denmark, speaking also on behalf of the Government of Norway, expressed the view that the Convention and its accompanying Recommendation remained as relevant, valid and necessary today as they had been in 1949 when adopted. Globalization had created new challenges putting to the test the balance between economic and social forces of the economy. The Convention made a valuable contribution in this regard, although its scope was limited to public contracts. She supported the view that governments should act as model employers and emphasized that Convention No. 94 only required governments to ensure the generally accepted level of wages and other working conditions for work of the same character in the trade or industry concerned. The Convention was still valid and relevant also for countries where the labour markets were regulated by collective agreements concluded between highly representative employers' and workers' organizations. The so-called Nordic model was based on the conviction that the social partners were best qualified to recognize the problems on the labour market and to find appropriate solutions. In this context, Convention No. 94 had been found to be particularly useful in situations where contracted enterprises brought foreign workers to Norway and Denmark. Labour clauses required the level of wages and other working conditions of those posted workers to correspond to the local level, preventing them from being employed in second-class jobs or under substandard working conditions. The Convention also offered a development potential. In developing countries where the public sector was often the largest employer, the Convention should be ratified and implemented as it provided the basis for the exercise of the fundamental right to freedom of association and collective bargaining in order to ensure decent wages and working conditions. She accordingly expressed the hope that IFIs and MDBs would not fail to take due consideration of the Convention.

108. Replying to certain comments made by the Employer members, the Worker member of Sweden noted that not only had the Convention been classified as up to date by the Working Party on Policy regarding the Revision of Standards but, in addition, in adopting the report of the Conference Committee on Sustainable Enterprises in 2007, the Employer members had recognized the value of Convention No. 94 in promoting sustainable procurement policies. Moreover, he recalled the tripartite consensus that all ILO up to date instruments should be promoted. He added that, in his view, the low level of ratification of the Convention was due to lack of awareness of its objectives, and a ratification campaign was therefore necessary. The case of the Minimum Age Convention, 1973 (No. 138) offered an interesting example. Back in 1985, it had only received 43 ratifications and serious doubts had been expressed about its ratification prospects. Yet, some 20 years later, the situation had completely changed. Efforts should therefore be made to ensure that the same happened with Convention No. 94.

109. The Employer member of Norway addressed the specific question of posted foreign workers engaged in the execution of public contracts and stated that her country had implemented Convention No. 94 through a government regulation which took effect in March 2007. The clause safeguarding posted workers' working conditions and wages required wages and conditions of labour to be not less favourable than those established in national collective agreements in force and not less favourable than what was considered normal for the relevant location and profession. Employers in her country supported the purpose of the regulation, as it was important that foreign workers working in Norway were offered acceptable wages and working conditions. The political debate, however, regarding wages and working conditions for foreign workers had been confusing because of the use of the term "social dumping", for which no legal definition existed. In her view, offering foreign workers wages below those stipulated in national collective agreements did not constitute social dumping, since those workers received lodging, food and travel costs. Besides, wages and working conditions for foreign workers were regulated by four different acts and regulations. The overlap in scope between the four instruments made it extremely difficult for a contracting authority to find out which instrument took precedence.

110. The Worker member of Kenya argued that the issue at stake was how public funds – sourced through domestic taxes and borrowed funds from international institutions and multilateral arrangements – were spent. In this regard, the purpose of Convention No. 94 and Recommendation No. 84 was to safeguard the interests of all citizens from being subjected to work situations that would not conform to the aspirations and expectations of the working people. Including labour clauses in public contracts could not be seen as asking too much from contractors, both domestic and foreign, who benefited from the utilization of public funds. Given that nationals of the contracting countries had to bear the full cost of these funds, it was fair that they obtained proper benefits from public contracts. Accordingly, foreign contractors should not be allowed to import foreign personnel and machinery. The Convention also addressed the issue of job creation, which called for a labour-intensive execution of the contracts awarded through public funds. Furthermore, the recognition of the relevant trade unions in the area of the execution of a public contract should be emphasized. Therefore, tender boards should include workers' representatives as public watchdogs. In conclusion, Convention No. 94 and Recommendation No. 84 needed urgent revision to take into account the changing nature of globalized business operations and should then be promoted as other core Conventions.

111. The Government member of Spain noted that Convention No. 94 and Recommendation No. 84 reflected the social needs that they were designed to address when they were first drafted. The instruments were adopted at the time of the Second World War in a situation characterized by the devastation of huge areas, which required an enormous effort by the public sector for the reconstruction of infrastructure and for overall economic recovery. At

the same time, reconstruction should not be detrimental to the working and living conditions of the workers concerned. Convention No. 94, therefore, offered a legal solution balancing both needs, thereby giving rise to the necessity for the inclusion of labour clauses in public contracts. The circumstances had certainly changed, but the quest for social justice was timeless. Thus, public authorities could still not invoke intense international competition or financial crises as excuses for disregarding labour rights. Both the Convention and the Recommendation had lost nothing of their currency and continued to offer legal solutions that were still valid today. Despite the recent ruling by the ECJ that seemed to follow a different approach, it should be recalled that Convention No. 94 was a universal standard which had given rise to various EU directives. In the same vein, the Government member of Italy indicated that the Convention continued to be a valid tool for ensuring fair wages and working conditions to workers engaged in the performance of public contracts.

112. The Employer member of Denmark, speaking on behalf of the local public employers, expressed great interest in the General Survey, which addressed a wide range of important issues. Local governments, being often the largest employer in Danish districts and also the largest providers of tenders for many different public tasks, were everyday users of Convention No. 94. The Convention wisely allowed States to define the term "public authority" themselves. Denmark had defined the concept in a way that municipalities had a free choice whether or not to use the Convention in tendering procedures. In practice, municipalities applied the Convention in most cases. His organization recommended that municipalities should include parts of the wording of the Convention in the tender documents, in order to avoid controversy and litigation. The question of compatibility between Convention No. 94 and EU law became even more topical after certain recent decisions of the ECJ. Despite these rulings, however, the local public employers in Denmark would still use Convention No. 94. They would continue to apply the Convention, not necessarily in order to improve working conditions, but rather in order to ensure that work paid for by them would be carried out in a manner comparable to that normally preformed in Danish districts.

113. The Worker member of the United Kingdom stated that the present discussion went to the heart of the question of what kind of international economy one wished to create. In theory, globalization provided new opportunities for developing countries. However, in reality this was only the case when the necessary supporting economic and social policies were in place. The principles enshrined in Convention No. 94 were central to such policies. By proposing a standard labour clause in public contracts, the Convention sought to ensure that such contracts did not force down wages and working conditions. He recalled that the United Kingdom was the first country to ratify Convention No. 94 but also the only country ever to have denounced it. A number of leading companies in the United Kingdom had since incorporated the London Living Wage into their procurement policies. While some argued that this was unlawful, EU rules clearly stated that suppliers should be appointed because of their overall economic advantage, not simply because they offered the lowest cost. The Trades Union Congress (TUC) and other European unions were gravely concerned about the recent cases where the ECJ ruled that free movement of goods, services, workers and capital took precedence over fundamental workers' rights, including the right of unions to organize and to bargain collectively. More positively, in the United Kingdom, after sustained trade union pressure, the Ministry of Finance was about to publish a booklet describing the way in which social clauses could be used to promote skills and equality in procurement contracts. This development made it even more illogical that the United Kingdom had still not decided to re-ratify Convention No. 94.

114. The Government member of Sweden emphasized that her Government fully supported the idea behind Convention No. 94 although it had not yet ratified it. Public authorities awarding contracts for works, goods or services should indeed ensure decent working

conditions. The decision not to ratify Convention No. 94 was taken by the Swedish Parliament already in 1950 and was supported by both workers and employers. The interests pursued by the Convention were seen as already being ensured by the Swedish system of collective agreements. The Government had not found reasons to revise its decision since then.

115. The Worker member of Japan stated that the two instruments regarding labour clauses were very important and continued to be relevant and valid, particularly in the light of the increasing importance of public contracting and the related competitive pressures. The tendency of national and local governments to contract private companies at low cost resulted in reduced profits for the contracting companies and consequently declining wages and working conditions for their workers. Granting contracts for public works to private companies was only rarely aimed at the reduction of expenditures, while no consideration was given to whether the workers concerned were provided with fair employment and working conditions. The labour costs were being compressed below the minimum wage and individual workers were being transformed into self-employed workers as a means to evade social insurance obligations. A growing number of workers were not able to maintain a minimum livelihood while cost-cutting had also led to a deterioration of public services.

Recent case law of the Court of Justice of the European Communities

116. The Worker members noted that a central question was how to avoid social dumping, and in particular wage dumping, in public procurement procedures. No region was immune from the issue of wage dumping, as shown by the recent ruling of the ECJ in the *Dirk Rüffert* case (C-346/06, judgement of 3 April 2008). The case consisted of a confrontation between two fundamental aspects of European law: article 49 of the Treaty of the European Community on the freedom to provide services and the Posting of Workers Directive (96/71/EC). Developments in the *Rüffert* case bore witness to a certain approach to public procurement under which workers were seen as cost factors. The case highlighted the right of public authorities, in granting procurement contracts, to require tendering enterprises to undertake to pay wages that corresponded to those already agreed through collective bargaining where the work was to be performed. The ECJ judgement ignored the 2004 directives on public procurement, which explicitly permitted social clauses. It did not recognize the right of member States and public authorities to use public procurement contracts as a means of combating unfair competition in relation to wages and working conditions by cross-border service providers. The unfortunate ruling was considered to be an open invitation to engage in social dumping.

117. The Employer members welcomed the judgement in the *Rüffert* case to the extent that it gave precedence to the freedom to provide services within the EU common market over national legislation that prescribed payment of wages as laid down in a local collective agreement. The Court had found that there was no justification to prescribe rates of pay laid down in a local collective agreement for workers in the context of a public works contract where the same obligation did not apply to workers in the context of a private contract. The judgement demonstrated an obvious discrepancy between the requirements of Convention No. 94 and EU regulations, which could result in 27 EU Member States not being in a position to ratify or continue to apply the Convention. The decision might also have implications for countries beyond the European Union.

118. The Worker member of Sweden indicated that in Sweden for many years the argument against ratification of the Convention had been that it was prevented by EU rules. In this regard, he welcomed the observation by the Committee of Experts that EU directives on public procurement were compatible with Convention No. 94 and did not prevent EU

Member States from ratifying the Convention. The recent ECJ judgement in the *Rüffert* case raised both concerns among trade unions and expectations in some other quarters. He expressed his belief that the European Union had no intention of undermining Convention No. 94 or allowing itself to be used as a scapegoat. The EU executive organs had declared several times that EU Member States should ratify and implement all up to date ILO Conventions, which included Convention No. 94.

119. The Employer member of Norway stated that despite repeated requests by the employers, the Government had been unable to clarify the Regulation of March 2007 on foreign posted workers, saying it would have to be interpreted on a case-by-case basis. That left clarification up to the courts. The Regulation clearly created a restriction on the free movement of services from EU Member States to Norway, and the recent judgement of the ECJ in the *Rüffert* case demonstrated that the European courts would rule against such unwarranted restrictions, even when they had a social objective. Employers in Norway therefore intended to pursue the matter through the courts.

120. A Worker member, speaking on behalf of the ETUC, emphasized that Convention No. 94 was particularly important in the European context because of the extensive subcontracting practices with a cross-border dimension and policies of intra-EU mobility. A series of cases decided by the ECJ had dealt recently with situations where employers sought to challenge locally applicable wages and working conditions by establishing themselves elsewhere in one of the new EU Member States (*Viking* case). In other cases, workers were hired through subcontractors located in new EU Member States (*Laval* case). With regard to the *Rüffert* case, she noted that the action taken by the public authorities concerned, by requiring payment of wages to all workers in line with the rates agreed in locally applicable collective agreements, were in line with Convention No. 94. However, contrary to the Advocate General’s opinion, the ECJ held that, in the case at hand, wages had been fixed in a manner contrary to the directive concerning the posting of workers and that the setting of higher wages than those applicable in posted workers’ home country amounted to a restriction of the freedom of services which was not justified by the aim of protecting workers. Unfortunately, the *Rüffert* case confirmed the ECJ’s narrow interpretation of the posting of workers directive and did not make any reference to the public procurement directives which explicitly allowed social clauses to prevent social dumping and oblige public authorities to investigate when tenders were abnormally low. In the ETUC’s view, this was an open invitation for social dumping and a race to the bottom and thus, contrary to the aims of Convention No. 94. Although there was tension and political conflict between the *Rüffert* case and ILO Convention No. 94, it should be recognized as of limited scope and to be very EU-specific, it was only relevant to intra-EU cross-border subcontracting. It did not apply to public procurement at the national level with only national actors involved, nor when posting from outside the EU. Nonetheless, it was problematic and a threat to collective bargaining and social standards. The speaker concluded that it was now time for the European Union and its members to show that they remained committed to the ILO and to support the promotion of Convention No. 94. It was urgent that the European Union addressed the issues at stake in relation to intra-Community mobility and procurement in order to avoid ambiguities, keeping in mind that the goals of Convention No. 94 were fully compatible with the aims of the EU Treaty.

121. The Government member of Sweden indicated that following the judgement of the ECJ in the *Laval* case (C-341/05, judgement of 18 December 2007), her Government had decided to appoint an inquiry commission to formulate proposals for any amendments in the Swedish legislation that might be deemed necessary as a result of the ruling. Both the *Laval* and the *Rüffert* cases concerned the balance between social protection of workers and the EU rules on freedom to provide services. Given that the two cases were closely related, it could not be excluded that the result of the inquiry might have an impact also on the application of social clauses in public contracts. The question of whether Convention

No. 94 was compatible with EU legislation was crucial for determining whether Sweden could ratify the Convention. At this stage, however, the Government was not in a position to revise its 1950 decision not to proceed with the ratification of the Convention.

The outlook: Prospects for promotion and other possible future ILO action

122. The Employer members stated that they could not support promotional activities for Convention No. 94 or for the adoption of the concepts set out in the Convention by other international organizations. They also expressed their opposition to any efforts to revise the Convention with a view to extending its scope to new forms of public procurement. They suggested that the Office might conduct research on the economic and social impact of labour clauses in public procurement contracts with a view to developing a revised and updated position on the issue of a social dimension, if any, of public procurement contracts. They proposed that a tripartite meeting of experts be organized with a view to preparing a guidance document regarding this issue.

123. The Worker members presented a number of proposals as to how the Office could follow up on the Committee of Experts' General Survey. Promoting the social dimension of public procurement, as envisaged in Convention No. 94, was an essential element of any trade union strategy aimed at promoting decent working conditions and fair wages. The Committee of Experts' recommendation to promote Convention No. 94 and to increase its impact should be supported. In this regard, the Office should launch a major campaign to raise awareness of an instrument that was still not widely understood. The Office should provide technical assistance to governments that had ratified the Convention so that they could give full effect to it. Efforts should also be made to obtain further ratifications. Technical assistance for the implementation of the Convention should become an integral part of DWCPs.

124. The Worker members further proposed that research programmes should be developed with the objective of identifying good practices in the area of labour clauses in public contracts. The International Institute for Labour Studies could play an important role in this respect. The Office should intensify the dialogue with governments and international institutions active in public procurement with a view to promoting Convention No. 94 as an essential element of sustainable public procurement policies. It should also establish a global database on socially responsible practices in relation to public procurement. Some very interesting initiatives existed in that area within the Trades Union International of Workers in Building, Wood, Building Materials and Allied Industries (UITBB). The data so collected could then be analysed at a meeting of experts to be convened by the Office. In contrast, the Worker members were of the view that revising Convention No. 94 was not necessary at the present time. They expressed the hope that the General Survey would enable the ILO, in the very near future, to position itself as the champion of sustainable public procurement policies.

125. The Government member of Denmark, speaking also on behalf of the Government of Norway, considered that the ILO should continue to promote and strengthen the capacities of the social partners through technical cooperation, and that the spirit of the Convention could be used as a source of inspiration and guidance for labour policy. She called on member States to ratify and implement the Convention. The Government member of the Netherlands emphasized that there was a need to increase awareness about the requirements of Convention No. 94 regarding social criteria in public procurement. Easily accessible information should be provided by the ILO concerning qualified and reliable auditors. Governments should also exchange information about their experiences with the social dimension of public procurement.

126. The Worker member of Sweden agreed with the Committee of Experts' recommendation that these instruments should be actively promoted by the Office to secure additional ratifications and better implementation. The General Survey pointed to current developments which needed to be taken into account in relation to public procurement from a decent work perspective, which he assumed would be the subject of future discussions. The Worker member of Japan stated that the lack of ratification had increased the number of workers without social protection, resulting in decent work becoming an elusive goal. The Office should therefore launch a promotional campaign so as to attract new ratifications of the Convention and should allocate the necessary resources to this effect.

127. Another Worker member, speaking on behalf of the BWI, expressed the view that further popularizing Convention No. 94 and promoting its ratification would be a useful follow-up on the findings of the General Survey. The promotional activities should include discussions on public procurement and labour clauses in public contracts at national and regional level. In order to improve living and working conditions in the construction industry, the BWI looked forward to continuing to work with construction employers and public authorities in the framework of the construction action programme of the ILO and at the national level. Another worker member, speaking on behalf of the ETUC, expressed the hope that EU Member States would support further activities for the promotion of Convention No. 94. It was important to note that ten EU Member States had ratified ILO Convention No. 94 and that all EU Member States had ratified all eight core Conventions of the ILO, which included freedom of association and the promotion of collective bargaining.

128. The Government member of Italy expressed his support for undertaking a promotional campaign and offering technical assistance with respect to the Convention and stressed the important contribution that the International Training Centre of the ILO in Turin could make in strengthening the visibility of the Convention. In the same vein, the Government member of Mauritius noted that in view of its relevance, the Convention should be actively promoted before any consideration was given to possible revision, while the Government member of the Democratic Republic of the Congo called for large diffusion of the Convention and also sensitization of governments for further ratifications.

129. The Government member of Canada referred to the Committee of Experts' view that the instruments under discussion might no longer address current procurement patterns and that they might need to be reviewed. In this context, his Government did not support additional efforts to promote the Convention. The Office's resources would be better used in assessing whether Convention No. 94 could be revised to make it meaningful for current procurement practices and to make its provisions sufficiently flexible, encouraging wide ratification and implementation. Given the importance of the social dimension of public procurement practices, more tripartite discussions were necessary in this regard.

130. The Government member of Lebanon noted that the Committee of Experts had made a number of suggestions, including the adoption of a Protocol to the Convention. In such case, the impact of a future Protocol on the national legislation should be carefully analysed. In addition, the relation between a future ILO instrument on public procurement and other relevant international instruments would have to be discussed. In the meantime, the provisions of the Convention needed further clarification and explanation. The Committee of Experts and the Office should play an active role in this regard, for instance by supplying technical assistance and holding workshops and expert meetings. Finally, she observed that the General Survey had its own specifity regarding the scientific approach and in-depth analysis of some of the provisions of the Convention which seemed to be obscure at first glance.

131. The Government member of Spain estimated that there was room for additional ratifications and that the current ratification record did not at all diminish the relevance of the Convention. He also referred to some shortcomings of the Convention which would need to be addressed in the event of a partial revision. Firstly, the concept of public authority would need to be defined differently: instead of referring to an administrative entity or a public entity, emphasis should be given to the public nature of the funds used in the procurement process. Secondly, account needed to be taken of the fact that the exception of low-value contracts could result in opening the door for failure in applying the Convention, which was facilitated by the fact that no quantitative limit had been established. Thirdly, it would be appropriate to provide for additional flexibility in the case of regions affected by natural disasters generally caused by climate change, although the exception of force majeure would still be acceptable. Fourthly, in accordance with the Convention, the public authority could impose penalties, such as the withholding of payments, in cases of failure to apply labour clauses. Nevertheless, in such cases the public authority should not be considered as responsible. But, in such a situation, it would be possible to go further and to provide that the public authorities assume a subsidiary responsibility.

Final remarks

132. In their concluding observations, the Employer members noted that the discussion on the General Survey had been rich, although there had been little participation of Worker representatives from developing countries and of member States not parties to Convention No. 94. Some Governments had indicated that they had no intention to ratify the instrument while others had stated that there was no need for special protection of workers in the context of public contracts over and above the generally applicable labour legislation. One Government supported the concept of requiring decent working conditions in connection with work performed under public contracts, while another was in favour of generally including core labour standards in public procurement contracts.

133. The General Survey was the first comprehensive survey in relation to Convention No. 94 and Recommendation No. 84 and the present debate was the first general discussion on these instruments. As a result, the Employers members believed that they were not bound by the findings of the Working Party on Policy regarding the Revision of Standards concerning the status of the instruments. In response to the submissions regarding the link between Convention No. 94 and collective bargaining, they were of the view that the Convention sought to impose the terms and conditions of certain collective agreements on employers who had chosen not to be parties to those agreements or to be parties to an alternate collective agreement. This was contrary to the voluntary nature of collective bargaining. Furthermore, the Convention interfered with sound public procurement policies and might compromise the quality of procured goods and services. The Convention might have the effect of excluding from work under public procurement contracts workers who enjoy decent working conditions but not necessarily enjoying the most advantageous working conditions. The Employer members concluded by reiterating that Convention No. 94 should not be promoted and that they opposed efforts to revise it with a view to extending its scope to new forms of public procurement. While accepting the role of a social dimension in public procurement contracts, they did not consider Convention No. 94 as a proper instrument for doing so.

134. The Worker members concluded their comments on the General Survey and the discussion that followed by stating that the Conference Committee on the Application of Standards was facing a situation where the analysis, albeit clear in the General Survey, lay bare diametrically opposite approaches on the part of employers and workers. Everything that the Worker members believed in and that justified their presence in the Committee had been repudiated in the Employer members' intervention. Under the circumstances, the

Worker members maintained fully their position in favour of a campaign aiming at promoting the Convention, strengthening its visibility, further research and exchange on good practices, continued technical assistance, and expert meetings to pursue reflection on socially sustainable procurement. Pointing to an inconsistency in the Employer members' line of argument, the Worker members recalled the conclusions adopted after the Conference discussion on the promotion of sustainable enterprises in June 2007 according to which the ILO was requested to promote the ratification and application of the international labour Conventions relevant to the promotion of sustainable enterprises, including Convention No. 94, the Labour Inspection Convention, 1947 (No. 81), the Workers' Representatives Convention, 1971 (No. 135) and the Maternity Protection Convention, 2000 (No. 183).

135. The Worker members reminded those governments that might still have doubts as to the need of promoting Convention No. 94 that fair competition required transparency and respect for the rights and dignity of workers. This implied, in particular, the prohibition to resort to undeclared or illegal work in the case of subcontracting under public contracts, the promotion of social dialogue and the observance of collective agreements. Governments had an interest in favouring fair, equitable and efficient industrial relations systems. Furthermore, governments should not lose sight of the fact that the practice of social dumping, namely imposing precarious and illegal working conditions on workers and thus impoverishing them to the extent that they needed to have recourse to social assistance to survive, amounted to subsidizing enterprises from the state budget. Finally, the Worker members considered that good employers were those who had innovative ideas, while the less efficient ones attempted to exploit their workers. Whereas the latter were doomed to disappear in a market economy that would observe the rights and dignity of workers, dynamic and innovative employers that respected social dialogue would prevail. There was a choice to make.

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136. With respect to the General Survey on labour clauses in public contracts, the Chairperson of the Committee of Experts expressed her appreciation for the interesting comments made during the discussion, which had been of excellent quality. As frequently in a tripartite setting, a wide range of positions and approaches were presented. The Worker members and governments had overwhelmingly confirmed the continued relevance of the Convention. She hoped that the somewhat dramatic language used by some speakers to criticize the Convention would not come in the way of further tripartite dialogue on these important issues.

137. In reply to a few points raised by the Employer members, the Chairperson of the Committee of Experts pointed out that neither the Convention nor the General Survey operated on the basic assumption that "competition was unhealthy". On the contrary, the Convention and the General Survey realistically accepted the need for competition. That was given. The Convention sought to ensure that so far as public contracts were concerned, there was a truly level playing field from which all competitors should start, namely all bidders had to respect as a minimum certain locally established standards. She further stated that it was difficult to understand the argument that the insertion of labour clauses into public contracts could lead to corruption and a lack of transparency and that their absence would somehow bring about true transparency and fairer competition. Moreover, she clarified that the Convention did not require payment of the "highest wages" but wages not less favourable than those established for the same work in the same place by collective agreement, arbitral award or national laws or regulations. In response to the argument that the Convention went beyond ILO standards by requiring more than minimum standards, she observed that the Convention naturally had to address the situation where collective agreements improved the minimum standards set out in labour

legislation. To suggest that governments acting as model employers should nevertheless permit some workers to be employed in public contracts at substandard wages and conditions simply because they were foreign-sourced would be reason for serious concern. Finally, the Chairperson of the Committee of Experts stressed that there were some basic principles that never grew old. The core principle of Convention No. 94, which was that workers employed under government contracts should receive wages and should enjoy working conditions at least as favourable as best local practice, was not out of date. It was at the very heart of the ILO and should not be easily labelled as "protectionist".

138. In her reply, the representative of the Secretary-General noted that there was a clear consensus that the question of labour clauses in public contracts called for further study and analysis. Both the Employer and the Worker members, as well as a number of Governments among those who participated in the discussion, had proposed that a tripartite meeting of experts should be convened to continue to examine the complex issues of whether and how to integrate social clauses into public procurement contracts. The Office took note of this nearly unanimous request and would look into possible options for carrying it forward, probably by bringing the matter before the Governing Body for decision on the first suitable occasion.

139. As regards the question of the promotion of Convention No. 94, the Office understood that there was strong support for specific action in this regard. With the exception of the Employer members and the Government representative of Canada, all speakers favoured promotional and awareness-raising activities. In this respect, the International Labour Standards Department had been working on a "Practical Guide to Convention No. 94" which aimed at helping constituents better understand the requirements of the Convention and ultimately improving the application of the Convention in law and practice. Finally, the representative of the Secretary-General drew the Committee's attention to the fact that the Sectoral Activities Branch of the Office would organize a two-day "Global Dialogue Forum on Procurement in Construction" in February 2009, with the main theme "Achieving decent work in construction through procurement and contracts".

D. Compliance with specific obligations

140. The Worker members emphasized that the obligation to submit reports constituted a fundamental element of the ILO supervisory system. The observance of this obligation was indeed of the essence to prevent governments that neglected their reporting duties from gaining an undue advantage, as well as to allow the supervisory bodies to proceed with the examination of national laws and practices. It was therefore appropriate to insist upon the respect of this obligation, so that the member States concerned could take the necessary measures in this regard.

141. The Employer members indicated that any form of non-compliance with the obligation to submit reports, which was a key element of the ILO supervisory system, involved a serious failure of that system. Those States which most flagrantly violated these obligations eluded examination by this Committee. The situation was even more serious when it came to the submission of first reports. Similarly, the failure to submit instruments to the competent authorities was a clear indication of a lack of commitment on the part of the government concerned. The essence of the activity of this Committee, and in general of the supervisory mechanisms, was the establishment of dialogue between member States and the Organization, through the submission of reports. The slight progress observed in the last years was not satisfactory. Two years ago, the Committee insisted on taking a new approach to cases of failure to submit reports. The report of the Committee of Experts should provide a better understanding of the reasons for such a failure, a global analysis of these reasons and more information on the circumstances of each country.

142. It was necessary to examine various strategies, including assistance from the member States which complied with their standards-related obligations and regular direct contact with ILO standards specialists. In this respect, the efforts of the Office were appreciated even though the results had been limited. Weak administrative structures and certain exceptional circumstances linked to catastrophes were elements which could contribute to understanding the difficulties of States in complying with the submission of reports. On the other hand, the lack of coordination among various competent units of the State, changes in governments or technical difficulties in the submission of reports could not be considered as elements justifying these failures.

143. 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.

144. In applying those methods, the Committee decided to invite all governments concerned by the comments in paragraphs 25 (failure to supply reports for the past two or more years on the application of ratified Conventions), 31 (failure to supply first reports on the application of ratified Conventions), 35 (failure to supply information in reply to comments made by the Committee of Experts), 76 (failure to submit instruments to the competent authorities), and 87 (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

145. 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.

146. The Committee noted from the report of the Committee of Experts (paragraph 74) that considerable efforts to fulfil the obligation to submit had been made in certain States, namely: **Afghanistan, Armenia, Islamic Republic of Iran, Madagascar** and **Swaziland.**

147. In addition, the Committee was informed by various other States of measures taken to bring the instruments before the competent national authorities. It welcomed the progress achieved and expressed the hope that there would be further improvements in States that still experienced difficulties in complying with their obligations.

Failure to submit

148. The Committee noted that in order to facilitate the work of the Committee, the report of the Committee of Experts mentioned only the governments which had not provided any information on the submission to the competent authorities of instruments adopted by the Conference for seven sessions at least (from the 87th Session in June 1999 to the 94th (Maritime) Session in February 2006). This time frame was deemed long enough to warrant inviting Government delegations to the special sitting of the Conference Committee so that they may explain the delays in submission.

149. The Committee noted that the five governments concerned with this serious failure to submit had not replied to its invitation to provide information to this session of the Conference, that is, **Sierra Leone, Solomon Islands, Somalia, Turkmenistan** and **Uzbekistan**.

150. The Committee further noted that more than 50 countries were identified by the Committee of Experts in paragraph 70 of its report. Those countries were experiencing considerable delays in submitting the instruments adopted by the Conference to the competent authorities, as required by the ILO Constitution. 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

151. 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 2007 meeting of the Committee of Experts, the percentage of reports received was 65.0 per cent, compared with 66.5 per cent for the 2006 meeting. Since then, further reports had been received, bringing the figure to 73.2 per cent (as compared with 75.4 per cent in June 2006, and 78.3 per cent in June 2005).

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

152. The Committee noted with regret that no reports on ratified Conventions had been supplied for the past two or more years by the following States: **Bolivia, Cape Verde, Denmark** (Faeroe Islands), **Sierra Leone, Solomon Islands, Somalia, Tajikistan, Togo, Turkmenistan** and **United Kingdom** (Anguilla, St Helena).

153. The Committee also noted with regret that no first reports due on ratified Conventions had been supplied by the following countries: since 1992: **Liberia** (Convention No. 133); since 1994: **Kyrgyzstan** (Convention No. 111); since 1995: **Kyrgyzstan** (Convention No. 133); since 1998: **Equatorial Guinea** (Conventions Nos 68, 92); since 1999: **Turkmenistan** (Conventions Nos 29, 87, 98, 100, 105, 111); since 2002: **Gambia** (Conventions Nos 105, 138), **Saint Kitts and Nevis** (Conventions Nos 87, 98), **Saint Lucia** (Convention No. 182); since 2003: **Dominica** (Convention No. 182), **Gambia** (Convention No. 182), **Iraq** (Conventions Nos 172, 182); since 2004: **Antigua and Barbuda** (Conventions Nos 122, 131, 135, 142, 144, 150, 151, 154, 155, 158, 161, 182), **Dominica** (Conventions Nos 144, 169), **The former Yugoslav Republic of Macedonia** (Convention No. 182); since 2005: **Antigua and Barbuda** (Convention No. 100), **Liberia** (Conventions Nos 81, 144, 150, 182); and since 2006: **Albania** (Convention No. 171), **Dominica** (Conventions Nos 135, 147, 150), **Georgia (**Convention No. 163), **Kyrgyzstan** (Conventions Nos 17, 184), **Nigeria** (Conventions Nos 137, 178, 179). It stressed the special importance of first reports on which the Committee of Experts based its first evaluation of compliance with ratified Conventions.

154. In this year's report, the Committee of Experts noted that 49 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 555 cases (compared with 415 cases in December 2006). The Committee was informed that, since the meeting of the Committee of Experts, 16 of the governments concerned had sent replies, which would be examined by the Committee of Experts at its next session.

155. 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 2007 from the following countries: **Afghanistan, Antigua and Barbuda, Barbados, Belize, Bolivia, Cambodia, Cape Verde, Chad, Congo, Democratic Republic of the Congo, Equatorial Guinea, Ethiopia, France** (French Southern and Antarctic Territories, Réunion), **Gambia, Guinea, Guinea-Bissau, Guyana, Haiti, Ireland, Jamaica, Kyrgyzstan, Lesotho, Liberia, Malaysia** – Sabah, **Mali, Mongolia, Nigeria, Pakistan, Saint Kitts and Nevis, Seychelles, Sierra Leone, Solomon Islands, Sudan, Tajikistan, Togo, Uganda, United Kingdom** (Anguilla, Bermuda, British Virgin Islands, Gibraltar, Montserrat, St Helena) and **Zambia**.

156. The Committee noted the explanations provided by the governments of the following countries concerning difficulties encountered in discharging their obligations: **Barbados, Congo, Democratic Republic of the Congo, France** (French Southern and Antarctic Territories, Réunion**), Gambia, Ireland, Lesotho, Mali, Nigeria, Russian Federation, Saint Kitts and Nevis, San Marino, Solomon Islands, Somalia, The former Yugoslav Republic of Macedonia, Uganda** and **United Kingdom** (Anguilla, Bermuda, British Virgin Islands, Gibraltar, Montserrat, St Helena).

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

Supply of reports on unratified Conventions and Recommendations

158. The Committee noted that 146 of the 301 article 19 reports requested on the Labour Clauses (Public Contracts) Convention (No. 94) and the Labour Clauses (Public Contracts) Recommendation, 1949 (No. 84), had been received at the time of the Committee of Experts' meeting, and a further five since, making 50.1 per cent in all.

159. 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: **Antigua and Barbuda, Cape Verde, Democratic Republic of the Congo, Equatorial Guinea, Gambia, Guinea, Haiti, Iraq, Kiribati, Kyrgyzstan, Liberia, Pakistan, Paraguay, Russian Federation, San Marino, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, Tajikistan, The former Yugoslav Republic of Macedonia, Togo, Turkmenistan, Uganda, Uzbekistan** and **Yemen**.

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

160. 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

161. 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 50 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 65 such cases, relating to 52 countries; 2,620 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.

162. This year, the Committee of Experts listed in paragraph 53 of its report, cases in which measures ensuring better application of ratified Conventions had been noted with interest. It noted 314 such instances in 119 countries.

163. 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

164. The Government members of **Barbados, Cambodia, Congo, Democratic Republic of the Congo, Denmark** (Faeroe Islands), **Ethiopia, France** (French Southern and Antarctic Territories, Réunion), **Gambia, Ireland, Kiribati, Lesotho, Mali, Nigeria, Russian Federation, Saint Kitts and Nevis, San Marino, Solomon Islands, Somalia, The former Yugoslav Republic of Macedonia, Uganda, United Kingdom** (Anguilla, Bermuda, British Virgin Islands, Gibraltar, Montserrat, St Helena), **Yemen** and **Zambia** had promised to fulfil their reporting obligations as soon as possible. In addition, the Government member of **Iraq** apologized for the lack of appropriate conditions to provide the Committee with the requested reports and promised full cooperation with the ILO, in observance of the ILO Constitution.

Case of progress

165. In the case of **Sweden (Labour Inspection Convention, 1947 (No. 81))**, the Committee welcomed the measures taken by the Government through the Work Environment Authority to improve the functioning of the labour inspection. These measures included the creation of a web site for the online notification of employment accidents and other incidents; the determination of a method for the mapping of workplaces likely to present occupational hazards, thereby facilitating the evaluation of all workplaces registered in this respect; and appropriate training activities for all staff involved in the handling of supervision procedures, particularly with a view to ensuring compliance with professional rules and ethical principles. The Committee noted that this case was included in the list of countries as a case of progress that should serve as an example of good practice.

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

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

Special cases

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

168. As regards the application by **Bangladesh of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee noted the information provided by the Government representative and the debate that followed. The Committee observed that the Committee of Experts' comment referred to serious violations of the Convention both in law and in practice, including: allegations of the raiding of the offices of the Bangladesh Independent Garment Workers' Union Federation (BIGUF) and the arrest of some of its officers; further arrests and police harassment of other unionists in the garment sector; arrests of hundreds of women trade unionists in 2004 whose case was still pending before the courts; and obstacles to the establishment of workers' organizations and associations in export processing zones (EPZs). It further observed with regret that many of the discrepancies between the Bangladesh Labour Law of 2006 and the provisions of the Convention concerned matters upon which the Committee of Experts had been requesting appropriate legislative action for some time now. The Committee noted the Government's statement that the Labour Law of 2006 was adopted following a process of consultations with the social partners over many years. It further noted the Government's indication that it was in the process of reviewing the Labour Law, within the framework of the tripartite consultative committee, in order to bring its provisions into conformity with the Convention in respect of any remaining loopholes. As regards the allegations of arrests and detentions, it noted the Government's statement that none of these persons remained in custody nor were the charges against them being actively pursued. The Committee observed that in reply to its request concerning technical assistance, the Government stated that it would conduct a needs assessment and request such assistance if needed. Expressing its concern over the apparent escalation of violence in the country, the Committee stressed that freedom of association could only be exercised in a climate that was free from violence, pressure or threats of any kind against the leaders and members of workers' organizations. The Committee requested the Government to provide full particulars to the Committee of Experts in respect of all the allegations of arrest, harassment and detention of trade unionists and trade union leaders and urged it to give adequate instructions to the law enforcement bodies so as to ensure that no person was arrested, detained or injured for having carried out legitimate trade union activities. The Committee further urged the Government to take measures for the amendment of the Bangladesh Labour Law and the EPZ Workers' Associations and Industrial Relations Act so as to bring them into full conformity with the provisions of this fundamental Convention as requested by the Committee of Experts. The Committee emphasized in this regard the serious difficulties prevailing as regards the exercise of trade union rights in EPZs and the restrictions on the right to organize of a number of categories of workers under the Labour Law. It called upon the Government to ensure that all workers, including casual and subcontracted workers, were fully guaranteed the protection of the Convention. The Committee expressed the hope that the necessary concrete steps would be taken without delay and trusted that all additional measures would result in an improvement and not a deterioration of the trade union rights situation in the country. It requested the Government to provide a detailed report on all of the above matters for examination at the forthcoming session of the Committee of Experts.

169. As regards the application by **Zimbabwe of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee deeply deplored the persistent obstructionist attitude demonstrated by the Government through its refusal to come before it in two consecutive years and thus seriously hamper the work of the ILO supervisory mechanisms to review the application of voluntarily ratified Conventions. The

Committee recalled that the contempt shown by the Government to this Committee and the gravity of the violations observed had led this Committee to decide last year to mention this case in a special paragraph of its report and to call upon the Government to accept a high-level technical assistance mission. The Committee further deplored the Government's refusal of the high-level technical assistance mission that the Committee had invited it to accept. The Committee observed with profound regret that the comments of the Committee of Experts referred to serious allegations of the violation of basic civil liberties, including the quasi-systematic arrest and detention of trade unionists following their participation in public demonstrations. In this regard, the Committee further regretted the continual recourse made by the Government to the Public Order and Security Act (POSA) and lately, to the Criminal Law (Codification and Reform) Act of 2006, in the arrest and detention of trade unionists for the exercise of their trade union activities, despite its calls upon the Government to cease such action. The Committee also observed that the Committee on Freedom of Association continued to examine numerous complaints regarding these serious matters. The Committee took note with deep concern of the vast information presented to it concerning the surge in trade union rights and human rights violations in the country and the ongoing threats to trade unionists' physical safety. In particular, it deplored the recent arrests of Lovemore Matombo and Wellington Chibebe and the massive violence against teachers as well as the serious allegations of arrest and violent assault following the September 2006 demonstrations. The Committee emphasized that trade union rights could only be exercised in a climate that was free from violence, pressure or threats of any kind. Moreover, these rights were intrinsically linked to the assurance of full guarantees of basic civil liberties, including freedom of speech, security of person, freedom of movement and freedom of assembly. It recalled that it was essential to their role as legitimate social partners that workers' and employers' organizations were able to express their opinions on political issues in the broad sense of the term and that they could publicly express their views on the Government's economic and social policy. The Committee therefore urged the Government to ensure all these basic civil liberties, to repeal the Criminal Law Act and to cease abusive recourse to the POSA. It called upon the Government immediately to halt all arrests, detentions, threats and harassment of trade union leaders and their members, drop all charges brought against them and ensure that they are appropriately compensated. It called upon all governments with missions in the country to be present at the trial of Mr Matombo and Mr Chibebe and follow closely all developments in relation to their case. The Committee urged the Government to cooperate fully in the future with the ILO supervisory bodies, in accordance with the international obligations that it voluntarily assumed by its membership in the Organization. The Committee firmly urged the Government to ensure for all workers and employers full respect for the civil liberties enunciated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights without which freedom of association and trade union rights were void of any meaning. It urged the Government to accept a high-level, tripartite, special investigatory mission in this case of flagrant disregard for the most basic freedom of association rights. It urged the other governments that had ratified this Convention to give serious consideration to the submission of an article 26 complaint and called upon the Governing Body to approve a commission of inquiry.

Continued failure to implement

170. The Committee recalled that its working methods provide for the listing of cases of continued failure over several years to eliminate serious deficiencies, previously discussed, in the application of ratified Conventions. This year the Committee noted with great concern that there had been continued failure over several years to eliminate serious discrepancies in the application by **Zimbabwe of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**.

171. The Government of the country to which reference was made in paragraph 176 was invited to supply the relevant reports and information to enable the Committee to follow up the abovementioned matter at the next session of the Conference.

Participation in the work of the Committee

172. The Committee wished to express its gratitude to the 57 governments which had collaborated by providing information on the situation in their countries and participating in the discussion of their individual cases.

173. The Committee regretted that, despite the invitations, the governments of the following States failed to take part in the discussions concerning their countries' fulfilment of their constitutional obligations to report: **Afghanistan, Albania, Cape Verde, Chad, Guinea, Guinea-Bissau, Haiti, Jamaica, Liberia, Malaysia** – Sabah**, Mongolia, Tajikistan** and **Togo**. It decided to mention the cases of these States in the appropriate paragraphs of its report and to inform them in accordance with the usual practice.

174. The Chairperson of the Committee announced that on the last day of the discussion of individual cases, the Committee would deal with the cases in which governments had 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 was a significant obstacle to the attainment of the core objectives of the International Labour Organization. For this reason, the Committee could discuss the substance of the cases concerning governments which were registered and present at the Conference, but which had chosen not to be present before the Committee. The debate which ensued in such cases would be reflected in the appropriate part of the report, concerning both individual cases and participation in the work of the Committee.

175. The Worker members recalled that in 2007, the **Government of Zimbabwe** boycotted this Committee defiantly with deliberate intent after having asked for several postponements to which the Committee acceded. At that juncture, the Employer members had expressed the following view: "The situation created by the Government of Zimbabwe was regrettable, insulting to the Committee and to the ILO supervisory system as a whole." They had agreed with that view then, they agreed with it now. The Worker members further recalled that the allegations raised by the Government last year in document D.10 largely attempted to state that the Committee was entertaining a political issue. Yet all that the Committee of Experts and this Committee continued to address were violations of a freely ratified Convention by the Government. This continued defiance was a travesty of justice, was very regrettable and should not be allowed to prevail without reprimand.

176. The Employer members pointed out that this was the second year that the **Government of Zimbabwe** had elected not to appear before this Committee in accordance with its methods of work. This was regrettable and insulting to this Committee and the ILO supervisory machinery. Last year, under the 2005 Bosnia and Herzegovina precedent, the Committee had had the limited possibility to discuss the case based on the information supplied by the Government in document D.10. This year, there was no D. document. However, as reflected on page 7 of document D.1, the Committee had amended its methods of work to provide that the Committee could discuss the substance of the cases concerning which governments were registered and present for the Conference. The Employer members further underlined that the Government of Zimbabwe had participated in the discussion of an earlier case concerning another country this year. Moreover, its representatives were sitting in the gallery now. They concluded by stating that the

substantive discussion of this case would be reflected in Part Two of the Committee's report, but would also appear in a special paragraph in Part One of the Committee's report.

177. The representative of the Secretary-General informed the Committee that the **Government delegation of Equatorial Guinea** was not accredited to the Conference this year. The Chairperson of the Committee stated that in the case of governments that were not present at the Conference, the Committee would not discuss the substance of the case, but would bring out in the report the importance of the questions raised. In this situation, a particular emphasis would be put on steps to be taken to resume the dialogue.

178. The Worker members pointed out that the **Government of Equatorial Guinea** was on the list of individual cases of the Conference Committee in the context of two footnotes in respect of Conventions Nos 87 and 98. Equatorial Guinea ratified these Conventions in 2001. Since then, the main argument of the Government to evade its obligation to promulgate a law that would comply with the principles contained in Conventions Nos 87 and 98 had been to state that there was neither trade union culture nor trade unions in the country. The immediate consequence of this was that collective bargaining could not be exercised in the country. The Worker members stressed that at least four organizations of workers had requested recognition which illustrated the will of the workers in that country to try to create a trade union culture. However, they had been pushed underground by the Government. Hence, the attitude of the Government was unacceptable and the situation was serious. The Government needed to recognize that the trade union tradition would come to exist of itself once the trade unions concerned started to function. In this regard, the ILO could provide technical assistance. The Worker members therefore asked the Office to formally request the Government to accept technical assistance.

179. The Employer members indicated that the absence of a report to the Committee meant that this case could not be discussed properly. There was some indication in the General Report of the Committee of Experts that some contact had been made between the member State and the Office. The Employer members could only hope that this dialogue would bear fruit and that this Committee would be able to discuss this case in a more informed manner in the future.

180. The Committee noted with regret that the governments of the States which were not represented at the Conference, namely: **Antigua and Barbuda, Belize, Dominica, Equatorial Guinea, Kyrgyzstan, Saint Lucia, Seychelles, Sierra Leone, Turkmenistan** and **Uzbekistan**, were unable to participate in the Committee's examination of the cases relating to them. It decided to mention these countries in the appropriate paragraphs of this report and to inform the governments, in accordance with the usual practice.

Geneva, 10 June 2008. *(Signed)* Ms Noemí Rial
Chairperson

Mr Jinno Nkhambule
Reporter