



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

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

#### **PART ONE**

#### **GENERAL REPORT**

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## A. Introduction

1. In accordance with article 7 of the Standing Orders, the Conference set up a Committee to consider and report on item III on the agenda: “Information and reports on the application of Conventions and Recommendations”. The Committee was composed of 220 members (107 Government members, 20 Employer members and 93 Worker members). It also included 15 Government deputy members, 76 Employer deputy members, and 147 Worker deputy members. In addition, 25 international non-governmental organizations were represented by observers.<sup>1</sup>

2. The Committee elected its Officers as follows:

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

*Vice-Chairpersons:* Mr Edward E. Potter (Employer member, United States) and Mr Luc Cortebeeck (Worker member, Belgium)

*Reporter:* Mr Christiaan Horn (Government member, Namibia)

3. The Committee held 17 sittings.

4. In accordance with its terms of reference, the Committee considered the following: (i) information supplied under article 19 of the Constitution on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference; (ii) reports supplied under articles 22 and 35 of the Constitution on the application of ratified Conventions; and (iii) reports requested by the Governing Body under article 19 of the Constitution on the Employment Policy Convention, 1964 (No. 122), the Human Resources Development Convention, 1975 (No. 142), the Employment Service Convention, 1948 (No. 88), the Private Employment Agencies Convention, 1997 (No. 181), the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189) and the Promotion of Cooperatives Recommendation, 2002 (No. 193).<sup>2</sup> 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.<sup>3</sup>

## Work of the Committee

5. In accordance with its usual practice, the Committee began its work with a discussion on general aspects of the application of Conventions and Recommendations and the discharge by member States of standards-related obligations under the ILO Constitution. In this part of the general discussion, reference was made to Part One of the report of the Committee

<sup>1</sup> For changes in the composition of the Committee, refer to reports of the Selection Committee, *Provisional Records* Nos 4 to 4(h). For the list of international non-governmental organizations, see *Provisional Record* No. 3.

<sup>2</sup> Report III to the International Labour Conference – Part 1AI: Report of the Committee of Experts on the Application of Conventions and Recommendations; Part 1AII: Information document on ratifications and standards-related activities; Part 1B: General Survey concerning employment instruments.

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

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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.<sup>4</sup> 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.

6. The second part of the general discussion dealt with the General Survey concerning employment instruments carried out by the Committee of Experts. It is summarized in section C of Part One of this report. The final part of the general discussion considered the report on Teaching Personnel of the Joint ILO–UNESCO Committee of Experts. This discussion is set out in section D of this report.
7. Following the general discussion, the Committee considered various cases concerning compliance with obligations to submit Conventions and Recommendations to the competent national authorities and to supply reports on the application of ratified Conventions. Details on these cases are contained in section E of Part One of this report.
8. The Committee held a special sitting to consider the application of the Forced Labour Convention, 1930 (No. 29), by Myanmar. A summary of the information submitted by the Government, the discussion and conclusion is contained in Part Three of this report.
9. During its second week the Committee considered 25 individual cases relating to the application of various Conventions. The examination of the individual cases was based principally on the observations contained in the Committee of Experts' report and the oral and written explanations provided by the governments concerned. As usual, the Committee also referred to its discussions in previous years, comments received from employers' and workers' organizations and, where appropriate, reports of other supervisory bodies of the ILO and other international organizations. Time restrictions once again required the Committee to select a limited number of individual cases among the Committee of Experts' observations. With reference to its examination of these cases, the Committee reiterated the importance it placed on the role of the tripartite dialogue in its work and trusted that the governments of all those countries selected would make every effort to take the measures necessary to fulfil the obligations they had undertaken by ratifying Conventions. A summary of the information submitted by Governments, the discussions, and conclusions of the examination of individual cases were contained in Part Two of this report.
10. With regard to the adoption of the list of individual cases to be discussed by the Committee in the second week, the Chairperson of the Committee announced that a provisional final list of individual cases, in relation to which the Committee of Experts had placed a double footnote, was now available.<sup>5</sup> He stressed that the Officers of the Committee expected to complement this list subsequently with additional cases. As in previous years, the Committee intended to examine the cases of 25 member States, in addition to the Special Sitting concerning Myanmar (Convention No. 29).

<sup>4</sup> Work of the Committee on the Application of Standards, ILC, 99th Session, C. App/D.1 (see Annex 1).

<sup>5</sup> ILC, 99th Session, Committee on the Application of Standards, C. App./D.4/Add.1.

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11. Following the adoption of the final list of individual cases<sup>6</sup> by the Committee, the Worker members emphasized that drawing up the list had been particularly difficult this year and everything suggested that that would be the case also in the years to come. Over the years there had been a growing tendency to engage in trade-off, a practice which they found unacceptable. It was unacceptable in the first place because of the Committee's mandate, which was to participate in the monitoring of the application of ratified Conventions. That meant that it must be in a position to examine serious shortcomings in the application of ILO Conventions calmly, without coming under any kind of purely ideological pressure. Its mission could not afford to be jeopardized, or else any hope of applying the ILO's standards – which were there for the benefit of the workers and in the interests of social progress – would be lost. Secondly, it was unacceptable because of the respect that the Committee owed to the Committee of Experts. The Worker members pointed out that the work of the Committee on the Application of Standards was based almost entirely on the reports of the Committee of Experts, which devoted a great deal of time to analysing and summarizing reports and documents dealing with instruments that were subject to the reporting requirement laid down by the ILO Constitution. If the Committee, purely for reasons of subjective convenience, were to start putting aside reports drawn up by the Experts, which contained carefully prepared legal conclusions, it would be sending the wrong kind of message to the Committee of Experts. The Committee examined in an intelligent and mature way violations of workers' rights that were both serious and flagrant. All the cases in the report of the Committee of Experts were serious, but some of them were more so than others and it was from among those that the individual cases for discussion had to be selected. The Committee could not simply accept without demur the Workers' or Employers' or Governments' argument that there were fewer violations of workers' rights in certain countries, and that therefore those countries should no longer be on the list of individual cases. Violations were still violations, whether they took place in the United Kingdom, in Colombia or in Cuba – all of which would not be on this year's list when in fact they should be. There were still far too many workers' representatives being killed in defence of freedom of association and of the more widespread application of workers' rights, and the Committee owed them its deepest respect for having risked their lives simply for doing their duty.
12. After a lengthy and difficult debate, Colombia had finally been taken off the list so as to break a deadlock. The same had happened in 2008, when although Colombia had come up for examination it was not listed as an individual case. The Worker members could not count the case of Colombia as warranting an expression of interest or satisfaction by the Committee, in spite of the explanations given by the Chairperson of the Committee of Experts. The observation itself referred to serious concerns, which it would not be possible to discuss. The United Kingdom would not be on the list of individual cases either, notwithstanding the fact that the Committee of Experts had carefully built up a case concerning the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), involving a Western European country that was a Member of the European Union (EU). Discussion of the case would have raised the important issue of the restrictions imposed on the right to strike of workers who were affiliated to a trade union which itself was facing a court action for damages that clearly threatened its financial survival. It was not a question of challenging the Court of Justice of the European Communities but about dealing with a major violation of freedom of association in a geographical context that was all the more interesting because it concerned the 27 Members along with the candidates for membership of the EU.

<sup>6</sup> ILC, 99th Session, Committee on the Application of Standards, C. App./D.4/Add.1(Rev.) (see Annex 2).

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- 13.** In the same way, the Committee had had to leave out such important cases as Pakistan, with regard to the Abolition of Forced Labour Convention, 1957 (No. 105), and Algeria, concerning the effective exercise of freedom of association. The workers' movement in the latter country was clearly in danger, with the Government refusing to recognize the right of workers of all nationalities to form trade unions or to allow them to call a peaceful strike on the grounds that the country was in a state of emergency. On 12 May 2010, the headquarters of the coalition of independent trade unions representing more than 600,000 workers from the health and education sectors and from the local and national public service had been closed down.
  - 14.** There would be no discussion, either, of the case of Romania, where demonstrations were currently being held in front of the Parliament in Bucharest to protest against salary cuts that also affected public servants, in violation of conditions of employment that were protected by the ILO. The Worker members were extremely regretful that the case of Japan, with regard to the Forced Labour Convention, 1930 (No. 29), had not been included. Was it ever going to be possible for a tripartite forum like the ILO to speak openly about the situation of "comfort women"? The Worker members had asked the same question in 2009, and it had still not been answered, and the Committee of Experts had not made any observation on the subject in 2010. The Worker members wondered when a solution could be found that might be conducive to reconciliation with the victims of this degrading situation, by offering them adequate compensation, in order to restore the dignity of these women who had been used as sex slaves.
  - 15.** It was no easy matter to limit the choice to 25 cases, but the deadline had to be respected. All seven double footnotes cited by the Committee of Experts would be examined. It was, however, impossible for the Committee to take account of cases where progress had been made. In future, some way would have to be found to allow certain governments to highlight the efforts that they had made to comply with observations made by the Committee of Experts.
  - 16.** The Employer members felt that they should put aside this year their usual practice of not commenting extensively on the final list of cases. The process of choosing 25 cases out of about 800 comments by the Committee of Experts was extremely difficult. Moreover, as the Chairperson of the Committee of Experts had pointed out, there were different ways of looking at an observation based on one's point of view. Even though the criteria for the selection of cases had been identified, there were naturally disagreements between the Worker and Employer members on the application of these criteria in practice and divisions of views on the final selection. This was true not only between the two groups but also within each group. For instance, feeling that the point of view of the Committee of Experts on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), by the United Kingdom was not correct, the speaker would have preferred to have this case discussed so that a political debate could take place and be communicated to the Committee of Experts; however, his point of view was not prevalent among the Employer members. It was important to give credence to the different points of view emanating from the debates within the Employers' group. It was also important to acknowledge the different context which existed in each country. Treating a country situation in the same way every year when substantial efforts were being made to make improvements, was rendering a disservice to the supervisory mechanism. Rather than continuing to make the same criticisms every year regardless of the efforts made, the Committee should give the Government room to make progress. Just like the Worker members, the Employer members felt that not all cases that they would have liked to see discussed were on the list. Moreover, with regard to the comments made by the Worker members which had been interpreted to mean "horse-trading" of cases, the perspective of the Employer members was that there was no such "horse-trading", each case being regarded on its own merits. The final list had been adopted through the same procedure as

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in the past. Of course, many other cases could have been chosen among the 800 comments made by the Committee of Experts but a difficult choice had to be made.

17. The Employer member of Costa Rica stated that last year the Committee had discussed the same case under the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and she expressed surprise that the case was on the list again because the Committee had urged the Government to adopt legislative measures in consultation with the social partners and the employers had promoted two draft laws which were first on the list for discussion by Parliament. Although these laws had not yet been adopted, that was because trade unions had obstructed the process. In addition, all governments needed time and in her country the Government had assumed office only one month earlier.
18. The Employer member of Georgia expressed surprise at the fact that his country had been selected for discussion at the Committee since pursuant to the discussion which had taken place two years ago, the Government had closely cooperated with the ILO in building robust social dialogue institutions. On behalf of the 1,500 members of his organization, he expressed his readiness to continue this positive relationship with the ILO and promote social dialogue in his country. He hoped that the discussion would not jeopardize the efforts to build a social partnership and emphasized that what was needed was advice and support from the ILO. The inclusion of his country in the list of cases was difficult to understand.
19. The Worker member of Colombia stated that the international labour Conventions and their ratification had helped to build a more fair, decent and human society and make the tripartite framework a reality. In the case of Colombia, there was absolutely no compliance with the recommendations adopted by the Committee on the Application of Standards. The situation was currently very difficult for the trade union movement in Colombia. By removing Colombia from the list, that situation was in a way being tolerated. This year, 28 trade union members had been murdered and during the mandate of this Government 557 union members had been murdered. Trade unionists had been treated as enemies. He declared that the widows and orphans of union members warranted discussion of that case.
20. Another Worker member of Colombia stated that there was disagreement and consternation because the case of Colombia was not being discussed. He reported that 64 per cent of the murders of trade unionists in the entire world occurred in Colombia. The most recent had taken place only two weeks after a strike in the palm oil sector. Moreover, workers had been dismissed because of their union membership, as was the case of workers of a textile company that were all dismissed within a period of one week of joining the union. He cited another case in which 139 workers at a banana plantation were dismissed and removed from their workplace by force after having joined a trade union. One worker died on this occasion. He stressed that it was extremely unfair that Colombia was not on the list.
21. Another Worker member of Colombia declared that the previous speakers had sufficient reasons to express their dissatisfaction. He also pointed out that it was not normal practice that there were objections after the adoption of the list. The list had become shorter over the years. Some time ago, the International Labour Conference would last for one month and 40 or 42 countries would be selected for the list. He declared that in that context, the General Confederation of Workers (CGT) of Colombia had submitted a document detailing all the anti-trade union activities that had occurred in Colombia.
22. Following the adoption of the final list of individual cases to be discussed by the Committee, the Employer and Worker spokespersons conducted an informal briefing for Government representatives.

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## Working methods of the Committee

23. The Chairperson announced, in accordance with Part V(E) of document D.1, the time limits for speeches made before the Committee. These time limits were established in consultation with the Vice-Chairpersons and it was the Chairperson's intention to strictly enforce them in the interest of the work of the Committee. The Chairperson also called on the members of the Committee to make every effort so that sessions started on time and the working schedule was respected. Finally, the Chairperson recalled that all delegates were under the obligation to abide by parliamentary language. Interventions should be relevant to the subject under discussion and be within the boundaries of respect and decorum.
24. The Worker members recalled the changes that had taken place over the last year as a result of the observations made by the Conference Committee at its previous session, particularly with regard to time management and the lack of discipline shown by certain speakers, the number of double footnotes proposed by the Committee of Experts, and the fact that it had been impossible to discuss a case of progress because of lack of time. They expressed the firm hope that the strict measures proposed with regard to time management and the order in which governments were placed on the final list of individual cases would bear fruit in terms of the balance that should be sought between the right of constituents to present the situation regarding the application of Conventions in their countries, in law and in practice, and the right of all to be heard. The Worker members were committed to respecting the new rules in that regard without, however, excluding the possibility of working on the Saturday of the second week.
25. The Government member of Austria, speaking on behalf of the Government members of the Industrialized Market Economy Countries (IMEC), expressed full support for the changes in procedure outlined in the document on work of the Committee (C. App./D.1) with a view to improving time management. These included the proposed time limits and their strict enforcement by the Chair as well as the automatic slotting of individual cases in the second week. IMEC looked forward to applying these improved working methods without night sessions. The speaker also expressed support for the fact that the discussion had begun with the discussion of the General Survey given the short timeframe for discussing the General Survey and officially transmitting the content of that discussion to the Committee on the Strategic Objective of Employment (Employment Committee). Considering that the tight timetable did not leave room for tripartite negotiated outcomes, IMEC proposed to adopt a record of the Committee's discussions on the morning of Friday, 4 June, and officially transmit this record to the Employment Committee. The Chair of the Committee on the Application of Standards could also give a short introduction before the Employment Committee. In view of further improvements to be made to the working methods of the Committee, including a review of the impact of the introduced changes, IMEC fully supported the continuation of the Tripartite Working Group on the Working Methods of the Conference Committee to ensure ongoing open and transparent discussion of important issues and the most effective use of the limited time available to the Committee.
26. The Government member of Oman, also speaking on behalf of the Council of Ministers of Labour and Social Affairs of the Gulf Cooperation Council (GCC), comprising Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates and Yemen, noted that the Gulf countries had reviewed the proposed amendments to the Conference Committee's working methods, and commended the Tripartite Working Group on the Working Methods of the Conference Committee on the efforts deployed in this respect. He further highlighted the need for the Tripartite Working Group to continue its work in view of its contribution in developing the Conference Committee's work in a manner which met its increasing challenges and to take into account the obstacles that were detected by the Conference Committee, through practice, or those that were mentioned by member States. With respect



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to the Conference Committee's mandate in following-up on the application of member States' implementation of international labour Conventions, and the Conference Committee's working methods in this regard, he further stressed that: (1) there continued to be a need for an objective analysis of the list of individual cases through an early announcement to those member States that would be placed on this list, which would help meet the objective test specifically for this purpose and would enable the member States to inform the Conference Committee of new developments; (2) there continued to be a need for the participation of governments in reviewing the manner of selecting individual cases, and their participation as an observer in the Conference Committee set up for this purpose, whilst stressing the need for a balance in such a selection; and (3) there was importance for the participation in the Conference Committee of regional advisors specialized in international labour standards, with a special emphasis to be made on providing the Regional Office for Arab States with specialized Arab-speaking experts, with an expertise in the Arab region and its socio-economic conditions. He concluded with the hope that the Conference Committee would continue its work in providing assistance to member States to meet their obligations arising from international labour standards. Concurrently, he stressed that the countries of the GCC would endeavour to provide all of the help required by the Conference Committee, whenever it was needed.

## **B. General questions relating to international labour standards**

### **General aspects of the supervisory procedure**

27. First of all, the representative of the Secretary-General indicated that it was her privilege to report on developments since the last session of the Conference and to bring to the Committee's attention some important current and future standards-related topics. She emphasized that this year's Conference was particularly rich from the standards perspective with a first discussion concerning a Convention on decent work for domestic workers, a vast, virtually invisible form of employment in many countries. This year marked the second discussion for the adoption of a new international standard on HIV/AIDS and the world of work, which this Conference was expected to adopt as a Recommendation.
28. The speaker then pointed out that this Committee had the overall responsibility for considering the extent to which international labour standards were being implemented and reporting thereon to the Conference. This mandate was to be found in article 23 of the ILO Constitution, and was articulated in article 7 of the Standing Orders of the International Labour Conference. With this overall objective in mind, the Committee had adapted its methods of work over the years, as and when important issues arose, notably at the initiative of its members, on the basis of tripartite dialogue and consensus. The achievements of the Tripartite Working Group on the Working Methods of the Conference Committee were the result of this process.
29. Turning to the issue of the functioning of the supervisory system, the representative of the Secretary-General stressed that compliance with reporting obligations was of paramount importance for the efficient functioning of the supervisory system, as the quality of the examination by the supervisory bodies depended to a large extent on the quality of the information received. Over the last few years, she had referred to the decrease in the number of reports submitted under articles 19 and 22 of the ILO Constitution which had become a matter of great concern for both the Committee of Experts and this Committee. In 2008, 70.2 per cent of reports were received by the end of the meeting of the Committee of Experts; in 2009, 67.8 per cent were received by that time. She was pleased to report,

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however, the steady increase in the number of observations received from employers' and workers' organizations, which clearly demonstrated that the system was increasingly being used by constituents.

30. The speaker pointed out that this year's General Survey concerning employment instruments had taken a thematic and global approach articulated around four Conventions and two Recommendations. In this regard, she wished to focus on the Human Resources Development Convention, 1975 (No. 142). The key here was to reconcile the objectives of education and training. In the past and even now, young people were trained for a particular job, without *anticipating* future market needs. When jobs were lost, new ones would come open, but many would have different skill requirements than the old ones. In some respects when someone lost his or her job now, they needed to start all over. As periods of unemployment lengthened, skills eroded. The drama of youth unemployment extended far beyond the economic side of the question. Most students today were willing to work hard to succeed, but they were rightly unsure that educational institutions were equipped to guide them. The conclusion on skills for improved productivity, employment growth and development, adopted at the Conference in 2008, stressed that "education, vocational training and *lifelong learning* are central pillars of productivity and employability". Emphasis should be placed on lifelong learning. Difficult as it was, young people would have to accept that in the future "career" would have a different meaning, a different form and a different scope than was the model for their parents. Today, any meaningful approach to socio-economic development was necessarily an interrelated one and therefore it would be quite timely that some of these structures would certainly be examined in next year's General Survey on Social Security.
31. Returning to the issue of the General Survey, the speaker underlined that this year's General Survey represented the first follow-up to the 2008 Declaration on Social Justice for a Fair Globalization. Following the adoption of the Social Justice Declaration in 2008, the Governing Body decided that the General Survey and the recurrent item report would deal with the same strategic objective. This meant that this Conference had before it a General Survey concerning employment instruments and a report before the Recurrent Item Committee on Employment entitled *Employment policies for social justice and a fair globalization*. This was the first time that this Committee as well as the Recurrent Item Committee on Employment would be discussing the same subject but from two different perspectives. This Committee would focus on the report of the Committee of Experts which presented a global picture on law and practice of ILO member States whether or not they had ratified the relevant Conventions. The Recurrent Item Committee on Employment would have to consider conclusions that would be comprehensive. This Committee would therefore need to ensure that it was able to provide a relevant input that could be taken into account by the Recurrent Item Committee. This was a unique opportunity given to the tripartite constituents, through the Conference, to influence in a major way standard-setting policy as a cornerstone of ILO activities by enhancing its relevance to the world of work and to ensure the role of standards as a useful means of achieving the constitutional objectives of the Organization.<sup>7</sup> This Committee would be in a position to assess standards gaps, if any, to propose solutions as well as to provide guidance for the promotion of standards as it did last year in respect of the instruments that were the subject of the General Survey. She therefore invited the Committee to give serious consideration as to how it could best interact with the Recurrent Item Committee on Employment so as to ensure that relevant standards-related conclusions were drawn by the Conference for follow-up by the Governing Body. This clearly called for innovative ways of working and

<sup>7</sup> ILO Social Justice Declaration for a Fair Globalization, final preambular paragraph.

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the Office was available to assist in every way possible to make this first interaction with the Recurrent Item Committee a success.

- 32.** The speaker then addressed the labour law challenges facing the world of work which had certainly been aggravated by the financial and economic crisis and included the following: (i) the weakening of the employment relationship with the increasing classification of workers as contractors or contract workers; and (ii) a growing shift of what was traditionally the responsibility of the employer to workers in these situations, for instance the provision of health insurance and social security contributions. Other challenges concerned labour standards and the supply chain and the informal economy. One response to these diverse challenges could be found in the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), highlighted by the Committee of Experts in its report. Indeed, freedom of association and collective bargaining were given special emphasis in the Global Jobs Pact as essential enabling tools to ensure that crisis responses were best adapted to the needs of the real economy and to strengthen participation in those choices and ease increased social tension. With regard to the informal economy, she informed the Committee that the Office had recently published a monograph entitled: *Extending the scope of application of labour laws to the informal economy: Digest of comments of the ILO's supervisory bodies related to the informal economy*. It was to be hoped that this would assist the tripartite constituents in designing strategies to help bridge the gap in the application of international labour standards and assist them in developing laws and strengthening institutions at the national level to extend protection to workers in the informal economy in order to facilitate the transition to formality. Another challenge was designing strategies in order to enhance the impact of international labour standards. In this regard, national courts could play a very important role in giving effect to the observations, recommendations and conclusions of the ILO supervisory bodies. A recently revised publication by the Standards Department and the ILO Turin Centre on *International labour law and domestic law: Training manual for judges, lawyers and legal educators* was a way of seeking to enhance the role of the courts in creating greater coherence between international labour standards and national labour laws, particularly where the countries concerned had ratified the relevant international labour standards.
- 33.** Finally, the representative of the Secretary-General turned to the issue of the authoritative interpretation of ILO Conventions which was the subject matter of article 37 of the ILO Constitution. She pointed out that in November 2009, the Governing Body had asked the Office to start consultations on the issue of the interpretation of international labour Conventions. The referral procedure to the International Court of Justice, the only body at present competent to provide the authoritative interpretation set forth in article 37(1) of the ILO Constitution, had been used only once, in 1932. The standard practice today was that the Legal Adviser and the Standards Department on the basis of the Vienna Convention on the Law of Treaties, the *travaux préparatoires* concerning international labour standards and taking account of comments by the Committee of Experts, prepared a “reply” to requests for interpretation with a disclaimer citing the aforementioned constitutional provision. In a globalized world, however, ILO instruments did not remain wholly within the sphere of the ILO. It was for this reason that the question of the ILO providing the authoritative interpretation of ILO Conventions took on its importance: so that others did not provide discordant or ill-informed interpretations concerning labour standards, ultimately creating confusion and potentially weakening the supervisory system. The tribunal envisaged in article 37(2) of the ILO Constitution was for the time being the subject of informal tripartite consultations of Governing Body members. The objective was to see to what extent the implementation of this provision would enhance the impact of international labour standards by giving it the hallmark of ILO expertise and authority. Thus, it was the start of a process already provided for in the Constitution, and which would enhance the transparency, credibility, coherence and authority of the ILO's

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universal message, which was beautifully reiterated earlier that day by the President of the Swiss Confederation, Ms Doris Leuthard, when she addressed the Conference.

- 34.** In conclusion, the representative of the Secretary-General emphasized that, in form and in substance, standards were breaking new ground in terms of extending protection and working in ways that were more user-friendly. Much had been written and said about standards in times of crisis. The bottom line, however, was that while adaptation was ultimately the price of survival, social Darwinism had no place at the ILO. Labour standards did indeed cover the breadth of the human condition and this included embracing workers with HIV/AIDS and domestic workers, who may have no protection at all
- 35.** The Committee welcomed Professor Janice Bellace, former Chairperson of the Committee of Experts. She pointed out that 2009 marked the 60th anniversary of Convention No. 98, which was more relevant than ever to the needs of the labour market in a globalized environment. This Convention occupied a critical place in the fundamental principles and rights at work structure for it made operational elements of freedom of association, and recognized that the right to organize and the right to bargain collectively went hand in hand. Moreover, because collective agreements were the product of a process whereby employers' and workers' organizations negotiated to regulate jointly terms and conditions of employment, they often served to implement standards found in other ILO Conventions. Moreover, this year the ongoing global economic crisis prompted the Committee of Experts to comment briefly on the relevance of several wage-related Conventions.<sup>8</sup> Typically, the relevance of these Conventions was highlighted by a crisis in one country or region, or in one industry. The increasing globalization of the economy meant that a financial crisis that started in one part of the world quickly had an impact on other countries, and that the financial crisis became an economic and social crisis, with a resulting sharp spike in unemployment and failed businesses. As a result, the guarantees expressed in these wage protection Conventions took on renewed significance.
- 36.** The speaker then referred to the Subcommittee on Working Methods which met during the 2009 session of the Committee of Experts to discuss ways to make the General Report more useful to the Conference Committee on the Application of Standards. She pointed out the fact that the Experts had described the criteria they used in determining whether to insert special notes (traditionally referred to as "footnotes") at the end of an observation. The difference between cases where a member State was requested to submit an earlier report (often referred to as a "single footnote") compared to cases where the government was asked to provide detailed information to the Conference (a "double footnote") was a matter of degree. In applying the criteria, the Committee of Experts used its discretion, and had regard to the specific circumstances of the country and the length of the reporting cycle. In addition, the Committee of Experts was sensitive to the practical reality that the Conference Committee had limited time in which to consider these cases. This year the Committee of Experts had decided to limit the number of cases that were double footnoted. In selecting a very limited number of cases to double footnote, the Committee of Experts focused solely on legal compliance and practical application and selected only the most serious cases. The Committee of Experts preferred to give ample room to the Conference Committee to decide which cases it wished to discuss.
- 37.** Turning to the issue of terminology, the speaker underlined that the Committee of Experts had noted with satisfaction or interest that in a number of member States, longstanding comments on the application of ratified Conventions had been addressed. Responding to

<sup>8</sup> Protection of Wages Convention, 1949 (No. 95), Minimum Wage Fixing Convention, 1970 (No. 131), Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173).

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some confusion over the meaning of terms that had been used for some years, in the General Report of the Committee of Experts had considered some situations where these terms might be used. For example, a case of *progress* related to a specific issue arising out of the application of a Convention, and simply indicated that the member State had taken some measures with regard to that issue. Similarly, a case of *satisfaction* indicated solely that a government had taken measures, often through the adoption of new legislation or an amendment to existing legislation, to respond directly to a specific issue raised by the Committee of Experts. In expressing its satisfaction, the Committee of Experts was indicating to the government and the social partners that it considered the specific issue resolved. It did not, however, reflect any view on the member State's overall compliance with the Convention. A more recent term was cases of *good practice*. In its General Report, the Committee of Experts emphasized that the use of this term did not in any way involve an additional obligation for a member State. The Committee of Experts believed it would be helpful for governments and the social partners to learn of a new approach for achieving or improving compliance with a Convention, or of an innovative way of addressing difficulties that arose in the application of a Convention.

38. The speaker then addressed the issue of compliance by the member States with their reporting obligations. The Committee of Experts was disturbed by serious failures of certain member States to comply with their reporting obligations, mostly (although not all) due to insufficient infrastructure attributable to lack of human or financial resources. The Office was to be commended on its efforts to improve this situation, often through technical assistance, which was meeting with some success. The Committee of Experts endeavoured to engage in a fruitful dialogue with the member States regarding efforts to achieve compliance with a Convention. When reports were not submitted, or when the government, in responding to an observation or direct request, was not responsive to the comments of the Committee of Experts, the dialogue was constrained. Likewise, when the government's report was limited to legal provisions and did not supply information on practical application, the Committee of Experts found itself unable to determine whether effective application of the Convention had been secured in the member State. In this regard, she drew attention to the government's obligation to communicate its report to employers' and workers' organizations. If the government failed to do so, these organizations were denied their opportunity to comment and an essential element of tripartism was lost.
39. Turning to the General Survey, the speaker underlined that the Committee of Experts welcomed the opportunity to review, for the first time, national law and practice with regard to employment instruments, following a new thematic approach which flowed directly from the adoption of the Social Justice Declaration at the International Labour Conference in June 2008. The first strategic objective of this Declaration was "promoting employment by creating a sustainable institutional and economic environment", and the Governing Body selected this objective as the first recurrent item. Synchronizing the subject matter of the General Survey and the recurrent item report had the benefit of promoting greater coherence between the normative, economic and social policy work of the ILO. The challenge of reviewing the jurisprudence of the Committee of Experts regarding four Conventions and two Recommendations in one General Survey may at first have caused some apprehension for fear of not producing a comprehensive and thorough Survey. The benefits, however, of approaching this topic in a comprehensive fashion were soon apparent. In addition, the Committee of Experts, recognizing the different scope of this General Survey, utilized five members, rather than the usual three, on the working party. This was not only because of the additional work to be done, but also because mere geographic diversity was not sufficient; the level of economic development was an additional factor to consider.

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40. To some extent, the organization of the General Survey was traditional, in that the first part set forth and explained the requirements of instruments themselves, the second part reviewed what was happening in practice, and the third part looked at the continuing relevance of these instruments. However, the second part was quite different because the Committee of Experts, in this General Survey, made use of information submitted in the member States' reports and publicly available data as a basis for assessing the extent to which the member States complied with the relevant standards. This was not a strictly legal analysis but an assessment of whether the member States' performance was consistent with a commitment to the pursuit of an active policy designed to promote full, productive and freely chosen employment. The Committee of Experts realized that there were different stages of development and economic capacity, and thus sought to determine whether member States had made the best possible effort, in light of their stage of development, to achieve and maintain full and productive employment. The framework applied by the Committee of Experts in approaching this assessment was set out in the first four pages of Part B – Global overview. The Committee of Experts briefly described Keynesian economic theory, which was widely accepted in the period 1940–70, and the neo-liberal economic theory which began to dominate in the 1980s. The Committee of Experts took no position on the correctness of these theories which often dictated very different policy choices. However, the Committee of Experts did note that it must be aware of the tension that arose when economic analysis intersected with legal analysis, both of which could be affected by political, social and cultural conditions.
41. In undertaking an assessment of labour market performance, data needed to be used, and a period of time selected. For the most part, the Committee of Experts used data for the period 1998–2007; that was, going back two decades from the most recent complete data available. There were some concerns about the completeness of the data on which the Committee of Experts relied. Many member States reported that they had some data collection activity attached to their public employment service, but that it was unlikely that they conducted regular national labour force surveys and, as a result, they lacked the ability to monitor and report on overall employment trends. Nonetheless, the Committee of Experts found that the data revealed some important policy issues. For instance, standard economic theory assumed that unemployment was low in developing countries that did not have unemployment insurance. Yet, the data revealed that this was most definitely not the case. The Committee of Experts wished to highlight this unexplained phenomenon of high unemployment rates in developing countries and recommended an investigation of the causes of this phenomenon, as a basis for framing sound employment policy. In looking at data over the past 40 years, the Committee of Experts did discern that some efforts to lower unemployment, such as creating incentives for early retirement to open up places for others, may not have contributed to sustainable full employment over the long term, particularly with regard to older workers. Finally, in discussing the informal economy, the Committee of Experts was constrained in its analysis because there appeared to be different understandings of the concept in some developing countries, and because the data was lacking on which to make an assessment of the impact of governments' efforts. The Committee of Experts, however, wished to stress the need to examine more closely the ways in which workers could be more fully mainstreamed into the formal economy.
42. In conclusion, the Committee of Experts believed that the employment instruments studied remained relevant. No specific recommendation for standard setting was made, although two options were presented for discussion. One related to a gap; namely, that the current employment instruments spoke to governments pursuing policies limited to a national labour market. Another option might be the adoption of an instrument consolidating all the instruments relating to employment, designed to highlight the need for governments to take a comprehensive and coherent approach.

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43. The speaker concluded by noting that the members of the Committee of Experts were grateful that the Employer and Worker Vice-Chairpersons of the Conference Committee, Mr Potter and Mr Cortebeek, were once again able to meet with the members of the Committee of Experts, to further the dialogue between the two committees. In encouraging member States to fully apply ratified Conventions, the two committees worked in tandem, with the Committee of Experts engaging in the technical legal analysis and the Conference Committee focusing on implementation. As such, the Committee of Experts found it most useful to increase its understanding of how this process could be made more efficient, in addition to ensuring the spirit of mutual respect and cooperation between the two committees.
  44. 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.
  45. Welcoming the synergy that existed between the Conference Committee and the Committee of Experts, the Worker members underlined the need to preserve and continue to strengthen contact between the two Committees. The Committee of Experts played a key role in the system of monitoring the application of standards which, together with tripartism, were the two essential ingredients that made the ILO's supervisory mechanism unique and irreplaceable.
  46. The Worker members took note of the clarifications provided by the Committee of Experts on the distinction between cases of progress and cases of good practice, along with the details on cases in which the Committee had expressed "interest" or "satisfaction". In that regard, the proportion of cases of satisfaction (71 for 49 countries) and interest (276 for 114 countries) was surprising, above all when they concerned certain countries known for repeated failures in applying Conventions. Furthermore, the fact that an expression of "satisfaction" or "interest" could appear in the same comment as an expression of "profound regret" made it difficult for the workers of the country in question to demand that the government be called to address the Committee. In addition, certain improvements noted by the Committee of Experts did not correspond to the situation experienced in practice by workers or even employers. For instance, certain cases of progress were based solely on information provided by governments, either because trade union organizations were not involved in the process or because they were almost non-existent in the country. Certain information should therefore be noted with greater circumspection.
  47. The Worker members were pleased that, against the backdrop of the global economic crisis, the Committee of Experts had highlighted the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and ILO standards on wages. Those instruments were crucial to sustaining recovery in job creation and guaranteeing that wages would be maintained at levels that would allow the economy to be rebuilt. It was also essential to keep minimum wages at decent levels and periodically adjust them, in consultation with the social partners, and to maintain adequate and effective labour inspection. In that regard, the importance of governance instruments should be recalled. Governments that ratified Conventions must make every effort to ensure their effective application, which required independent labour inspectors who were properly provided with human and financial resources.
  48. Noting that the solutions that were being sought to escape from the crisis failed to take into account the increasing precariousness of workers, the Worker members drew attention to the words of the Secretary-General's representative, who stressed that the ILO was the social conscience of the United Nations. With regard to the issue of interpreting international labour Conventions that was before the Governing Body, the Worker members considered it to be an extremely delicate subject on which immediate consensus

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could be difficult to obtain. Consequently, more time, studies and exchanges of views would be necessary.

- 49.** In conclusion, the Worker members thanked the members of the Committee of Experts whose mandate had expired after some years of service to the Committee, and congratulated the new members of the Committee, as well as its new Chairperson. Lastly, the Worker members paid tribute to the memory of Evgeny Sidorov and Apecides Alvis, great fighters for the cause of workers in their countries and on the international stage.
- 50.** The Employer members referred, first, to the composition of the Committee of Experts, in particular the ongoing problem of having a full complement of 20 Experts in place. They encouraged the Director-General to propose to the Governing Body a number of diverse candidates for the vacancies so that they could be appointed without delay to ensure the effective and efficient operation of the Committee of Experts.
- 51.** The Employer members then addressed the need for greater transparency and integration between the Committee of Experts, the Conference Committee on the Application of Standards, the Governing Body's LILS Committee, and the Governing Body itself. This was significant because the ultimate responsibility for ILO standards supervision lay with the ILO's tripartite constituency. Yet, the reality was that the Conference's tripartite constituents and the Governing Body had very little say in the day-to-day supervisory process. It was the Committee of Experts' report that was used by the Office as one of the tools to build country profiles that measured decent work, or was quoted to indicate the ILO's position on the state of compliance by individual countries with ratified Conventions. At present, the report of the Committee of Experts was submitted to the Governing Body for information but was never discussed in the LILS Committee or the Governing Body. On the other hand, the Conference Committee would only be able to address just 3 per cent of the more than 800 observations of the Committee of Experts this year. The Employer members considered that tripartite governance needed to be restored to the application of standards. They expressed the view that the Committee of Experts' report should become a document that had full tripartite ownership and reflected tripartite views. This document would give the possibility for tripartite constituents to set out their views on standards supervision-related issues and would strengthen the credibility and acceptance of ILO standards supervision.
- 52.** With regard to cases of progress, the Employer members appreciated that the Committee of Experts responded to their suggestion that the utility and transparency of this designation would be enhanced if the elements of the conclusions directly relating to this designation were highlighted in the observations. However, because of the density of some of the observations, it was not always easy to find the "case of progress" designation. On an overall statistical basis, it would be useful to know overall cases of progress by Convention, and whether overall progress was increasing or decreasing by Convention. As far as cases of good practice were concerned, the Employer members recalled that they had questioned the utility of that designation for the last two years, considering that the designation of a case of progress was sufficient and urging the Committee of Experts to drop this designation because it was not useful to the ILO tripartite constituency.
- 53.** Turning to questions concerning the application of certain Conventions, the Employer members again objected to "mini-surveys" or comments made outside the article 19 General Survey process and noted that isolated or unlinked observations could be easily overlooked by the ILO tripartite constituency, such as the general observations on wages and labour inspection in this year's Committee of Experts' report. They also recalled their concern about new reporting requirements that some general observations attempted to create. The fact that such reporting requirements were not cleared through the LILS Committee and the Governing Body gave the impression that there was a breakdown in the



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tripartite governance process. The Employer members expressed a set of objections with respect to the general observation on wages, especially the unilateral establishment by the Committee of Experts of new reporting requirements for four wage Conventions and the promotion of the Labour Clauses (Public Contracts) Convention, 1949 (No. 94), which did not take into account the concerns expressed during the tripartite debate on the 2008 General Survey on labour clauses in public contracts. These concerns focused on the discriminatory aspects of Convention No. 94, its negative impact on job creation and taxpayers, and its inconsistency with European Union law. The Employer members stated that, at a time of stress on sovereign debt, Convention No. 94 was the wrong solution at the wrong time, highlighting its substantive defects. Recalling the Governing Body's decision of November 1998 that the Convention be re-examined in due course, the Employer members called for a re-examination of the Convention by the LILS Committee as a matter of urgency, invited States parties to this Convention to consider denouncing it; the next denunciation was September 2012–13. They also requested the Office to stop promoting this Convention. Moreover, all General Surveys conducted since 1990 should contain an insert that included the tripartite discussion and debate on the General Survey.

- 54.** With specific reference to the Indigenous and Tribal Peoples Convention, 1989 (No. 169), the Employer members referred to observations on certain countries made by the Committee of Experts, according to which certain governments were asked, pursuant to *Article 15(2)* of Convention No. 169, to suspend the implementation of existing projects, the exploitation or exploration of activities and implementation of infrastructure projects and the exploration and exploitation of natural resources. The Employer members pointed out that such requests did not have a basis in the Convention and had to be eliminated as soon as possible. The Committee of Experts was not a court of law and could not, in effect, request economic activity to stop.
- 55.** Turning to the Termination of Employment Convention, 1982 (No. 158), the Employer members recalled that it was one of the most contentious ILO Conventions and expressed the view that this instrument was basically an obstacle to a dynamic labour market that facilitated the creation of productive employment. A tripartite meeting of Experts was planned for next year to consider what to do with this no longer relevant instrument. The eight observations made by the Committee of Experts on this Convention confirmed the existence of major flaws in the instrument, especially its detrimental effect on enterprises by tending to delay or make difficult and expensive necessary dismissals, thus endangering the viability of enterprises. Recalling that the Convention would again be open to denunciation in 2015–16, the Employer members called upon the Committee of Experts and the Office to provide objective and balanced information about the Convention, including ways to mitigate its rigidities as far as possible, and to refrain from promoting it.
- 56.** In this context, the Employer members opposed the Experts' attempts to read provisions of Convention No. 158, into obligations under other Conventions, particularly when the Government had not ratified them. For example, in the observation on Belarus and Convention No. 122, the Experts called the Government's attention to certain provisions of Convention No. 158. First, it needed to be emphasized that the latter Convention had not been ratified by Belarus. Moreover, the Experts seemed to suggest that "short-term contracts", the use of which was restricted under Article 3(2) of Convention No. 158, was contrary to the promotion of "full and productive employment" in Convention No. 122, and that governments had to give some job guarantee "to satisfy the employment needs of the workers, whose short-term contract of employment had ended". The Employer members' firm view was that Convention No. 122, did not in any way limit the use of short-term contracts.

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- 57.** Finally, with respect to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Employer members recalled that the text and legislative history of both Convention No. 87 and Convention No. 98 made clear that Convention No. 87 did not expressly provide for a right to strike. Convention No. 87 at most contained a general right to strike which nonetheless could not be regulated in detail under the Convention. Yet, the Committee of Experts had continued a detailed critique of ratifying countries' strike policies, especially on "essential services", applying a "one size fits all approach" and failing to recognize differences in economic or industrial development and current economic circumstances. This was in sharp contrast to the Experts' 1953 General Survey on Conventions Nos 87 and 98, where the Experts stated: "The object of this Convention is to define as concisely as possible the principles governing freedom of association, whilst refraining from prescribing any code or model regulations." and it was not until its third General Survey on Conventions Nos 87 and 98 in 1959, that the right to strike was mentioned at all in a single paragraph and only with respect to the public sector – ten years after the Conventions were adopted. The Experts' views on the right to strike expanded to seven paragraphs in the 1973 General Survey, and included opinions on temporary and general prohibitions of strikes, strikes in the public sector and essential services, strike restrictions based on maintaining public order and economic development, and recourse to state dispute resolution procedures. This regulation of restrictions on the right to strike further grew to 25 paragraphs in the 1983 General Survey, and included further refinement of the 1973 General Survey as well as adding first time views on requisitioning and minimum service, restrictions related to the objectives of the strike, restrictions on the methods used, provisions imposing a waiting period on strikes, and sanctions against strikes. In the 1994 General Survey, this evolved into a separate chapter on the right to strike encompassing 44 paragraphs and numerous new subjects for detailed comment by the Experts. The Employer members considered that the Committee of Experts' approach undermined tripartism in standard-setting and supervision, particularly given the fact that whenever the right to strike was part of a Convention No. 87 case in the Conference Committee, it was impossible to reach a conclusion on that issue. They once again asked the Committee of Experts to reconsider their interpretation on the right to strike that had progressively expanded since 1959 and that had no basis in Conventions Nos 87 and 98.
- 58.** The Employer members acknowledged that the work of the Committee of Experts, especially its observations on compliance with ratified Conventions, was of utmost importance to the work of the Conference Committee, but expressed the view that the Committee of Experts had to show in the written materials that they took account of what was discussed in the Conference Committee. This would be in the interest of maintaining the integrity of the tripartite governance process mandated by article 23 of the ILO Constitution and article 7 of the Standing Orders of the Conference.
- 59.** The Government member of Austria, speaking on behalf of IMEC, highlighted that the ILO supervisory system was unique in the international framework of human rights procedures. The Conference Committee had the responsibility to help ensure that the capacity, visibility and impact of the ILO supervisory system continued to evolve positively, despite the inherent challenges. Noting that one of the main ILO activities since the last Conference was the promotion of the Global Jobs Pact, the speaker observed that the ILO's response to the employment and social policy consequences of the economic and financial crisis continued to be prominent on the Conference agenda. Quoting from the Global Jobs Pact, he stated that to prevent a downward spiral in labour conditions, the Conference Committee had to place special emphasis on fundamental principles and rights at work and their implementation through effective governance mechanisms. Not ensuring fundamental principles and rights at work at such a critical time would represent not only a moral failure to uphold universally recognized rights, but would also represent a failure of economic policy to ensure growth and recovery. This year, the Conference Committee was

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entering a new phase of the implementation process of the Social Justice Declaration, which led to synchronizing the instruments to be studied by the General Survey with the yearly recurrent item. IMEC appreciated the efforts of the Office in elaborating improved questionnaires which resulted in an increased response rate, and believed that this was the right way to maintain the authoritative value of General Surveys. Also this year, the Conference would start the cycle of recurrent discussions with the strategic objective of employment, which was the first time that the discussion of the General Survey by the Conference Committee would contribute to the recurrent discussion. IMEC hoped that the new approach would increase the synergy between standards and the other activities of the ILO and would therefore enhance the impact of the standards system.

- 60.** IMEC welcomed the Committee of Experts' continuous efforts to enhance the quality of reporting and appreciated the improvements of the presentation in an accessible format, such as the country profiles. IMEC had always supported the discussion of significant cases of progress in the Conference Committee, as well as the efforts by the Committee of Experts to clarify the criteria for identification of cases of "good practices" in comparison with cases of "progress", which clarified that cases of good practice were always cases of progress but not necessarily vice-versa. IMEC attached great importance to the combination of the work of the supervisory bodies and the practical guidance given to member States through technical cooperation as one of the key dimensions of the ILO supervisory system. IMEC appreciated the heightened attention given to this complementariness by the Committee of Experts, which had led to an enhanced follow-up of cases of serious failure. This was also due to the Conference Committee's increasingly systematic references to technical assistance in its conclusions.
- 61.** With reference to the 60th anniversary of Convention No. 98, IMEC reiterated its strong support for collective bargaining and social dialogue as essential tools to achieve the strategic objectives of the Organization. The speaker underlined that collective bargaining had an important role to play in the response to the crisis because it was a flexible and responsive tool that allowed for a balance of working conditions and new economic realities, while protecting the rights of workers. IMEC took note of the Committee of Experts' observations with respect to the relevance and application of the ILO wage-related Conventions in the context of the global financial crisis and its acknowledgment that the crisis had increasing impact on the wage incomes of millions of global workers. IMEC agreed that wage protection was particularly important in times of crisis and that the Global Jobs Pact offered a good set of options for supporting recovery and helping put the economy on a sustainable track, which included putting relevant wage-related standards at the centre of crisis responses.
- 62.** Finally, the speaker highlighted IMEC's concern that, despite an ever-increasing workload, the Committee of Experts was still operating at less than full capacity, as it had been almost continually for the past decade. He was happy to note that new Experts had been appointed, but observed that there were still remaining vacancies. Therefore, he reiterated IMEC's appeal to the Director-General to fill all vacancies on the Committee and to ensure that the Committee was adequately resourced to complete its work effectively.
- 63.** The Government member of the Bolivarian Republic of Venezuela, speaking on behalf of the Government members of the Group of Latin America and Caribbean Countries (GRULAC), reiterated his firm commitment to the ILO supervisory mechanisms but expressed his concern about the work and the report of the Committee of Experts. In relation to the working methods of the Committee of Experts, he drew attention to the fact that the mandate of the Committee of Experts did not include resolving controversies, issuing judgements on conflicting demands of interested parties, issuing injunction measures, resolutions, judgements, decrees or awards, and its opinions or comments were not mandatory. The Committee of Experts' function was to determine if the provisions of a

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specific Convention were complied with. He reaffirmed his deep concern that the Committee of Experts exceeded its mandate when it gave mandatory nature and form to its opinions. These excesses might be used as detrimental requests in dialogue processes and also constituted an obstacle to the good political will of governments in their efforts to generate permanent solutions. He expressed the view that within the Committee of Experts' observations and conclusions there were measures with an injunctive nature and that the Committee of Experts made its own assessment of the facts submitted to the Committee on Freedom of Association, which was contrary to the principle of *non bis in idem* and duplicated the work of the Committee when what was desirable was mutual respect and spirit of cooperation.

- 64.** The speaker highlighted that the Committee of Experts tended to take into consideration the views of the social partners but did not give equal footing to the information presented in a timely manner by governments, which violated impartiality and objectivity. He also highlighted that the Committee of Experts no longer valued the need for reasonable timeframes that a State needed in order to initiate administrative, legislative and judicial measures, and for the Office to be able to react to requests for technical assistance. He also expressed the view that the Committee of Experts interpreted Conventions which was delegated to the International Court of Justice in the Constitution. He stressed the need to activate efforts to safeguard the principles of independence, objectivity and impartiality as well as transparency, which should guide the Committee of Experts in its tasks. He highlighted renovation as a way to provide the body with a critical spirit and to encourage revision, rectification and innovation in order to achieve the objectives for which the Committee was created. He strongly urged the Committee of Experts to ensure that the nature of the comments remained within the limits of its constitutional mandate. He trusted that the Committee of Experts' Subcommittee on the Working Methods would continue to examine such methods so that independence, objectivity and impartiality, which were essential for a supervisory body, were within the future work of the Committee. He trusted that in the near future the functioning of the Committee of Experts could be regulated so as to ensure procedures which were predictable, transparent and objective, since 84 years of existence had provided enough elements to guide its operation.
- 65.** The Government member of Brazil pointed out the context of the international economic crisis that principally affected the most vulnerable groups, and stressed the importance of Convention No. 98 and wage protection as being particularly appropriate. The role of workers and their capacity to engage in collective bargaining should continue to be reinforced. Her Government supported ILO efforts aimed at preventing wage arrears and protecting workers' wage claims in the case of the employer's insolvency. Revitalizing the national economy through socially responsible public spending represented an equally important element. In this regard, she noted that Brazilian legislation granted preferential treatment to workers' wage claims and also recognized the control of public spending as a priority issue so as to avoid excessive public deficit. Her Government sought to promote economic development by investing in labour-intensive sectors which was expected to generate more and better quality jobs. In the same vein as the Committee of Experts, her Government recognized the importance of maintaining decent minimum wage levels. Adjusting the minimum wage, which had increased by 73 per cent since 2003, facilitated workers' protection during the crisis and maintained demand. Recalling her Government's commitment to international labour standards, she concluded by indicating that the instrument of ratification of the Labour Relations (Public Service) Convention, 1978 (No. 151), would be communicated to the Office in the coming days while the Workers with Workers with Family Responsibilities Convention, 1981 (No. 156), would be submitted to the Parliament in conformity with the Decent Work Country Programme.

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- 66.** The Government member of Cuba recalled the remit of the Committee of Experts and the principles of independence, objectivity and impartiality that governed its work and stressed the importance of taking them into account when reviewing working methods. She pointed out that a reading of paragraph 58 of the Committee of Experts' report laid bare that the difference in cases of progress, when note was made with interest or note was made with satisfaction, was minimal and that in both cases subjective criteria were used and could lead to interpretations that deviated from the principles of objectivity and impartiality. She also recalled that paragraph 65 stipulated that the identification of a case of good practice in some way involved additional obligations for a member State with regard to the Conventions that it had ratified as provided for in sections (1) and (2) of that paragraph, which reflected greater flexibility of the Committee of Experts in studying the means of application, which in most cases depended on the specific conditions of certain countries for implementing the Convention's provisions, which could not necessarily be adopted as models for application in other economic and social contexts. Finally, she referred to the pertinence of the Conventions concerning wages in the context of the global economic crisis. She noted that during periods of economic stability and relatively satisfactory levels of employment, wage was one of the main instruments workers had to guarantee their subsistence and that of their family. Currently, at a time of global economic crisis affecting primarily workers, wage protection was even more important, along with measures against salary discrimination and how to strengthen decent work for maintaining economic recovery and ensuring a sustainable economy.
- 67.** The Worker member of Greece expressed her appreciation regarding the scope, quality and innovative approach of the reports presented to the Conference Committee. In the follow-up on the Global Jobs Pact, this accomplished volume of work would hopefully contribute to safeguarding norms and standards that were crucial to the realization of the strategic objective of employment and the right to decent work. Nonetheless, she stated that neither the current social and economic considerations that shaped this work, nor a global overview of employment policies and instruments, would be complete without taking stock of the impact of the current phase of the financial crisis on ILO standards, in particular, the government bonds crisis. Measures implemented in a number of countries in Europe, including Greece, directly challenged the promotion of full, decent and productive employment in the quest for a fair globalization. Their scope and impact inevitably tested the continuing relevance of employment instruments. A new global landscape, regrettably shaped by unregulated financial markets and speculation, was being created very rapidly with serious repercussions for the world of work. Serious questions were raised by the emergency exit strategy imposed on Greece by the IMF, the ECB and the EC, that far from containing the crisis would only worsen it, because it severely curtailed any growth prospect. This particular policy mix, among others, froze economic activity, stifled investment and strangled domestic demand so that, instead of growth and employment, economic stagnation and unemployment were promoted with serious repercussions on social cohesion. However, a further grave concern, from the standard-setting point of view, was caused by measures that directly targeted core labour standards and ratified Conventions. Such measures were unnecessary and included the revision of the collective bargaining process, of sectoral collective agreements and the general collective agreement in the private sector, and the challenge to the negotiated minimum wage structure. The Greek trade unions recognized the country's grave fiscal and economic situation. They could not, however, understand nor accept structural adjustment that involved a totally unjustified reversal of core labour rights and standards in the private sector. Serious questions were raised whether the so-called rescue strategies killed employment and growth, and they expressly required the suppression of a normal, working labour relations system. The speaker concluded by supporting the ILO outlook on employment and growth, believing that realistic, well-balanced and socially acceptable plans were needed, negotiated with the trade unions through effective social dialogue. The strategic objective of employment could not be achieved by brutal exit strategies; it required a drastically

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different policy mix that would support investment, growth and employment, safeguard incomes, provide fair and effective taxation, and sustain social cohesion and the environment.

- 68.** The Government member of Panama expressed agreement with the statement made on behalf of GRULAC, particularly concerning the declaration of the Chairperson of the Committee of Experts. He stressed the need to determine the circumstances in which the scope of the opinions of the Committee of Experts might have a prejudicial impact so that these opinions did not become a negative element in the dialogue that was taking place within countries. He explained that his Government had studied the need to make legislative changes, but in specific cases employers and workers had objected to any change, for instance in the case of the reduction of the minimum number of workers required to form a trade union. In addition, the speaker stressed the need to establish mechanisms that were impartial and objective in evaluating information presented by governments and in dealing with the comments of social partners. He considered positive the possibility of granting longer deadlines to governments for making required legislative and administrative provisions.
- 69.** The Worker member of Pakistan stated that, in terms of the role of collective bargaining and wages in these difficult times, and the impact of the financial crisis, the IMF had been imposing measures on several countries, including his own, by asking for a reduction in the deficit, which would raise unemployment. With respect to the supervisory mechanisms, he observed that during the Cold War in the 1960s and 1970s, the Employer members had been helpful in protecting and highlighting the importance of the supervisory system. In this regard, however, he stated that he did not have the time to produce the historical statements of the Employer members, but requested that these comments be looked into. Hence, the yardstick could not be changed with the passage of time. If the supervisory mechanism was submitted to the tripartite process, then it would become a political process. Turning to worker rights, he further observed that governments had undertaken the obligation to freedom of association and, by ratifying the relevant Conventions, had undertaken to implement this freedom in law and in practice. The right to strike was a prerequisite to collective bargaining and, without it, workers would be in a state of forced labour, as they would be compelled to work against their will. He noted that, where there was a gap between a government's law and practice in this respect, the Office could provide technical assistance. This process would occur through a dialogue between governments and the Conference Committee, with the participation of the Office. In the new system, even the Chairs of the Employers' and Workers' groups and the Chairperson of the Conference Committee could have a dialogue. He urged that the Committee of Experts' independence and impartiality be protected, and concluded by asking member States to ratify the core Conventions and to fill in the gap between implementation with ratification.
- 70.** Another Government member of the Bolivarian Republic of Venezuela supported the GRULAC statement. He stressed that the Committee had access to information provided by governments in their reports to the Conference Committee, reports of other ILO supervisory bodies and observations made by employers' and workers' organizations. He expressed concern that various ILO bodies requested the same information and repeated in their reports the same alleged non-compliance of several countries. Those bodies made similar, and sometimes the same, observations on specific cases. He felt that there should be coordination that avoided an overlapping of efforts and maximization of government resources. He stated that a report of a supervisory body that reproduced the opinions of social partners, but which did not include the response of the government involved, did not respect the principle of tripartism. He expressed the opinion that fair and adequate consideration and evaluation of the information and data provided by governments was essential in order to prevent the Committee of Experts from dealing with ambiguities and

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half-truths that violated the credibility and right of defence of governments. He also expressed his concern, as stated by GRULAC, that the Committee of Experts was exceeding its mandate and pointed out that corrective measures should be adopted to give the Committee of Experts ways and means of strengthening its credibility and ensuring full respect for the reports it produced.

## **Fulfilment of standards-related obligations**

- 71.** The Worker members welcomed the letters sent by the Office within the framework of following up cases of serious violations of standards obligations, particularly the fact that it had requested field offices to contact countries facing persistent difficulties, as a matter of priority, and offered them the necessary technical assistance. To that end, governments should indicate clearly the obstacles they encountered in fulfilling their obligations. That was also of prime importance for following up conclusions adopted by the Conference Committee in individual cases. Attention was drawn to the positive case of Argentina which, after discussion of the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), by the Conference Committee the previous year, had requested technical assistance to revise its legislation. It was hoped that that assistance would lead to the adoption of an act that complied with the Convention before the next session of the Conference.
- 72.** With respect to serious failures to report, the Employer members considered that two root causes needed to be addressed: first, before ratifying Conventions, countries needed to assess their implementation and reporting capacities and understand that ratification required reporting and implementation; second, there needed to be ongoing streamlining and simplification of ILO Conventions with a focus on essential regulation. The Employer members had proposed a regular review mechanism for ILO standards in order to ensure that there was at all times an up to date body of ILO standards that corresponded to constituents' needs. The setting up of such a mechanism had now become urgent since the last review of the ILO Conventions by the Governing Body dated back to the period 1995–2002. Concerning the failure to reply to the comments of the Committee of Experts, the Employer members considered that simply sending the same comments to countries as part of a direct requests strategy might not be the most effective solution.
- 73.** Concerning review of the forms in the reports as provided for in article 22, the Government member of Cuba pointed out that that process should include in its objectives the lightening of the workload, both for the national administrations and the International Labour Office and the Committee of Experts, allowing focus on general work on fundamental aspects of the application of Conventions, but in no way should it serve to weaken important aspects of application, which should be monitored by the Committee of Experts, or to avoid the due and required review of those Conventions considered to be fully or partially obsolete. The speaker emphasized that those issues should be discussed directly with the participation of all the members of the ILO, as provided for in the regulations and in the very ILO Constitution. Reiterating the importance of complying with the obligation of submitting reports and replies to comments of the Committee of Experts, she expressed the opinion that it was encouraging that the proposal to group Conventions by topics had been well received, which would facilitate the gathering of information at the national level and would provide a broader idea of the application of the Conventions in a specific field. She stated that the proposal to vary the cycle of presentation of reports on fundamental Conventions would provide new means for facilitating the work of complying with the required submission of reports. She recalled the importance of the comments of the organizations of employers and workers mentioned in paragraph 76 of the report, but insisted on carefully treating and submitting to an objective and impartial review those comments that deviated from the issues raised within the framework of a specific

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Convention and that dealt with unconfirmed situations, unrelated to objectives of compliance with the Conventions.

## Concluding remarks

74. The Worker members wished to respond to the comments of the Employer members and certain Governments regarding the right to strike and the impartiality of the members of the Committee of Experts. They felt that they could not leave unanswered the Employer members' attacks on the principles laid down by the ILO's supervisory bodies regarding the right to strike under Convention No. 87. For some years it had become the established practice for the representatives of the Workers and Employers to discuss matters of mutual interest with the Committee of Experts. The healthy and entirely transparent collaboration that had thus developed testified to the reliance of all sides on the intellectual rectitude and the impartiality of the members of the Committee of Experts. The Committee of Experts was a body of legal experts from all horizons and from all juridical cultures who were appointed by the Governing Body for a renewable mandate of three years. Did that mean that there was a crisis of confidence vis-à-vis the Governing Body, the Worker members wished to know? They recalled further that although the right to strike was not referred to explicitly in an ILO Convention, as was the case in many countries' legislation, that did not prevent the existence of such a right from being recognized on the basis of several international legal instruments that considered the right to strike as a corollary of freedom of association and the right to bargain collectively. In its Articles 3 and 10, Convention No. 87 asserted the right of workers' and employers' organizations "to organize their administration and activities and to formulate their programmes". Based on those provisions, the Committee on Freedom of Association (since 1952) and the Committee of Experts (since 1959) had on numerous occasions reaffirmed that the right to strike was a fundamental right of workers and of their organizations. Those supervisory bodies had defined the sphere of application of that right and had drawn up a set of principles setting out the scope of the Convention. It would appear that the Employer members, while not yet actually contesting the right to strike, did contest its scope. Yet the principles enunciated also respected the right of enterprises and did not condone wildcat, violent or political strike action. They were simply a well-defined tool that provided workers whose rights were flouted with a weapon of last resort. Since the Committee on Freedom of Association, too, was established by the Governing Body, the Worker members questioned once again whether there was a crisis of confidence vis-à-vis that institution.
75. The Employer members expressed appreciation of the comments made by the Government and Worker members during the general discussion, in particular the statement made by the Worker member of Pakistan. In response to the final remarks of the Worker members, the Employer members wished to clarify that they were only asking for the tripartite governance of the supervision of ILO standards to be restored in conformity with article 23 of the Constitution of the ILO and article 7 of the Standing Orders of the International Labour Conference. They emphasized that they were not questioning the valuable role of the Committee of Experts, but only certain of its interpretations. In particular, as was well-known, the Employer members had for many years been raising questions with regard to the detailed regulation of the right to strike, to which the Committee of Experts had never responded. The Employer members added that they were by no means questioning the right to strike itself, but merely the detailed regulation thereof by the supervisory bodies. The supervisory process had engaged in a progressive extension and detailed elaboration of the regulation of the right to strike. He recalled that the Committee of Experts had first referred to the right to strike in an observation in 1961 and that the legislative history of Conventions Nos 87 and 98 demonstrated that attempts to include explicit reference to the right to strike in their texts had been rejected. Reliance on the Committee on Freedom of Association was not necessarily appropriate in support of the examination of the



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application of ratified Conventions by the Committee of Experts. The Employer members reaffirmed their support for the work of the supervisory system and the important fact-finding, examination and conclusions of the Committee of Experts. However, it was not in accordance with the tripartite governance of the supervisory mechanism to silence one of the tripartite constituents when the latter raised valid concerns on a minority of the comments made by the Committee of Experts.

### **The reply of the Chairperson of the Committee of Experts**

76. The Chairperson of the Committee of Experts emphasized first of all that the Committee of Experts consciously endeavoured to be scrupulously impartial and to confine itself to the facts as presented in the file. The Committee of Experts did realize that the government and the social partners, acting in all good faith, naturally viewed an incident from their particular vantage point. As such, the Committee of Experts sought to separate advocacy, opinion and allegations from facts. Referring to the obligation of the government to communicate its report to employers' and workers' organizations to allow them the opportunity to comment, the speaker underlined that somewhat similarly, if the Committee of Experts received a comment from an employers' or workers' organization alleging noncompliance with a Convention, the Experts forwarded that complaint to the government and requested a reply. If a reply was received from the government, the Committee of Experts did take it into account in its observation or direct request.
77. With regard to the right to strike, the speaker emphasized that this right had been recognized by the Committee of Experts for over 50 years. The last General Survey on freedom of association was written in 1994, before any member of this year's Committee of Experts was appointed. In reviewing her 15 years on the Committee of Experts, she could not recall an instance where the Committee of Experts had extended its jurisprudence regarding the right to strike. To some extent, the Committee of Experts responded to issues that the parties had raised. It may be that the right to strike had appeared more frequently in observations on Convention No. 87, but that did not arise from any intention of the Committee of Experts to extend its jurisprudence in this area.
78. Finally, she underlined that the Committee of Experts was the highest impartial body charged with a supervisory function within the ILO. It was established to be a neutral, impartial body in an organization with a tripartite governance system. The Conference over the years had created ways in which the voices of the parts of this tripartite system could be heard, including ways in which their views on the Committee of Experts' report and the General Survey were heard, and published. The traditional separation of the Committee of Experts' report and General Survey from the views expressed by governments, employers and workers on the same issues had served the Organization well over the years. She urged the Committee to think most carefully before proposing a change, which might seem small, but which could change the delicate balance that had enabled this unique tripartite organization to move its valuable work forward for more than 90 years.

### **The reply of the representative of the Secretary-General**

79. At the very outset, the representative of the Secretary-General wished to thank all those who had participated in this discussion. The Chairperson of the Committee of Experts had already responded to certain matters raised concerning the report of the Committee of Experts and its General Survey. Turning to the matters falling within the Office's responsibility, she wished to confirm, in relation to the question raised by the Libyan Arab

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Jamahiriya, that all the comments of the CEACR were translated into Arabic. Concerning the point made by the Worker members on the question of the application of Convention No. 29 by Japan, this case would be examined by the Committee of Experts at its forthcoming session as the report of the Government was due this year. This examination would cover the Government's report but also the comments submitted by workers' organizations. With regard to the Employer members' request to the Office to stop promoting Convention No. 94, she referred to the Committee's discussion as it was reflected in paragraphs 73–139 of the Committee's 2008 general report. In her final remarks, she noted that "*with the exception of the Employer members and the Government representative of Canada, all speakers favoured promotional and awareness-raising activities*". The speaker pointed out that the Office was obliged to follow any existing or new tripartite decision taken as regards the promotion of ILO Conventions. As a general matter, the Office's mandate was to promote Conventions until such time as there was a tripartite decision that a certain ILO Convention was out of date and no longer met the objectives of the Organization.

- 80.** The speaker then wished to address the Employers' view that greater visibility was given to the report of the Committee of Experts than this Committee's report, despite the improvements made in recent years. She emphasized that this Committee and the Committee of Experts were the two pillars of the ILO supervisory system. They acted in symbiosis and the dialogue between these two Committees was widely acknowledged as the hallmark of the ILO supervisory system. The secretariat would continue to examine ways in which greater visibility could be given to the work of this Committee as well as to the complementary relationship between the two Committees. By way of example, in the country profiles published in Part III of the Information document accompanying the report of the Committee of Experts, a new section had been included on cases discussed before the Conference Committee on the Application of Standards since 1985.
- 81.** With respect to the comment made by the Worker members on the question of interpretation of Conventions, there was no question that this must be a constituent-driven process and ownership was critical to its progress. The matter was still subject to informal tripartite consultations that had been launched by the Governing Body in November 2009. A first round of informal consultations took place in March 2010. The tripartite constituents decided at that time to pursue informal consultations in November 2010. She wished to recall that since the 1930s, this was the first comprehensive examination of the question of interpretation that was undertaken by ILO constituents and that the ultimate and singular objective of these consultations was to enhance the impact of the ILO standards system.
- 82.** In respect of the concerns raised by certain speakers that the Committee of Experts was still not functioning to its full operating capacity, the representative of the Secretary-General indicated that at the end of the last session of the Committee of Experts, there had been four vacancies. Since the beginning of the year, the Office had worked hard to be able to propose to the Officers of the Governing Body a suitable number of candidates with the required qualifications. She was hopeful that before the beginning of the next session of the Committee of Experts, at least two vacancies would be filled.
- 83.** Concerning the submission of reports, as a number of speakers had noted, since the launch of the so-called individualized follow-up, some concrete progress had been made. It was true, as the Employer members noted, that there was no clear trend toward improvement. However, this was true if one looked solely at figures. She recalled in this respect that the approach adopted under the guidance of this Committee and the Committee of Experts had consisted in moving away from a purely automatic, administrative and quantitative logic and to adopting an approach that was pragmatic, proactive and sustainable.

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84. This Committee regularly pointed out that the seriousness of failures to meet the reporting obligations should be treated as the seriousness of failures to meet the obligations deriving from ratified Conventions. Equally, one could say that often the difficulties at the origin of the lack of reporting could be as complex as the difficulties in implementing ratified Conventions. If these difficulties were to be overcome in a sustainable manner, they required time and the articulation of several means and resources, both human and financial. That being said, it was not to be forgotten that this Committee and the Committee of Experts had succeeded in raising the importance of the submission of reports with the countries. Awareness raising was the first step to finding long-term solutions. This in turn had sparked-off a number of requests for technical assistance that had been met mainly by the ILO field offices with substantial financial support from the Standards Department. As a result, a number of serious and long-standing cases had been resolved in full or in part. She cited in this respect the case of Turkmenistan. This country, which became an ILO member in 1993 and ratified six fundamental Conventions in 1997, had until this year never submitted any reports on these Conventions. The Committee of Experts had made a general observation in this year's report, worded in pretty strong terms. The Office visited the country twice in 2007 and 2009. The Office had received all six reports due at the beginning of the year and her Department would receive a high-level delegation from the country for a technical visit the following week. The dialogue with the supervisory bodies could now begin.

85. In conclusion, the representative of the Secretary-General underlined that the year had been a turning point for the standards system. A leap had been made thanks to this Committee's long experience and tradition of dialogue and above all its sense of responsibility towards the ILO as a whole.

### **C. Reports requested under article 19 of the Constitution**

#### **General Survey concerning employment instruments in the light of the 2008 Declaration on Social Justice for a Fair Globalization**

86. The Committee devoted part of its general discussion to the examination of the General Survey concerning employment instruments,<sup>9</sup> prepared in light of the fact that the first of the four strategic objectives highlighted in the Social Justice Declaration is the promotion of employment, an issue which has become even more urgent and relevant in the context of the current global economic crisis. Furthermore, since the Social Justice Declaration requires a more coherent, collaborative and coordinated approach by the ILO to achieve its strategic objectives, the Governing Body chose in November 2008 to focus on employment in the General Survey as it is also being considered as the first recurrent item at the present session of the Conference. The Selection Committee took a decision at its first sitting on 2 June (point 6) to authorize, in advance, the transmission to the Committee for the Recurrent Discussion on Employment of any outcome adopted by the Conference

<sup>9</sup> Six employment instruments were covered by the General Survey: the Employment Service Convention, 1948 (No. 88), the Employment Policy Convention, 1964 (No. 122), the Human Resources Development Convention, 1975 (No. 142), the Private Employment Agencies Convention, 1997 (No. 181), the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), and the Promotion of Cooperatives Recommendation, 2002 (No. 193).

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Committee on the Application of Standards upon its consideration of the General Survey. Following its adoption by the Committee on the morning of 4 June, a brief summary and conclusions of its discussion on the General Survey was presented that afternoon to the Committee for the Recurrent Discussion on Employment.

- 87.** The General Survey took into account information in the reports communicated by 108 member States under article 19 of the ILO Constitution until December 2009. According to its usual practice, the Committee of Experts also made use of the available information in the reports submitted under articles 22 and 35 of the Constitution by those member States that had ratified the Conventions concerned. Observations and comments received from 44 employers' and workers' organizations were also reflected in the General Survey.

## Opening remarks

- 88.** The Employer members welcomed the intention of the General Survey to better integrate the normative principles of employment policy with current social and economic considerations and looked forward to greater recognition by the Committee of Experts of changing social, economic and market circumstances as well as workplace realities. While acknowledging the value of adjusting the traditional format of general surveys to make a contribution to the recurrent discussion on employment, the Employer members considered that something very valuable had been lost in the substance of the examination of individual instruments. In view of the number of instruments covered by the General Survey, and the need to rationalize the questionnaire, governments had not provided as much detailed information as they would have if the General Survey had covered fewer instruments.
- 89.** The Employer members noted that, even with the possibility of electronic submission, only 108 of the 183 member States had replied to the questionnaire. The Committee of Experts had therefore been more general in its observations and had not provided the more detailed remarks that were useful to the implementation of the instruments. It was also notable that the texts of the instruments under examination had not been included in the General Survey, making it difficult to reconcile the observations made with the texts of the respective instruments. Moreover, there was no critical analysis of the continuing relevance of the instruments considered and possible needs for revision. For example, Convention No. 88 had been adopted over 60 years ago and, despite its apparently useful contribution, the question of whether it should be improved or modernized had not been addressed.
- 90.** The Employer members added that much of subject matter of Part B of the General Survey, "Global overview of employment policies", would be covered by the recurrent review. It was their belief that there was a need to retain General Surveys as tools for providing detailed explanations of the provisions of ILO standards, offering an overview of the application of standards in ratifying and non-ratifying countries and reviewing the relevance and possible need for revision of the selected standards. The Employer members expressed concern that the real value of General Surveys in helping constituents to gain a better understanding of ratified treaty obligations might be undermined by aligning them with the schedule of the recurrent reviews.
- 91.** The Worker members recalled that this year the discussion of the General Survey was the first stage in a process that constituted a break with past practice. Although that was encouraging, it also raised concerns. It was encouraging in that the new format of the General Survey and the context in which it appeared made it a policy instrument. The conclusions that the Committee would reach on the General Survey would be referred to

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the Committee for the Recurrent Discussion on Employment in the hope of outlining a new approach for ILO action in this area. The Worker members reaffirmed that General Surveys were an essential part of the supervisory process, serving not only as strategic monitoring tools and instruments for the development of international practice, but also as means of exerting pressure to combat deregulation. Although the Social Justice Declaration and the Global Jobs Pact marked an era of transversal policy-making, that did not imply that all standard setting should be abandoned to be replaced by voluntary regulation or by a logic of corporate social responsibility left entirely to the discretion of enterprises.

92. The Worker members observed that, under the new format, the General Survey should facilitate ratification campaigns and confirm the relevance of ILO standard setting and supervisory activities. The Worker members trusted that it would be possible to send a constructive message to the Committee for the Recurrent Discussion on Employment that was in keeping with the commitments embodied in the Social Justice Declaration and the Global Jobs Pact. They recalled that labour standards were recognized by the Social Justice Declaration as playing a fundamental role and that the very idea of negotiating new standard-setting action was key to the vision embodied in the Declaration.
93. Several government members welcomed the innovative approach of synchronizing the subject of the General Survey with the discussion of the recurrent item report and hoped that a unified action plan on the important question of employment would be submitted to the Conference and the Governing Body. The Government member of Spain considered that joint consideration of the issue of employment in the Committee on the Application of Standards and the Committee for the Recurrent Discussion on Employment offered an opportunity to consider the best means of giving effect to the employment instruments in the current context of the global financial and economic crisis and its consequences on labour markets and employment. The Government member of Switzerland added that, while it was the role of the Committee of Experts to review the requirements arising out of the employment instruments and to undertake a critical assessment of existing instruments, it would be more appropriate to leave the evaluation of the employment policies adopted to the Governing Body Committee on Employment and Social Policy and the Conference Committee for the Recurrent Discussion on Employment.

## **Global overview of employment policies**

94. The Employer members recalled that over the six years since the 2004 General Survey, *Promoting employment*, the world had witnessed the expansion of the G8 to the G20, reflecting the increased pace of industrial development, employment and the growth of such countries as Brazil, China and India. The economic and financial crisis that had resulted in the adoption of the Global Jobs Pact in June 2009 was turning into a public debt crisis. Moreover, the global economic crisis was challenging existing dogmas and concepts about employment and was showing the complexity of the relationship between employment and other economic, tax and social policies. The coordination of policies was therefore critical and should focus on the creation of full and productive employment, rather than on job security. Government action should be concentrated on employment and employability, with the support of labour market policies that activated the labour force, made work pay and promoted labour market mobility.
95. The Employer members observed that the present General Survey highlighted the intersection and inter-relationship between economics and labour standards. Moreover, the current economic crisis demonstrated the importance of ensuring that coherence with ILO standards did not impair the achievement of full, productive and freely chosen employment. Productive and sustainable employment was the prerequisite for decent work,

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wealth creation and social justice, and should be the cornerstone of any ILO policy and action. Any discussion about improving working conditions and ILO standards was meaningless without employment. The focus of the General Survey on employment standards, which in reality amounted to economic frameworks for job creation and economic growth, provided an opportunity to examine more closely and place emphasis on the basic conditions for the creation and maintenance of jobs. The economic crisis, despite the high number of job losses worldwide, had shown that there were various possibilities for governments to influence the conditions for the creation and maintenance of productive jobs. However, the crisis had also demonstrated the financial limits faced by governments in subsidizing jobs if they were ultimately not productive and not sustainable.

- 96.** The Worker members emphasized that the world economic crisis was far from over and recalled that, according to ILO estimates, unemployment stood at 212 million at the beginning of 2010, with a sharp rise in unemployment among young people. Many unemployed workers had given up hope of finding work, while others found themselves engaged in involuntary part-time work. Millions of people, especially in the developing world, were working in the informal and subsistence economy and the number of workers living in poverty everywhere had increased by 100 million since 2008.
- 97.** The Worker members welcomed the excellent overview provided by the General Survey of the impact of the employment instruments in practice. However, although many member States had indicated in their replies that employment was a priority objective, there were grounds for believing that this might not be the case in practice. The statistics provided in Part B of the General Survey dated from 2007 and were therefore hardly up to date. As a result, there was little information in the General Survey on how member States had responded to the current global financial and economic crisis.
- 98.** The Government member of India indicated that the ILO employment instruments were being given effect in his country through various laws and measures. Employment generation was an integral part of the growth process in India, where development strategies focused on accelerating the growth of employment and ensuring proper wages. The Eleventh Five-Year Plan had the objective of creating 58 million job opportunities, through the creation of productive employment more rapidly with a view to raising the income of the large number of rural workers and improving their living conditions. Employment opportunities were being created through such factors as the growth of GDP, investment in infrastructure and the expansion of exports. The Unorganized Workers' Social Security Act, 2008, envisaged the establishment of suitable welfare schemes to improve education and skills development for workers in the informal economy. The measures adopted included several major employment generation programmes, including the Prime Minister's Employment Generation Programme and the Mahatma Gandhi National Employment Guarantee Scheme. He noted that the Committee of Experts had expressed appreciation in the General Survey of the efforts made by his country for employment generation, and particularly the implementation of the National Rural Employment Guarantee Act (NREGA). It had also noted the measures that were being taken in the field of skills development and the apprenticeship system to make it demand driven. In India, the national employment services operated within the conceptual framework of Convention No. 88. The network of employment exchanges was expanding its role in the provision of employment market information, assistance for the self-employed and vocational guidance and counselling services. Information technology was being applied to identify existing skills and skill requirements at the national level, as well as a system for the placement and tracking of trainees. The cooperative sector in India was one of the largest in the world and was being granted greater functional autonomy under the Multi-State Cooperatives Act, 2002, while measures were also being taken for skills development in cooperatives. The draft national employment policy was very

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comprehensive and broadly covered the provisions of the ILO employment instruments with a view to providing a framework for the achievement of the objective of remunerative and decent employment for all. In conclusion, he reiterated the importance of social dialogue in his country and noted that the issue of the global economic crisis and its implications had been discussed at the recent session of the Indian Labour Conference, the highest tripartite body in his country.

- 99.** The Government member of Brazil reaffirmed his country's commitment to full, productive and freely chosen employment, as noted frequently in the General Survey and as demonstrated by its ratification of 80 international labour Conventions. He endorsed the strengthening of international labour standards on employment policy, vocational training, public and private employment services and protection against unemployment and referred to the various employment promotion initiatives implemented in his country, which focused on the most vulnerable groups in order to promote real equality in society. The current unemployment rate in Brazil (7 per cent) was one of the lowest on record, despite the international economic crisis. Government policies were discussed with the social partners in various tripartite committees and at major national conferences. The National Conference on Employment and Decent Work, to be held in 2012, demonstrated the importance that the Government attached to strengthening tripartite dialogue in the formulation of employment policies and the involvement of all stakeholders in discussing the measures to be adopted for the development of an environment that was conducive to the creation of enterprises which could provide more and better jobs. Alongside employment promotion, it was also essential to maintain the minimum wage at a decent level. The Government of Brazil had institutionalized a policy for the adjustment of the minimum wage, which had increased by 73 per cent in real terms since 2003. That increase in the value of the minimum wage, and the consequent rise in the contribution of income from work to the national economy, together with the effect of social benefits, had succeeded in protecting the domestic market during the worst months of the financial crisis and had contributed to the mitigation of its worst effects. The Government's policies had also resulted in millions of Brazilians rising above the poverty line and the recent reduction in the historical levels of social inequality in the country. The promotion of employment was a defining element for Brazil's public policy.
- 100.** The Government member of Oman, speaking on behalf of the governments of the Member States of the Gulf Cooperation Council, reaffirmed the call made in the Social Justice Declaration for the achievement of sustainable development at two levels: that of the workforce, in the sense of developing skills to meet labour market needs; and that of enterprises and entrepreneurs. The Member States of the Gulf Cooperation Council were engaged in close collaboration in their efforts to achieve the objectives of decent work and sustainable development.
- 101.** The Government member of Senegal emphasized the importance of the Social Justice Declaration and the Global Jobs Pact in providing guidance to countries in the adoption and implementation of new employment strategies. The problem of employment had become a major concern in her country, particularly in the current context of the global economic crisis. It was therefore a major national objective to establish and implement a proactive policy for the creation of employment and income-generating activities, inspired by international human rights and labour instruments, with a view to eliminating inequality in access to employment and facilitating access to credit and financial services, taking into account the specific situation of vulnerable categories of the population and modernizing working conditions. A decent work programme was currently being formulated with the involvement of the social partners and civil society and a Poverty Reduction Strategy Paper has been adopted for the period 2006–15 with a view to reducing poverty by half by the year 2015 and achieving the respective Millennium Development Goals. Important measures had been adopted to promote the employment of youth, women and persons with

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disabilities, together with the establishment of a promotional framework for the implementation of the national employment policy, focusing on the Higher Council for Employment, which was a tripartite body chaired by the Prime Minister.

- 102.** The Government member of the Syrian Arab Republic indicated that the new Labour Code in his country emphasized the importance of establishing an active labour policy to promote freely chosen employment. With a view to achieving the strategic objective of employment and combating unemployment, private employment agencies had been introduced, in consultation with the social partners, a central employment agency had been established and a financial mechanism created for small and medium-sized enterprises.
- 103.** The Government member of Angola indicated that his country already had an institutional and legal framework enabling it to develop active employment policies, especially for the most disadvantaged population groups, in order to reduce unemployment and improve living conditions. The ratification of Convention No. 88 had resulted in the creation of government institutions for the formulation and implementation of employment, training and vocational rehabilitation policies. The 1992 Employment Act, which took account of the provisions of Conventions Nos 88 and 122 and the respective Recommendations on employment services and policy, set out the principles and fundamental components of employment policy and made the State responsible for their implementation. A national employment system would be established under the terms of the Act, which would help to structure the labour market.
- 104.** The Government member of the Philippines indicated that her country was currently completing the consultation process for the ratification of Convention No. 181. She emphasized that any job sufficiency strategy required the Government and the private sector to focus on creating productive and secure jobs that provided adequate income, offered social protection and ensured respect for labour rights and democratic participation in the workplace. In view of the enormous challenge of job creation in the Philippines, a sustained high economic growth strategy was required to create decent jobs and reduce poverty, including a sound industrial policy that could attract more local and foreign investment. It would also be necessary to develop national financial markets, enhance competitiveness and productivity and improve the efficiency of the infrastructure in the power and transport sectors. To ensure greater coherence in all these areas, the Government needed to conduct meaningful social dialogue with the social partners and other stakeholders to craft sustained job-led growth with a strong human and labour rights and gender agenda covering, among others, trade and investment priorities, environmental protection, energy and agriculture, governance and political stability. It was in this context of identified national needs and priorities that the consultation process would be carried out to develop the national jobs pact in the context of the fourth cycle of the Decent Work Agenda.
- 105.** The Government member of Spain said that the employment instruments selected highlighted the need for a macroeconomic framework that promoted growth and employment, with the support of an education and vocational training policy that developed the skills required for new growth sectors. The instruments served to guide governments and the social partners in the formulation and application of employment promotion policies that protected the right to work as a human right. In the current highly complex global situation, it was important to adopt a more integrated approach encompassing economic, employment and social policy as an essential tool to address the current crisis.
- 106.** The Government member of France emphasized that the objective of full employment was clearly more difficult to achieve in the context of the current global crisis. With a view to ensuring a sustainable recovery and restoring growth in the long term, active employment



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policy and labour market measures needed to be implemented with the aim of increasing productivity and retaining workers in the labour market. They should be guided by the principle of integrating as many workers as possible into the labour market and facilitating a secure occupational trajectory through the provision of training, in cooperation with the social partners. At the end of 2008, France had implemented a major recovery plan to support economic activity and protect jobs. Considerable resources and exceptional measures to support employment had been implemented to limit the destruction of jobs and promote employment creation and vocational recycling. Although the current general context of budgetary constraint necessitated more restrictive macroeconomic policies, sufficient resources still needed to be allocated so as not to penalize employment. The employment measures adopted in recovery plans would need to be kept under review and, where necessary, withdrawn in a pragmatic manner and in the context of social dialogue. The structural measures adopted prior to the crisis, and particularly those relating to the activation of employment and vocational training policies, should be reinforced.

- 107.** The Worker member of Colombia agreed that it was essential for national employment policies to be based on the principle of the promotion of decent work, and for subcontracting policies to be abandoned. In that respect, he emphasized the need to ensure that the action taken to promote cooperatives did not serve to legitimize subcontracting, as had occurred in Costa Rica with solidarism. In Colombia, the establishment of “pseudo cooperatives” in the form of *cooperativas de trabajo asociado* had led to increased abusive subcontracting and a deterioration in working conditions.
- 108.** The Worker member of France emphasized that the human right of full, productive and freely chosen employment had yet to be fully implemented and that current theories of flexicurity resulted in practice in a great deal of flexibility and little security, as illustrated by the growing phenomenon of involuntary part-time work and the increasing precarity on the labour market. The economic and financial crisis had served as a pretext for greater selectivity in recruitment, a decline in job security and the restriction of the means available to labour inspectors. The public sector had been affected by stagnation, reductions in salaries and the failure to fill posts following the retirement of incumbents. The enormous public debt resulting from the aid provided to bail out speculative financial organizations would result in tax rises and strong cuts in social protection. In particular, unemployment benefit was seen by advocates of neoliberalism as being overly generous and discouraging people from returning to work. In the eyes of European governments, social security had become a luxury in the context of globalization and heightened international competition, in which multinational enterprises did their utmost to avoid protectionist legislation and reduce social costs, including on such long-term investments as vocational training. He recalled that, in addition to its immediate benefits, social security helped to maintain consumption levels, thereby contributing to sustainable recovery. Workers and retirees in European countries, with particular reference to Greece and Romania, who were experiencing cuts in social security regimes, had ended up as the victims of financial institutions that should have been better controlled in the first place. He therefore concluded that freedom of association and the right to bargain collectively were essential for the achievement of a balanced employment policy that was in compliance with fundamental rights and that social protection needed to be considered as an instrument for regulating the labour market.
- 109.** The Worker member of Senegal added that, although SMEs undoubtedly played a vital role in job creation and economic growth, it was necessary to place emphasis on the quality of the jobs created. Under pressure from employers, certain governments had focused their policy for SMEs on deregulation and the dismantling of protection. Moreover, in developing countries, the establishment of export processing zones sometimes excluded the workers concerned from social protection. It now appeared that there were two levels of social protection: one for workers in large firms and one for

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workers in SMEs. This was in clear contradiction to the provisions of Recommendation No. 189, which called on member States to ensure the non-discriminatory application of labour laws with a view to improving the quality of employment in SMEs. The debate on the role of SMEs also offered an opportunity to address the issues of the informal economy and microfinance, with the ultimate goal of transforming informal enterprises into formal companies, which would improve the protection of workers and improve the access of the enterprises concerned to microcredit, thereby helping them to generate decent work more effectively.

- 110.** The Worker member of Pakistan reaffirmed the importance of employment as a basic right of workers which was essential to human dignity, and without which poverty could not be meaningfully addressed. The recent global financial crisis had caused tremendous suffering and demonstrated the need for greater regulation and controls, both financial and otherwise. Action at the international and national levels was required to meet the employment challenge in such areas as: the provision of skills and life-long learning opportunities, particularly for women and young persons; the adoption of measures to formalize the informal economy; the reinforcement of labour inspection services; and the acceleration of technological advancement in developing countries. Greater cooperation was also required on migration policy between sending and receiving countries in order to address the related problems of labour exploitation. Job security was also an essential aspect of decent work. Without employment security, workers were vulnerable to exploitation and were less productive. Finally, he observed that vocational training was necessary, not only to promote employability, but also for the overall development of individuals, and therefore of society as a whole. Adequate occupational safety and health measures and the enjoyment of fundamental rights at work, and particularly freedom of association, were critical to employment promotion and the achievement of decent work.
- 111.** The Worker member of South Africa drew attention to the growing problem of unemployment among university graduates and young migrant workers in countries at all levels of development. An examination should be undertaken of why educational institutions appeared to be unable to provide skills that equipped graduates for the labour market. This problem, which had existed even before the economic crisis, resulted in a waste of resources and the demoralization of those concerned. A solution needed to be found through cooperation between educational institutions and employers.

## **The employment instruments**

- 112.** The Employer members recalled that, 46 years after the adoption of Convention No. 122 in 1964, the world and the considerations relating to achieving the objective of free, productive and freely chosen employment had changed a great deal and the pace was accelerating. The question of whether to define the right to work as meaning guaranteed employment had now become a political artefact of the Cold War. Already by 1996, the characteristics of today's world had taken over, as reflected in the general discussion on employment policies in a global context held at the Conference at its 83rd Session (June 1996). On that occasion, it was emphasized in the *Conclusions concerning the achievement of full employment in a global context: The responsibility of governments, employers and trade unions* that full employment could only be achieved in a stable political, economic and social environment, which required a number of enabling factors including "appropriate policies to achieve economic and financial stability" and "a legal and institutional framework that guarantees human rights, including freedom of association, secure property rights and the enforceability of contracts". It also required an environment that encouraged private-sector investment and the hiring of employees.

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- 113.** The Employer members indicated that the numerous references to the right to work in the General Survey could create confusion and misunderstanding and divert attention from the straightforward policy obligation set out in Article 1, paragraph 1, of Convention No. 122 that “each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment”. Article 1, paragraph 2, provided that the aim of this objective was to ensure that “there is work for all who are available and seeking work”, “such work is as productive as possible” and “there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and use his skills and endowments in a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin”. These were the principles that should be the focus of the present discussion.
- 114.** The Employer members indicated that paragraphs 33–55 of the General Survey, which addressed the three objectives of Convention No. 122, namely “full, productive and freely chosen employment”, fell short in clarifying “productive employment”, which was, however, fundamentally connected to the second phase of the economic crisis that the world was currently undergoing.
- 115.** The Employer members recalled that the Human Resources Development Convention, 1975 (No. 142), illustrated the central role of the State in developing vocational guidance and training that took into account employment needs, opportunities and obstacles. The Convention highlighted the need for the provision of training and development opportunities that produced the right skills at the right time to meet labour market needs and promoted full, productive and freely chosen employment. However, there were several comments in the General Survey that were peripheral to this main goal. For example, in paragraph 124, the Committee of Experts construed Article 1, paragraph 2(c), of Convention No. 142 as placing the emphasis of policies and programmes of vocational guidance and training on the overall development of the individual. It was the belief of the Employer members that the primary purpose of vocational training should be employability, rather than personal development, since ultimately workers needed to have the skills and competences required for the job. Training policies and programmes should therefore give priority to meeting the needs of enterprises.
- 116.** The Employer members added that Recommendation No. 189 highlighted the widely recognized importance of SMEs in the creation of employment and the need to promote SMEs in any policy aimed at full, productive and freely chosen employment. They emphasized that SMEs succeeded, not only because they had a great idea for a product and service, but because they were flexible and responsive. However, in paragraph 398 of the General Survey, while acknowledging that several ILO Conventions, including the Termination of Employment Convention, 1982 (No. 158), permitted exclusions of limited categories of workers after consultation with the social partners, the Committee of Experts apparently concluded that there should be no differentiation for SMEs. Such a view was counterproductive to employment promotion and there was no textual basis for the caveat introduced by the Committee of Experts that such exceptions should be adopted “under conditions that are socially adequate for all concerned”. The Employer members emphasized that sustainable jobs could not exist without sustainable enterprises. SMEs had been one of the biggest victims of the economic and jobs crisis. Yet without sustainable SMEs, there could be no jobs recovery in the current economic circumstances.
- 117.** The Employer members observed that the comments in the General Survey on the Employment Service Convention, 1948 (No. 88), and the Private Employment Agencies Convention, 1997 (No. 181), clearly showed the conflict between the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), which effectively prohibited private employment agencies and Convention No. 181, which permitted and encouraged

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them. The Employer members called upon governments to consider the ratification of Convention No. 181, or the denunciation of Convention No. 96.

- 118.** The Employer members further noted that Article 11 of Convention No. 181, which required ratifying countries to ensure that workers in temporary work agencies were “adequately protected” in relation to a series of issues, including freedom of association and collective bargaining, was interpreted in paragraph 310 of the General Survey as also covering the right to “engage in lawful industrial action”. The Employer members disagreed with that interpretation and emphasized that the right to industrial action was not covered by Article 11 of Convention No. 181, nor by Conventions Nos 87 and 98. In their view, Article 11 of Convention No. 181 could not therefore be seen as requiring the protection of workers in employment agencies if they engaged in lawful industrial action.
- 119.** The Employer members also referred to paragraph 313 of the General Survey, in which it was indicated that adequate protection in the areas covered by Article 11 was achieved when applied through other Conventions ratified by the States concerned. As not all the countries that had ratified Convention No. 181 had also ratified the Conventions listed in the table following paragraph 313, the Employer members indicated that there were other ways in which compliance could be achieved. They added that the “adequate protection” of workers in temporary work agencies did not necessarily have to be the same protection as that provided to other workers.
- 120.** The Employer members also raised the question of whether the prohibition set out in Article 7 of Convention No. 181 on the charging of fees or other costs to workers by private employment agencies might have become obsolete and whether measures to control and prevent abuse might be more appropriate.
- 121.** The Employer members indicated that in paragraph 351 of the General Survey, the Committee of Experts introduced the notion that the protections set out in Convention No. 181 had extraterritorial application, including in countries that had not ratified the relevant standards. The Employer members believed that this notion raised significant issues of interference in the sovereign right of countries to issue the laws that applied within their borders, especially where they had not ratified the relevant Conventions.
- 122.** The Employer members, in relation to the reference in paragraph 353 of the General Survey to the indication in Paragraph 6 of the Private Employment Agencies Recommendation, 1997 (No. 188), that private employment agencies should not make workers available to a user enterprise to replace workers of that enterprise who were on strike, they recalled that this was an optional provision in a non-binding instrument. This provision of Recommendation No. 188 was, moreover, questionable, as it called upon private employment agencies to position themselves in an ongoing industrial dispute in favour of the striking workers and to the disadvantage of the employer affected by the strike. In their view, ILO standards should be neutral and private employment agencies should be left to take their own decisions in such situations.
- 123.** With reference to the Promotion of Cooperatives Recommendation, 2002 (No. 193), the Employer members indicated that the call made in paragraph 501 of the General Survey for employers to promote cooperatives by providing certain support services was not in line with the guidance provided in Paragraph 15 of Recommendation No. 193, in accordance with which “Employers’ organizations should consider, where appropriate, the extension of membership to cooperatives wishing to join them and provide appropriate support services on the same terms and conditions applying to other members”.

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- 124.** The Worker members welcomed the identification in the General Survey of the elements covered by the employment instruments, namely: making a political commitment to achieve full employment, building appropriate institutions, making the best possible effort to that end and ensuring that the institutions were as effective as possible. There was an additional crucial element, which consisted of the need to mainstream the objective of full employment into other policy areas. The need for more than just measures in the fields of labour and training to achieve a real impact should be a guiding principle for the present Committee and the Committee for the Recurrent Discussion on Employment.
- 125.** With regard to Convention No. 122, the Worker members considered that the present total of 102 ratifications was broadly unsatisfactory considering the importance of the objective of full employment for the ILO and its members. They added that all too often, in practice full employment was considered less important than other policy objectives. For many countries, employment policy was not so much an objective in itself, as a derivative of macroeconomic policy, particularly in view of the aim of strengthening competitiveness and liberalization. The result was that the priorities of ministries of employment might be countermanded by other priorities, such as the need to stabilize budget and curb inflation, rather than promoting employment. This raised the question of the real influence of ministries of employment over economic, budgetary and financial policy. A similar issue faced the ILO, which had had to stand up to economic and financial institutions, with remarkable success. Even within the ILO, employment should not just be the concern of a single department, but needed to be mainstreamed throughout its work.
- 126.** The Worker members observed that few countries were able to set numerical objectives for full employment over a specific period. Convention No. 122 did not set a deadline for the attainment of full employment, although nothing prevented the establishment of intermediate objectives. The Worker members recognized that the financial and economic crisis had resulted in a major budgetary crisis, and that a large number of countries were faced with the need to stabilize their budgets. However, doing so too quickly could jeopardize the recovery of economic growth and employment. Moreover, several countries, particularly in Europe, under pressure from the financial markets, were not heeding the warnings made in that respect.
- 127.** The Workers recalled the view of the ILO that employment creation needed to go hand in hand with high-quality employment or decent work. In 2009, the Global Jobs Pact had invited countries to consider introducing a minimum wage, in accordance with the Minimum Wage Fixing Convention, 1970 (No. 131), but the question arose as to what progress had been made in this and other areas relating to the quality of employment. With a view to maintaining employment levels, many countries had chosen to sacrifice quality, for example by reducing protection against dismissal and against precarious contracts, under the pretext of the modernization of the labour market. These issues particularly affected young people, women, migrant workers and very poor workers. Precarious employment and involuntary part-time work were not freely chosen, and were therefore contrary to the Convention.
- 128.** Even though the challenge of the ageing of the population was imminent, the objective of full employment still appeared to raise difficulties for a series of economists and for certain employers who feared pressure for wage increases. Consequently, more and more measures appeared to focus on the supply side, such as raising the retirement age, cutting early retirement schemes, facilitating economic migration, the activation of the long-term unemployed and the disabled, and cutting back unemployment benefits. In a situation of already high unemployment, such policies were liable to increase unemployment even further, when priority quite simply needed to be given to the creation of decent jobs. Every country faced the problem of achieving full employment in a globalized economy, which limited its room for manoeuvre. States seeking full employment needed to make two

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commitments: to continue making every effort at the national level, with due regard for the international context; and to do everything possible to ensure that regional and international bodies joined the ILO in giving priority to full employment. Moreover, States could exercise little influence over the investment decisions of multinational corporations, many of which hardly seemed to take into account the disastrous consequences on employment of their strategic decisions. The financial crisis had set off another wave of restructuring programmes, which were seriously prejudicing labour markets and made it all the more important to heed the broad guidelines of the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. The Worker members therefore concluded that they did not share the optimism expressed in the General Survey with regard to Convention No. 122, in view of the broadening chasm between the formal recognition of the objective of full employment and the policies actually pursued at the national and international levels.

- 129.** With regard to Convention No. 142, the Worker members regretted that so few States had ratified the Convention, although 29 reported that they were envisaging doing so. They also regretted the lack of information on the impact of the Human Resources Development Recommendation, 2004 (No. 195), which dealt with important new issues, such as the recognition of previously acquired skills and the need to develop national qualifications frameworks. It was also unfortunate, particularly in view of the observation in the General Survey that human resources development policy should focus on the individual, that the Paid Educational Leave Convention, 1974 (No. 140) had not been included in the General Survey. But the major question remained the impact that the stabilization policies and programmes to be adopted in many countries following the crisis would have on education and training programmes.
- 130.** With reference to Conventions Nos 88 and 181, the Worker members emphasized that the role of private employment agencies was not a decisive factor in the pursuit of full and productive employment, and that the leading role played in this respect by public employment services should not be overlooked. The General Survey clearly showed that many countries had not yet succeeded in putting a stop to the abusive practices of certain private employment agencies, especially in the field of international migration, over which the public authorities had little influence. This was also linked to a more general phenomenon, namely the rise in many countries in precarious forms of employment, on which little information was provided.
- 131.** The Worker members also considered that the General Survey should have emphasized the links between the employment instruments and the Employment Relationship Recommendation, 2006 (No. 198), which endeavoured to prevent atypical employment relationships from depriving workers of the protection to which they were entitled. The Worker members noted the clash between the policies promoted by the ILO in this area and the trend towards the liberalization of services. Emphasis needed to be placed on the importance of national licensing and certification requirements as a means of ensuring the correct operation of private employment agencies and increasing transparency in the labour market, which was essential for an effective employment policy. However, in the context of the free movement of services that was being promoted throughout the world, national regulations, licensing systems and national certification requirements were seen as an obstacle. This was true in Europe with the new Services Directive, as well as in the context of the World Trade Organization.
- 132.** Finally, the Worker members broadly endorsed the suggestions made in the General Survey for a more effective employment policy. However, they expressed certain reservations concerning the suggestion that the instruments for achieving full employment were largely confined to training and retraining, on the one hand, and to the development of SMEs and cooperatives, on the other, when a much more ambitious programme was

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required for the creation of more and better quality jobs. They also questioned the priority accorded in the General Survey to unemployment among young university graduates, when it was mainly the less skilled who were affected by unemployment.

- 133.** The Government member of the United Kingdom, with reference to some of the concerns raised in the General Survey suggesting that temporary agency workers in his country failed to qualify for many trade union rights, indicated that agency workers were fully entitled to join a trade union. Nor did they have to tell their employer they were members of a union. They could choose to be accompanied by a union representative at any workplace disciplinary or grievance meeting and the employer was not allowed to discriminate against a worker for being a union member. With regard to the comments in the General Survey on the vulnerability of temporary agency workers suggesting that they lacked protection and suffered from exploitation, he indicated that surveys had regularly shown that the majority of such workers valued the flexibility that this type of employment offered and that it was their preferred route into work. His country had a strong framework of protection for workers. Government agencies were available to resolve workplace problems, provide impartial information and advice on workplace law and enforce basic employment rights. Additionally, individuals had recourse to employment tribunals to seek redress for breaches of employment law and a range of agencies enforced basic employment rights, including the right to the national minimum wage. He added that migrant workers legally entitled to work within the country enjoyed the same rights and protections as other workers.

### **Standard-setting proposals**

- 134.** The Employer members considered that neither of the two standard-setting options outlined in paragraphs 806 and 807 of the General Survey were necessary or justified. In the first place, there was no gap in the current framework, but rather problems at the national level that needed to be addressed independently of standard setting. Secondly, a consolidated employment Convention would create confusion and impede the promotion of the primary objective of full, productive and freely chosen employment set out in Convention No. 122. They emphasized in that respect that the best safety net was an economy that created jobs, and that productive jobs that were able to adapt to change remained the best protection against economic uncertainties. It was not a question of eliminating regulation, but rather of smarter and more effective regulation. As indicated in the Global Jobs Pact, it was a question of labour market reform that facilitated labour mobility and employability, generated greater flexibility balanced with fairness, ensured that labour regulation was up to date and did not create unnecessary barriers and disincentives to job creation.
- 135.** The Employer members added that one of the ongoing challenges facing employment policies and ILO standard setting was the achievement of an international and domestic employment policy environment which balanced the needs of business and workers. Businesses needed to have sufficient flexibility and entrepreneurial expertise to compete in global markets, while workers required certain essential social protections and the opportunity to acquire the necessary education and training so that they could become and remain economically secure. For full employment to be achievable, a number of economic, political and legal factors needed to be present, including: a stable economic, political, legal and social environment; low inflation; low interest rates; coherent macroeconomic policies; stable exchange rates; guarantees of human rights; secure property rights; enforceable contracts; open markets; stable commodity prices; low taxes; currency liberalization; and debt reduction. The considerations that related to the reform of domestic employment policies were equally applicable to both the revision of old and the adoption of new standards which, after being ratified, clearly had an impact at the domestic level.

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- 136.** The Employer members emphasized that existing ILO standards that no longer fitted the characteristics of the modern workplace, or new standards that sought to solve every labour market imperfection or unknowable consequence, would be counterproductive to the objective of full employment, especially as it related to the very basic issue of the ability of firms to create jobs, increase productivity and raise the standard of living of workers. As such, ratified Conventions that no longer fitted the needs of the twenty-first century workplace constituted a competitive disadvantage to the countries that ratified them.
- 137.** The Worker members also indicated that neither of the two standard-setting options proposed in the General Survey was a priority in their view. They considered that the existing employment instruments were still particularly relevant as a guide for national and international employment policy. It was much more important to promote the ratification of Conventions and strengthen the implementation of the employment instruments, particularly Convention No. 122. And it was even more important to achieve greater convergence between macroeconomic and social policy.
- 138.** The Worker members therefore considered it more urgent to develop a new instrument, such as a Recommendation, which could also give renewed impetus to Convention No. 122, within a context, as outlined by the ILO Director-General at the G20 Meeting of Ministers of Labour and Employment in Washington in April 2010, of greater convergence between macroeconomic policy and employment, labour market, skills and social protection policies.
- 139.** Several Government members indicated that the employment instruments had provided important guidance for the action taken at the national level. Some Government members expressed opposition to the proposal for a new instrument on action in times of crisis. The Government member of Mexico considered that the adoption of either of the two proposals would restrict the usefulness of the existing instruments. The Government member of the United Kingdom added that there were still lessons to be drawn from the crisis and that evidence of the long-term impact of the policies adopted was still insufficient for the development of a new instrument.
- 140.** The Government member of Norway, also speaking on behalf of the Government members of Denmark, Finland, Iceland and Sweden, believed that the current employment instruments were fully adequate and that there was no need to develop an instrument addressing past, present and future crises. Such an instrument would also create confusion in relation to the status of the Global Jobs Pact, which was a powerful stand-alone tool giving effect to the Decent Work Agenda in response to the crisis.
- 141.** The Government member of Switzerland emphasized the need to resist the temptation to reduce measures of prevention and action against crises to a series of common normative denominators, as the necessary measures were largely developed at the national level. Before embarking on such a path, a very serious study of the feasibility of new standards would need to be conducted.
- 142.** The Government member of Spain considered that the proposed instrument would be very complex, given the inherent nature of economic crises, which did not lend themselves to the establishment of basic principles or general preventive measures. A more integrated approach between economic, employment and social policies would be an important tool for managing the impact and effects of crises so as to promote sustainable recovery and, in that respect, the Global Jobs Pact represented a policy instrument that addressed the repercussions of the international financial and economic crisis in the social and employment spheres.



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- 143.** The Government member of Germany, referring to the important role of tripartite consultations and social dialogue in times of crisis, expressed the belief that it would be interesting to discuss the possibility of adopting a new instrument in the form of a Recommendation setting forth policies that member States could use in a targeted manner to prevent crises in future. Such an instrument would fill a gap in the current framework of employment instruments.
- 144.** Several Government members also opposed the proposal for the adoption of a consolidated employment instrument. The Government member of Norway, also speaking on behalf of the Government members of Denmark, Finland, Iceland and Sweden, considered that the process of formulating such an instrument would be difficult and time-consuming. Moreover, it could lead to the weakening of Convention No. 122. It was more important to ensure that existing employment instruments were fully observed and applied in an efficient manner, while being based on the diverse realities and needs of member States. Nevertheless, there was some merit to the idea of a consolidated instrument and more documentation was required before a definitive decision could be taken.
- 145.** The Government member of Senegal considered it unnecessary to adopt a new consolidated instrument, although such an instrument could improve coherence and relieve the reporting burden on governments. The Government member of the United Kingdom indicated that, although the consolidation of the existing employment instruments could, in principle, enhance the promotion of valuable employment principles, including macroeconomic policy coherence and the development and review of active labour market policies, the same objective could be achieved through the sharing of information and expertise, as well as technical assistance from the Office. Moreover, consolidation might not lead to a stronger instrument and might instead diminish the impact of Convention No. 122. The Government members of the Philippines and the Syrian Arab Republic agreed that a new consolidated standard was unnecessary.
- 146.** The Government member of Italy indicated that her Government was open to discussion of a consolidated instrument, which could contribute to the coherence and effectiveness of existing instruments. However, it would be of fundamental importance not to weaken the principles set forth in Convention No. 122.
- 147.** The Government member of France, who agreed that the six employment instruments covered by the General Survey were of great relevance in assisting member States to cope more effectively with economic and financial crises, considered that the implementation and impact of the ILO's employment instruments needed to be strengthened. She called on the ILO to reflect on the possibility of a promotional instrument designed to strengthen the coherence between the social, economic and financial policies pursued by different international organizations, as well as within member States. The Government member of Portugal supported the proposal for a new instrument which strengthened Convention No. 122, taking into account the current problems faced by national labour markets.

## **Final remarks**

- 148.** Following the discussion on the General Survey, the Worker members concluded that there was an enormous gap between the basic principles set out in the ILO instruments concerning employment and their application in practice. That was due not only to the current levels of unemployment and underemployment, but also to the fact that many member States were not fulfilling their commitments under the Social Justice Declaration, the Global Jobs Pact and the employment instruments. Three main problems were identified in this regard. First, employment was often considered to be a by-product of macroeconomic and general policies, without any effective mechanism for integrating

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employment as a cross-cutting policy issue. Second, in many countries, macroeconomic and budgetary choices were made at the expense of the goal of productive employment, freely chosen for all. The pressure exerted by financial markets and international institutions, such as the IMF and the OECD, to move more quickly than planned towards a strategy of premature budgetary solutions was putting at risk the resurgence in growth and employment, as observed in Europe over the past few months. However, the trend might spread to other regions as well. The Worker members had hoped that the financial markets would be regulated, but instead it was governments that were being punished for their action to stimulate and assist the financial sector. Finally, long before the financial crisis, employment policy had been narrowly focused on supply, overlooking the fact that it was first necessary to create demand and productive jobs to allow jobseekers, as well as inactive workers, to find employment.

- 149.** The Worker members concluded that substantial changes were required in national policies and in the actions of international economic and financial institutions. The ILO had a key role to play in changing the existing paradigm. The Worker members identified eight main challenges in this regard. The first was to promote the ratification of the employment Conventions, and particularly Convention No. 122, but also the Human Resources Development Convention, 1975 (No. 142), and the Private Employment Agencies Convention, 1997 (No. 181), as well as the Paid Educational Leave Convention, 1974 (No. 140), which had not been examined in the General Survey. Second, it was necessary to promote the implementation of Conventions and Recommendations at the national level, in cooperation with the social partners, not only as a specific objective for the employment sector, but also as a cross-cutting ILO objective. The Worker members welcomed the fact that the ILO and its Director-General had made an outstanding effort during the financial crisis to place the question of employment and decent work on the agenda of the G20 and other international institutions, and had influenced policies in many countries. But there remained much to do at the national level. Member States now faced policies dictated by the IMF and the OECD which conflicted with fundamental ILO principles, and particularly the importance of full and productive employment.
- 150.** The Worker members added that the ILO needed to assist member States to change their paradigm, which gave rise to numerous challenges. How could the goal of full productive employment be integrated into general strategies and macroeconomic and budgetary policies? What did full employment mean on today's labour markets, where there was increased tension between supply and demand, but also new means of communication between employers and jobseekers? How high should structural unemployment be and what intermediary goals could be proposed for achieving full employment? What did productive employment mean in practice? And what would the consequences be for national policies of the introduction of such measures as a decent minimum wage and respect for free wage negotiations, the promotion of stable labour relationships, action to reduce segmentation and precarious employment, as well as the transition of workers from the informal economy to the formal economy? What would the effect be of bringing to an end the neglect of the agricultural sector in national and international policies, which had caused food crises and poverty among farm workers? How could two-speed social policy be avoided, with one speed for large companies and another for SMEs? And how could a unilateral supply-oriented employment policy be transformed into a policy focused on demand with a view to creating decent jobs?
- 151.** The Worker members emphasized that the ILO had to play a more important role in the development of national policies, especially at times of crisis. The ILO had proven that it was capable of intervening quickly in international discussions, notably with the G20. But how could the ILO's capacity to intervene at the national level be improved with a view to preventing the widespread domination of the "business as usual" approach adopted by other international institutions, such as the IMF? The Worker members added that more

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information was also needed, in the form of reliable statistics, thorough studies of the labour market and reviews of national policies, to improve the effectiveness of policies and to monitor the application of labour standards. In addition to databases, for example on employment policy and training, this included the monitoring and systematic study of the consequences for productive employment of budgetary, monetary and economic policies, with particular reference to liberalization and privatization policies.

- 152.** The Worker members observed that the capacity of member States to influence decisions concerning localization and investment by multinational businesses was very limited. The Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), clearly indicated that “Members should, after consultation with the organisations of employers and workers, take effective measures to encourage multinational enterprises to undertake and promote in particular the employment policies set forth in the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, 1977, and to ensure that negative effects of the investments of multinational enterprises on employment are avoided and that positive effects are encouraged”. This required close monitoring by the ILO, but also in-depth discussion of the role that the ILO would have to play in future to promote, also through its standards policy, respect among multinational enterprises for employment and training standards. It was clear that a soft approach based on self-regulation was insufficient.
- 153.** The Worker members recalled that they were not in favour of a new instrument to consolidate the existing employment and training instruments, and that they were doubtful of the added value of a new instrument to prevent and manage crises. The Global Jobs Pact was already an adequate response to the crisis, but now needed to be implemented. It was now of greater importance to obtain further guarantees that, in addition to the goal of full and productive employment, the concept of decent work was really anchored and fully integrated horizontally into general policies, especially budgetary, monetary and economic policies. A new instrument could be envisaged to move national policies in that direction.
- 154.** The Worker members referred to the serious problem of precarious and segmented labour markets, which merited greater attention from the ILO and was related in part to difficulties in the implementation of ILO standards. The General Survey had highlighted the difficulties arising out of triangular employment relationships referred to in Convention No 181. In addition, the problem of the follow-up to the Employment Relationship Recommendation, 2006 (No. 198), needed to be addressed. They called for an in-depth examination of these trends and a discussion of the role of ILO standard setting in this field.
- 155.** Finally, in response to the comments made by the Employer members, the Worker members referred to paragraph 310 of the General Survey, in which the Committee of Experts emphasized that the right of freedom of association and the right to collective bargaining should be fully guaranteed to all workers placed by private agencies or employed by temporary work agencies, and that adequate protection needed to be ensured to employees of employment agencies if they engaged in lawful industrial action.
- 156.** The Employer members observed that the examination in the General Survey of employment standards and policy had provided the opportunity to focus on sustainable jobs. In the current phase of the financial crisis, this offered an opportunity to ensure that governments made use of the instruments to achieve a strong recovery. They emphasized the complexity of employment policy and the challenges involved, which meant that there was no single model that could be followed in every case. Without economic growth, there would be no possibility of employment creation, and particularly of the achievement of full, productive and freely chosen employment. The Employer members once again emphasized the need for stable economic policies in the current climate. With regard to job

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security, they indicated that, while such security was important, it remained one of the policy aspects that needed to be balanced with others, and was not always the most important aspect. They also emphasized the difficulties faced by SMEs in achieving market success and observed that real security for workers consisted of the capacity to find new employment if they lost their jobs. This was one of the reasons why it was so important to focus on skills training and development.

- 157.** With respect to standard setting, the Employer members noted that the Worker members were not in favour of a consolidated employment instrument. The Employer members reaffirmed the view that productive and sustainable jobs were the best means of mitigating economic uncertainties, which required smarter and more effective regulation, as well as labour market measures. They concluded that a balance was needed between the flexibility and expertise that business required to be able to compete, and the social protection needed by workers to remain economically secure. This was one of the key challenges of standard setting in the field of employment.

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- 158.** In her reply on the General Survey, the Chairperson of the Committee of Experts on the Application of Conventions and Recommendations indicated that the broad-ranging discussion had been most interesting, not only because of the specific points covered, but also because it had revealed the vital importance of the topic for the health of our societies and the possibility of attaining decent work for working men and women. She expressed the belief that the discussion had borne out her earlier comment that there were different views on how best to achieve the goal of full, productive and freely chosen employment, and that different approaches could be successful. Everyone agreed on the need to create sustainable employment, with the Employer and Worker members perhaps placing different emphasis on how to balance this goal with others, such as job security and flexibility for SMEs. She added that the discussion in the Committee of Experts on the two options for possible standard setting had anticipated many of the points made by the present Committee. As indicated by the Worker members, the priority should be to bolster the action taken by member States, where the challenge was to make full, productive and freely chosen employment a goal of macroeconomic policy. Moreover, as noted, only 102 member States had ratified Convention No. 122, even though it simply called on governments to declare and pursue an active labour market strategy with the aim of achieving full, productive and freely chosen employment. During the discussion, no Government member had referred to any major impediments to declaring and pursuing such a policy.

- 159.** The Chairperson of the Committee of Experts recalled that this type of General Survey presented certain difficulties, as it had to be decided how to review several instruments at once. There was a tendency to look for common themes or issues among the instruments, rather than spending time on particular issues relating to just one Convention or Recommendation. With a view to producing a readable, coherent document, rather than six documents patched together, the Committee of Experts had searched for a unifying theme. In the case of the six employment instruments, that had been easily done, as Convention No. 122 set out the overarching goal, and the other five instruments related to an aspect of what member States needed to do to achieve full, productive and freely chosen employment. The Employer members had rightly indicated that the present General Survey was less precise in its legal analysis than others, which was due to the fact that Convention No. 122 was a promotional instrument, with few provisions suitable for that type of legal analysis.

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- 160.** She added that the difficulties involved in a General Survey covering several instruments should not be underestimated. In the present case, it was fortunate that the instruments chosen were closely related and could be seen as forming part of a single process, namely that of achieving full, productive and freely chosen employment. That might not be the case in future years. If several instruments that were only loosely linked were selected for review at the same time, and if they were all of a more standard prescriptive nature, it would be difficult to produce a General Survey with the usual attention of the Committee of Experts to careful analysis of compliance with specific provisions, without resulting in a document hundreds of pages long. She noted in that respect that the 2007 General Survey on forced labour, focusing on only two Conventions, had been 135 pages in length.
- 161.** She explained that, even in the current General Survey, more time could have been spent on certain provisions of an instrument if a more traditional review had been undertaken. Each year in the report of the Committee of Experts, in the observations and direct requests on Convention No. 122, comments were normally made with regard to certain member States that it was not evident from the government's report how economic and social policies were coordinated, or how the social partners were consulted in the formulation and implementation of these policies. If the traditional approach had been used of reviewing compliance with each clause of a Convention, time would have been devoted to examining the application of Article 2(a) of Convention No. 122, which provides that "Each Member shall, by such methods and to such extent as may be appropriate under national conditions ... decide on and keep under review, within the framework of a co-ordinated economic and social policy, the measures to be adopted for attaining the objectives specified in Article 1". A review of that type could have produced useful information at a time when there were calls for greater convergence between macroeconomic and social policy.
- 162.** Finally, she noted that some of the comments made during the discussion related to points on which there had been data constraints, for example concerning the extent of underemployment. Similarly, the term "small and medium-sized enterprises" was not used in precisely the same way in different countries, thus making it difficult to consider what circumstances might justify a relaxation of particular international labour standards. Finally, she noted that it had been logical to include Convention No. 181 in the General Survey, even though it had only received 23 ratifications and had been adopted only 16 years ago. As a result, there had not been much jurisprudence for the Committee of Experts to review. She said that private employment agencies would no doubt play an increasingly important role in matching individuals to jobs and it was therefore to be hoped that more member States would seriously consider ratifying Convention No. 181.
- 163.** In her reply, the representative of the Secretary-General said that, through its interesting discussion and the swift adoption of a brief summary and conclusions to its debate, the Committee had made a decisive contribution to ensuring that standards played a useful role in the achievement of the Organization's constitutional objectives. As the tripartite voice of standards, deriving its voice from its central role in the supervisory system, the Committee had expressed itself and had been heard by the Organization as a whole. The Committee had done so at a time when unemployment was at the highest level ever recorded and when the Organization was seeking the right policy options to secure recovery and shape sustainable growth that generated decent work for all.
- 164.** The representative of the Secretary-General added that the discussion of the General Survey this year had been an innovation for the supervisory system and for the ILO as a whole, as the first instance of the institutional implementation of the integrated approach set forth in the Social Justice Declaration. It could therefore only be improved upon. The International Labour Standards Department would take into account the comments made during the discussion as it prepared the next General Survey on social security. The Office should also take into account the comments made in relation to the question of

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coordination between the contents of the General Survey and those of the recurrent item report, as well as between the work of the respective bodies.

**165.** With reference to the comments made by the Employer members concerning the response rate to the questionnaire for the General Survey, the representative of the Secretary-General acknowledged that the rate had not been high over the past decade. However, the number of member States replying to the questionnaire for the present General Survey had reached its highest level since 2001, despite the number of instruments covered. Moreover, constituents had been given half the time normally allowed for responses. The decision to align the topic of the General Survey with that of the recurrent item had been taken by the Governing Body in November 2008. The questionnaire had been sent out at the end of December 2008, and replies had been requested by 31 May 2009. Member States had therefore only had five months to understand the new format and to reply. Under the circumstances, the response rate of 108 member States was exceptionally positive. Over the past decade, with the exception of 2005, the number of replies received had been lower than 100. She added that 109 countries had already replied to the questionnaire for the next General Survey on social security.

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**166.** A brief summary and conclusions of its discussion on the General Survey on employment instruments was presented by the Officers of the Committee on the Application of Standards to the Committee for the Recurrent Discussion on Employment on the afternoon of 4 June 2010. The text of the brief summary and conclusions are set out below.

### **Brief summary and conclusions of the discussion by the Committee on the Application of Standards on the General Survey concerning employment instruments**

**167.** The Committee on the Application of Standards held a discussion on the General Survey concerning employment instruments<sup>10</sup> prepared by the Committee of Experts on the Application of Conventions and Recommendations. During the course of the discussion, the following general points of view were expressed concerning the employment instruments. The detailed comments made concerning the General Survey are recorded in the Committee's report.

**168.** The Employer members emphasized that the primary goal of employment policy should be to enhance the ability of firms to create jobs, increase productivity and raise the standard of living of workers. The best safety net was an economy that created productive jobs capable of adapting to change, which remained the best protection against economic uncertainties. What was at issue was not the elimination of regulation, but the need for smarter, more effective regulation. For full employment to be achievable, a number of economic, political and legal factors needed to be present, including a stable economic, political, legal and social environment.

**169.** The Employer members expressed the belief that the central focus of the discussion should be on the fundamental promotional objective set out in Convention No. 122 of full, productive and freely chosen employment. In particular, the concept of "productive

<sup>10</sup> ILC, *General Survey concerning employment instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization*, Report III (Part 1B), 99th Session, Geneva, 2010.

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employment” was of vital importance during the second phase of the economic crisis that was being experienced in 2010.

- 170.** In that respect, two essential areas were small and medium-sized enterprises (SMEs) and vocational guidance and training. In view of the critical role played by SMEs in generating employment opportunities and growth, special importance should be attached to the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), which highlighted the importance of SMEs in any policy aimed at full, productive and freely chosen employment. The instruments on vocational training and human resources development emphasized the central role of the State in the development of vocational guidance and training that took into account employment needs and opportunities. There was an urgent need for the provision of training that developed the right skills at the right time to meet labour market needs. With regard to employment agencies, the Employer members recalled that the Private Employment Agencies Convention, 1997 (No. 181), permitted and encouraged private employment agencies, in contrast with earlier instruments which prohibited them, and they therefore called on governments to ratify Convention No. 181. They added that Convention No. 88 should be revised.
- 171.** With reference to the standard-setting options outlined in the General Survey, the Employer members did not consider that there was a gap in the current framework that needed to be filled. Moreover, they strongly believed that a consolidated employment Convention would create confusion and impede the primary objective of Convention No. 122 of full, productive and freely chosen employment. With respect to the revision of existing standards, they emphasized that standards that were no longer adapted to the realities of the modern workplace were liable to be counterproductive and to provide a competitive disadvantage to countries that ratified them.
- 172.** The Worker members emphasized that the crisis was far from being over. The financial crisis and the economic crisis that had followed had given rise to a serious budgetary crisis. Budgetary measures would be needed in many countries, but it was clear that budget cuts that were too rapid and too deep would seriously endanger the recovery of employment growth. Moreover, they emphasized that a policy to promote employment needed to go hand-in-hand with a policy to improve the quality of employment, through the attainment of the objective of decent work. In 2009, the Global Jobs Pact had called on member States to consider the introduction of a minimum wage, but little progress had been made in this respect.
- 173.** In view of the current situation, the Worker members outlined a number of priorities. The first was to promote the ratification of the four employment Conventions and to ensure their effective implementation, together with the Recommendations, in dialogue with the social partners as a horizontal policy effort. The ILO needed to help member States to achieve a paradigm change through the integration of the objective of full, productive and freely chosen employment into overall macroeconomic and budgetary policies. The ILO should also play a more important role in the development of national policies, particularly in times of crisis. The ILO had shown that it was capable of intervening rapidly in international debates, particularly at the level of the G20. It now had to improve its capacity to intervene at the national level.
- 174.** The Worker members also emphasized the need for greater information, including reliable statistics, in-depth analyses of the labour market and assessments of national policies, which were a prerequisite both for policy effectiveness and to supervise the application of the employment instruments. Such information should include the systematic assessment of the consequences on productive employment of budgetary, monetary and economic policies, as well as liberalization and privatization policies. In view of the incapacity of member States to influence decisions on the relocation of production and investment by

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multinational enterprises, there should also be an in-depth debate on the role that the ILO could play in future, through its standards policy, among other means, to promote observance by multinational enterprises of employment and vocational training standards.

- 175.** The Worker members were not in favour of a new instrument to consolidate the current employment and vocational training instruments. They also expressed doubts concerning a new instrument on crisis prevention and management. The Global Jobs Pact was already an adequate response to the crisis and should be put into effect immediately. Greater guarantees were needed that the objective of full, productive and freely chosen employment, combined with the concept of decent work, was truly being integrated into overall policies, and particularly budgetary, monetary and economic policies.
- 176.** Finally, the Worker members drew attention to the serious problem of increasingly precarious and segmented labour markets. This issue, which affected the achievement of the objective of decent work, required greater attention from the ILO. In certain respects, it was also a problem of the application of international labour standards, such as the provisions of Convention No. 181 respecting triangular employment relationships and the Employment Relationship Recommendation, 2006 (No. 198). There was a need for a more in-depth assessment of these trends as a basis for a discussion of the role that ILO standards activities could play in this respect. The Worker members also called for examination of the possibility of adopting of a new instrument to achieve coherence between the social, economic and financial policies promoted by international organizations, as well as member States.
- 177.** Many of the Government members who took the floor emphasized the importance of the guidance provided by the Global Jobs Pact, which was a powerful tool to improve the employment situation in the context of the current crisis. Several Government members considered that the current employment instruments, if broadly ratified and effectively implemented, were fully adequate and that there was therefore no need for a new crisis response instrument. Several Government members expressed doubt about the value of a new consolidated instrument on employment, which might be complex and time consuming to draft, and might involve a risk of weakening Convention No. 122. However, a number of Government members expressed interest in the possibility of a consolidated standard on employment, although the matter would have to be studied carefully to ensure that it did not weaken the principles set forth in Convention No. 122 and took into account the diverse realities and needs of member States. A consolidated instrument would offer greater efficiency and coherence, address any gaps and allow flexibility in implementation, as well as reducing the reporting burden on governments. Some Government members also expressed interest in a possible new instrument to achieve coherence between the social, economic and financial policies pursued by international organizations, as well as member States.
- 178.** Several Government members added that the ILO's employment standards had provided important guidance for the action taken at the national level. Certain Government members from developing countries described the beneficial effects of such measures as the introduction and improvement of employment agencies, the strengthening of vocational guidance and training systems and the implementation of a minimum wage. Employment promotion measures and investment projects were vital in combating poverty. Certain Government members from developed countries recalled the need to promote and protect employment, even during the current period of budgetary constraints. All the Government members who spoke emphasized the need for broad consultations when adopting employment policy measures.



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## Conclusions

**179.** This year, following the adoption of the Social Justice Declaration in 2008 and the Global Jobs Pact of 2009, the Conference Committee on the Application of Standards has before it a General Survey concerning employment instruments. The first strategic objective of the Social Justice Declaration is “promoting employment by creating a sustainable institutional and economic environment”. The Governing Body selected this objective as the first recurrent item for discussion at the International Labour Conference. Aligning the subject of the General Survey and the recurrent item report has the benefit of promoting greater coherence between the normative, economic and social policy work of the ILO. The Employer and Worker members, as well as many Government members, participated in a substantive discussion on the General Survey.

Considering that the Employment Policy Convention, 1964 (No. 122), is a governance instrument, promotional in nature, deals with economic policy issues and provides a promotional framework;

Taking into account the linkages between Convention No. 122 and the Human Resources Development Convention, 1975 (No. 142), the Employment Service Convention, 1948 (No. 88), the Private Employment Agencies Convention, 1997 (No. 181), as well as the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), and the Promotion of Cooperatives Recommendation, 2002 (No. 193);

The Committee on the Application of Standards invites member States that have not yet done so to ratify as a matter of priority Convention No. 122 and to consider ratifying Conventions Nos 142 and 181. They should take steps for their effective implementation with the full participation of the social partners.

The Committee on the Application of Standards invites member States and the International Labour Office to reinforce their efforts to share information and expertise on matters covered by the instruments. The ILO should provide technical assistance, including capacity building, to member States and the social partners with a view to the ratification and effective implementation of the instruments.

## **D. Report of the Joint ILO–UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART)**

**180.** The Employer members noted the task of the CEART to examine reports on the application of the 1966 and 1997 Recommendations submitted by governments, by national organizations representing teachers and their employers, by the ILO and UNESCO and by relevant intergovernmental or non-governmental organizations, and to communicate its findings to the ILO and UNESCO for their appropriate action every three years. The Committee reviewed the report as an exceptional matter to the Standing Orders in view of the fundamental and increasing importance of the educational sector for improved productivity and labour standards generally. Without the best possible education and training, the future would be more than ever compromised.

**181.** The Employer members shared most of the CEART’s observations. They believed in the critical importance of quality education systems and their decisive role in ensuring skills for individuals’ integration into labour markets, more than ever a central function of

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education. Workers' employability constituted the best guarantee of employment security, even more than legal protection. In a year when the relevance of the ILO's employment policy instruments was under discussion, especially to ensure sustainable economic recovery from the crisis, it was necessary to emphasize teaching quality and its close link to current and future skills as a linchpin of any successful employment policy.

**182.** In this context, the Employer members shared the objectives of developing a motivated teaching force with good working conditions, and emphasized several key points towards that end emerging from the CEART report:

- The necessity of an integrated approach to teacher education defined by a continual process of training, induction and professional development. Constant upgrading of teaching skills was indispensable, encompassing knowledge, skills, abilities and aptitudes, among these pedagogical capacity and communication. The commitment of teachers to successfully realizing these objectives as part of a shared responsibility was equally decisive.
- The concern over the deteriorating working environment of teachers in many countries. The climate of harassment and insecurity was not only unacceptable from a decent working perspective but reflected a loss of values that affected the whole of society, as well as enterprises. Actions needed to counteract this worrying trend surpassed the education sphere; nevertheless, effective and intelligent measures needed to be taken as quickly as possible so as to reinforce the role and authority of teachers.
- The need for governments in both developing and developed countries alike to improve education policies by investing sufficiently in education so as to avoid overcrowded classes and ensure appropriate teaching and learning conditions since the performance of teachers was so essential. The efforts employed to end the current economic crisis situation should give priority consideration to this aspect, given that the principal objective above all else was to ensure adequate education and training for all students.
- The importance for Employer members of ensuring quality education at each level of the system, in which the promotion of a culture of quality depended on teachers themselves. Deterioration in the education systems of many countries was of great concern and required fundamental change based on quality considerations, to be obtained through management efficiency and results.

**183.** The Employer members nevertheless did not fully agree with all of the CEART's observations, notably:

- While social dialogue and respect for collective bargaining were important in education, so was the need for social dialogue to be adapted to the public sector context and that of a society's general interests, as well as the labour relations context of each country. Social dialogue could take multiple forms, and not necessarily result in a collective bargaining agreement. The Employer members therefore did not share the criticisms about limitations in some countries on collective bargaining as these restrictions might reflect general interests and public welfare.
- While assigning great value to education as one of the most important public goods based on equal and non-discriminatory access to quality education, the Employer members disagreed strongly with the observations that private provision of education represented a negative "privatization" of this public good. In many countries where education was strongest and provided the greatest access, it was delivered by private entities competing fairly and providing quality teaching that benefited those most in

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need. It was surprising to see such biased observations in the CEART report, which did not reflect reality.

- Teaching quality was closely linked to achieving results, and remuneration no doubt constituted one of the many elements contributing to results-based outcomes. Any effective human resource policy had to take this element into account, and it was therefore surprising to see the CEART's observations that merit pay was incompatible with teamwork. This did not correspond to the reality of public or private service management, and teaching services undoubtedly needed such mechanisms to reinforce education system quality.
- The reference to ageing of the teaching force in many countries was not the relevant issue but rather the professional development and lack of qualified teachers.
- Part-time employment did not equate to precarious employment.

**184.** In conclusion, the Employer members stressed the pertinence of the 1966 and 1997 Recommendations, the relevance of the CEART reports and the need to continue regular tripartite discussions on this vital subject. In this context, emphasis should be placed on:

- greater account of the relationship between education and economic policies, notably links to quality training, skills development and the labour market;
- measures to protect teachers from violence in the interests of quality teaching and learning;
- the role of efficient educational management in ensuring quality teaching.

**185.** The Worker members concurred with the Employer members on the need for better teaching conditions and improved quality of education. Teachers were nation builders and therefore the State had a duty to provide them with a good working environment. While the impact of the global economic crisis had to be recognized, it was alarming to note the declining access of poor people to education, as the IMF and the World Bank had noted. Denying children access to education made them vulnerable to child labour. Therefore, greater allocation of countries' GDP to education was essential. Furthermore, as the CEART report pointed out, social dialogue in education needed to be strengthened, with governments respecting teachers' rights to freedom of association, to freely organize themselves and to collective bargaining as enshrined in ILO Conventions Nos 87 and 98, so as to enable improvements in their working environment.

**186.** The CEART report pointed to the shortage of primary teachers in developing countries especially, which resulted in overly large class sizes, overburdened teachers working in poor conditions and thus the inability in these countries to construct the foundations for human development. Teachers in public institutions also lacked job security, and received salaries that were both insufficient and lower than in comparable professions since certain benefits were not provided or the salaries not adjusted to inflation. This led to many leaving the profession for other jobs and these factors had led to an explosion of private education institutions. Although private education was not bad per se, these developments could lead to a stratified and unequal education system allowing only the rich access to high-class private institutions. At the same time, as the CEART report highlighted, the teaching staff, especially in private higher education institutions, faced similar problems as their public sector counterparts, with a consequent weakening of quality guarantees.

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- 187.** In concluding, the Worker members wanted the CEART report's recommendations to be distributed and promoted in all member States given the importance they attached to the recommendations concerning teaching personnel. Governments should follow and implement them, attributing additional resources to the education sector and ensuring social dialogue and freedom of association in decision-making. As regards the situation in Ethiopia pointed out in the CEART report, Education International (EI) and government representatives had met in Addis Ababa with a view to creating a climate of understanding and solving the outstanding problems.
- 188.** The representative of EI recalled that the Conference Committee examined the CEART report once every three years, a report that established a balance sheet on the application of the two international Recommendations concerning teachers. These texts constituted a very important reference base for the tens of millions of women and men teaching throughout the world, and were linked with the fundamental principles contained in ILO Conventions. The CEART was a unique body to which teachers attached great importance. Its tenth session was held at UNESCO in September–October 2009 in the context of a worsening financial and economic crisis in many countries. The CEART had focused its work on key themes relating to teaching and education as set out in the two international Recommendations: social dialogue; initial and continuing teacher education; employment, careers, remuneration and teaching–learning conditions; teacher shortages, academic freedom and employment conditions in higher education, with greater attention at the tenth session to the numerous reforms affecting higher education worldwide.
- 189.** Teachers supported the efforts deployed by CEART to ensure promotion and respect for the provisions of the 1966 and 1997 Recommendations and for its contributions to solve the problems raised in allegations made by teachers' organizations. In this respect, the Government of Japan should fully apply the recommendations made by CEART, as approved already by the ILO Governing Body, to promote a culture of social dialogue in the public administration through the establishment of consultative and negotiating structures at the national and prefecture levels. EI welcomed the progress that had been made so far.
- 190.** EI had participated in the work of CEART by submitting a report and by taking part in the special information session that permitted exchanges with representatives of international organizations; this opportunity should be expanded. A good number of EI's proposals were reflected in the recommendations of CEART, which EI supported, even though it was regrettable that their impact was limited due to ignorance of the international Recommendations.
- 191.** EI wished to stress three issues:
- The worldwide shortage of teachers could not be overlooked, especially during the current period of crisis, which had led to substantially reduced budgets in many sectors of education. Despite its crucial role, educational budgets had been decreasing almost everywhere in the world, dramatically affecting teachers' salaries, their employment and their very survival.
  - The growing precariousness of the teaching profession, with many teachers being hired on the basis of fixed- or part-time contracts, restricted their academic freedom and professional as well as institutional autonomy, especially in higher education. The increasing employment of low-cost contractual teachers in order to save on education expenditures had long-term negative effects on high-quality education.

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- An increase in violence and aggression against educational institutions, children and teachers that the CEART proposed as a high priority theme for its next session. Outrageous, unjustified and morally unacceptable violence had dramatic consequences on educational opportunities and on the psychological balance of children and teachers.
- 192.** Most governments and educational institutions continued to ignore the existence of the two Recommendations on teachers which, in turn, led to violations of the rights of teachers at all levels of education. The ILO and UNESCO had to take concrete steps to ensure their effective application both by governments and institutions. All education authorities had to assume their obligations within a framework of dialogue with teaching personnel and their representative organizations. The Employer members had confirmed the importance of education and training and the need to have teachers who were well-trained, respected and benefited from a working environment that allowed them to provide high-quality education. By applying the two Recommendations, governments recognized the fundamental importance of education in society for the training of future workers as informed and enlightened citizens, as well as defenders of a democratic society.
- 193.** The Worker member from Nicaragua emphasized that education was designed to support human development and not just that of markets. The reality in many Latin American countries was otherwise, and he underlined the importance for education policies not to be formulated on the basis of guidelines from the World Bank, whose priority was to reduce social spending. Rather, UNESCO should support governments more in their efforts to reform such policies. In Latin American countries there was an unfortunate tendency for non-governmental organizations or government-supported unions to take on an active role in training and in representing workers in education, thereby undermining the role of independent trade unions. The right to education was a human right, not a commodity to be bought and sold, and the quality of education should be measured by how well knowledge and schools equipped people to deal with life's realities. The CEART report was based on workers' rights derived from ILO standards and on UNESCO education policies and its recommendations should be supported by all. Governments, workers and employers needed to ensure that education was at the heart of national agendas for achieving sustainable human development.
- 194.** A representative of the World Federation of Trade Unions, representing the Ethiopian Teachers' Association (ETA) explained that ETA currently had 350,000 members teaching in public and private schools, and the organization was a member of many education networks in Ethiopia, as well as of different regional and international organizations, notably the WFTU. UNESCO had also commissioned ETA to do a study on education quality in 2005. The CEART's report had missed important facts prevailing in the country, for instance that there was only one legally registered teachers' organization in Ethiopia, the ETA, and that there was neither a "former ETA" nor a National Teachers Association. The leadership wrangles that had caused the emergence of factions struggling for control of leadership and ETA assets in the past had been solved by judicial decisions two years ago. Unfortunately, EI and the ITUC had been harassing the legally registered association for the last 15 years instead of supporting the ETA's effort to protect the rights and interests of teachers. In this regard, the CEART's report referred to the Government requiring teachers to perform duties unrelated to education, such as their participation in the population census, without consultation with teachers' organizations, yet the Government had consulted the ETA, which fully agreed with teachers' participation in the census. Although the CEART report stated that appropriate social dialogue was lacking on matters affecting teachers, regular discussions on teachers' rights and interests and the quality of education took place between teachers and government officials at various levels. The ETA met quarterly with the Ministry of Education and even met with the Prime Minister in 2009. Ignoring such facts only served to weaken teachers' unity. Although the

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CEART report stated that the case had been suspended until more information became available, this consideration was unfair, based on one-sided information and lacked the kind of analysis and research required under usual procedures. Despite the biased findings in the CEART's report, the ETA wished to continue its collaboration with the ILO, UNESCO, EI and the ITUC for the benefit and interest of Ethiopian teachers and the common benefit of all.

**195.** The Government member of Ethiopia stated that Ethiopian laws guaranteed freedom of association and the right to organize, and provided the legal framework enabling citizens to exercise their rights freely and effectively. The multitude of associations formed all over the country testified to the effective exercise of these rights. The allegations by EI regarding the ETA were unfounded. The allegation involved a dispute between two groups, each claiming to be legitimate representatives of the ETA. At the core of the dispute was a group of former teachers supported by external actors and senior supporters of the former military regime who challenged the legal status of the ETA's new leadership following the change of Government in Ethiopia. After a long running legal battle through all levels of the judicial system, without any Government involvement in the legal process, the Federal Supreme Court had finally decided in February 2008 in favour of the ETA's new leadership, and as a result the ETA continued to operate freely throughout the country. Even if processes in the country were not perfect, the Ethiopian Government supported social dialogue, as was shown by the established systems for social dialogue with workers, employers, associations representing different interests and the general public, for example the tripartite labour advisory board, public-private partnership forums and public forums with different segments of society. The Ministry of Education regularly consulted with the ETA and would continue to do so, whereas the Prime Minister met with the ETA in 2009. Her Government strongly opposed the CEART's report, as it was not founded on facts and was biased, whereas for example she noted that teachers had participated in population censuses in full agreement with the ETA. There had been and there was only one legally registered ETA. In contrast to the CEART report, the Government had provided sufficient information to concerned bodies proving that the allegations made by EI had no foundation. The ILO and UNESCO played an important role in advancing labour administration and education systems in Ethiopia and these organizations should not compromise such work by giving credence to baseless allegations.

## **E. Compliance with specific obligations**

**196.** The Employer members recalled that submission of reports by member States was the essence of the Committee's supervisory mechanism and that serious or systematic failure to fulfil reporting obligations was detrimental to the entire ILO supervisory system. Given the importance of reporting, the Committee had strengthened the follow-up procedure for cases of serious failure in order to identify causes and find appropriate solutions to rectify such situations. The Committee had instituted an evaluation system at the request of the Governing Body in 2009 and significant progress had been made since then, as indicated in the report of the Committee of Experts. Examples included the increase in reports received from Caribbean countries and the adoption of measures by almost all member States. The Employer members highlighted the fact that the root cause of failure by member States to fulfil obligations was institutional and related to infrastructure problems, which could be attributed to a lack of human and financial resources. However, some cases of apparent failure to report resulted from lack of coordination between different ministries or linguistic problems, which could easily be solved by technical assistance from the Office. In other instances, internal issues had been cited that were not clearly understood by the Employer members or by the Committee. The Employer members considered that the increase in the number of observations by employers' and workers' organizations accompanying reports reflected the importance of the Committee's activities, and he

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expressed the hope that they would continue to increase. The Employer members endorsed the need to intensify technical assistance activities for States with a view to identifying and eliminating difficulties in fulfilling reporting obligations. The Employers supported the idea of taking new measures to strengthen technical assistance to member States and turning them into wider technical cooperation programmes. The Employer members expressed support for efforts undertaken to reduce the burden of reporting. They considered that grouping reports by subject, based on the ILO's four objectives and the possibility of submitting reports electronically were important steps in terms of the quality of information that could be provided by member States.

- 197.** The Worker members welcomed the increase in the number of reports received in relation to the number requested. The Office's efforts had been successful in that they had helped to identify the difficulties underlying the failures, as well as solutions. Stronger monitoring had facilitated a considerable reduction in the number of cases of serious failure. Awareness of reporting had led almost all member States to take initiatives to overcome difficulties; however, efforts had to be continued and intensified. The Worker members deplored the slight decrease in the reporting rate this year compared to last year and were concerned with the number of late reports (paragraph 37 of the General Report). These delays hampered the work of the Committee of Experts and paralysed the supervisory system. While emphasizing that reporting obligations were the cornerstone of the ILO's supervisory system, the Worker members urged Governments to fully and seriously comply with their reporting obligations. The information contained in the reports had to be as detailed as possible for every case of serious failure. The Governments that had not fulfilled their reporting obligations were disadvantaged, since the absence of the reports made it impossible for the Committee of Experts to examine their national legislation and practice. The Committee and the Office had to insist that these member States take the necessary measures to respect their obligations in the future.
- 198.** 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.
- 199.** In applying those methods, the Committee decided to invite all governments concerned by the comments in paragraphs 33 (failure to supply reports for the past two years or more on the application of ratified Conventions), 38 (failure to supply first reports on the application of ratified Conventions), 42 (failure to supply information in reply to comments made by the Committee of Experts), 90 (failure to submit instruments to the competent authorities) and 99 (failure to supply reports for the past five years on unratified Conventions and Recommendations) of the Committee of Experts' report, to supply information to the Committee in a half-day sitting devoted to those cases.

### **Failure to submit**

- 200.** 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 89th Session in June 2001 to the 96th Session in June 2007). This timeframe 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.
- 201.** The Committee noted the regret expressed by many delegations at the delay in providing full information on the submission of the instruments adopted by the Conference to parliaments. Many governments had requested and obtained the assistance of the ILO to

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clarify how to proceed and to complete the process of submission to national parliaments in consultation with the social partners.

**202.** The Committee expressed concern at the failure to respect the obligation to submit Conventions, Recommendations and Protocols to national parliaments. It also recalled that the Office could provide technical assistance to contribute to compliance with this constitutional obligation.

**203.** The Committee noted that 42 countries were still concerned with this serious failure to submit the instruments adopted by the Conference to the competent authorities, that is: **Antigua and Barbuda, Bahrain, Bangladesh, Belize, Cambodia, Cape Verde, Central African Republic, Chile, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Georgia, Ghana, Guinea, Haiti, Ireland, Kenya, Kiribati, Lao People's Democratic Republic, Libyan Arab Jamahiriya, Mozambique, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Solomon Islands, Somalia, Sudan, Tajikistan, The former Yugoslav Republic of Macedonia, Turkmenistan, Uganda, Uzbekistan, Bolivarian Republic of Venezuela and Zambia.** The Committee hoped that appropriate measures would be taken by the governments and the social partners concerned so that they could bring themselves up to date, and avoid being invited to provide information to the next session of this Committee.

### **Supply of reports on ratified Conventions**

**204.** 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 2009 meeting of the Committee of Experts, the percentage of reports received was 67.8 per cent, compared with 70.2 per cent for the 2008 meeting. Since then, further reports had been received, bringing the figure to 77.4 per cent (as compared with 78 per cent in June 2009 and 73.2 per cent in June 2008).

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

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

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

#### **Antigua and Barbuda**

- since 2004: Conventions Nos 161, 182;

#### **Armenia**

- since 2008: Conventions Nos 97, 143;

#### **Dominica**

- since 2006: Convention No. 147;



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### **Equatorial Guinea**

- since 1998: Conventions Nos 68, 92;

### **Kyrgyzstan**

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

### **Sao Tome and Principe**

- since 2007: Convention No. 184;

### **Seychelles**

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

### **Vanuatu**

- since 2008: Conventions Nos 29, 87, 98, 100, 105, 111, 182.

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

- 207.** In this year's report, the Committee of Experts noted that 48 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 695 cases (compared with 519 cases in December 2008). The Committee was informed that, since the meeting of the Committee of Experts, 21 of the Governments concerned had sent replies, which would be examined by the Committee of Experts at its next session.
- 208.** 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 2009 from the following countries: **Armenia, Burundi, Congo, Czech Republic, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Ethiopia, France, Guinea, Guinea-Bissau, Guyana, Ireland, Kyrgyzstan, Libyan Arab Jamahiriya, Luxembourg, Nigeria, Sao Tome and Principe, Seychelles, Sierra Leone, Solomon Islands, United Republic of Tanzania (Tanganyika), The former Yugoslav Republic of Macedonia, Uganda, the United Kingdom (British Virgin Islands, Falkland Islands (Malvinas) and St. Helena), Uzbekistan and Zambia.**
- 209.** The Committee noted the explanations provided by the Governments of the following countries concerning difficulties encountered in discharging their obligations: **Central African Republic, Ghana, Kenya, Sudan, Uganda** and the **United Kingdom (British Virgin Islands, Falkland Islands (Malvinas), St. Helena).**

## **Supply of reports on unratified Conventions and Recommendations**

- 210.** The Committee noted that 460 of the 826 article 19 reports requested on employment instruments, had been received at the time of the Committee of Experts' meeting, and a further 16 since, making 57.6 per cent in all.
- 211.** The Committee noted with regret that over the past five years none of the reports on unratified Conventions and Recommendations, requested under article 19 of the Constitution, had been supplied by: **Cape Verde, Democratic Republic of the Congo, Guinea, Guinea-Bissau, Kyrgyzstan, Russian Federation, Saint Kitts and Nevis, Sao**

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

**212.** 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**

**213.** 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 60 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 71 such cases, relating to 49 countries; 2,740 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.

**214.** This year, the Committee of Experts listed in paragraph 63 of its report, cases in which measures ensuring better application of ratified Conventions had been noted with interest. It noted 276 such instances in 114 countries.

**215.** 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**

**216.** The Government members of **Bahrain, Cambodia, Chile, Congo, Central African Republic, Ethiopia, Ghana, Ireland, Kenya, Libyan Arab Jamahiriya, Luxembourg, Mozambique, Nigeria, Pakistan, Sudan, Togo, Uganda, United Republic of Tanzania** (Tanganyika and Zanzibar), the **United Kingdom** (British Virgin Islands, Falkland Islands (Malvinas), St. Helena)), **Uzbekistan** and **Zambia**, had promised to fulfil their reporting obligations as soon as possible.

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

**217.** 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.

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## Special cases

218. 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.
219. As regards the application by the **Central African Republic of the Minimum Age Convention, 1973 (No. 138)**, the Committee expressed deep regret at the absence of the Government before the Committee. The Committee noted the information contained in the report of the Committee of Experts relating to discrepancies between national legislation and practice and Convention No. 138, in respect of the absence of a determination of hazardous types of work to be prohibited to persons under 18 years and the keeping of registers by employers, the absence of a national policy designed to ensure the effective abolition of child labour, the large number of children under the minimum age who were self-employed or who worked in the informal economy, the low school enrolment rates and high school drop-out rates, and the weak enforcement of the Convention. The Committee took note with serious concern of the information presented to it concerning the high number of children between the ages of 5–14 who worked in various sectors of the economy, including in gold and diamond worksites, agriculture, cotton and coffee plantations, fishing, as street vendors, restaurants and washing cars. It further noted with grave concern the information regarding the trafficking of children and their forced recruitment in armed conflict, as well as the deplorable conditions experienced by child soldiers, both boys and girls. Noting the legislative discrepancies between the Labour Code of 2009 and Convention No. 138, the Committee firmly hoped that the necessary provisions would soon be adopted to determine the types of hazardous work to be prohibited for children under 18 years of age and to ensure the keeping of registers by employers indicating the names and ages or dates of birth, of persons employed by them or working for them under 18 years of age. The Committee also noted with serious concern that, in practice, a high number of children under the age of 14 increasingly worked in the informal economy, often in hazardous work. It urged the Government to intensify its efforts to improve the situation, notably by developing a national policy to ensure the effective abolition of child labour and an action programme to combat child labour. It further requested the Government to ensure the effective implementation of the new Labour Code. In this regard, it called on the Government to strengthen the capacity and reach of the labour inspectorate and to ensure that regular visits, including unannounced visits, were carried out so that penalties were imposed on persons found to be in breach of the Convention. The Committee noted with concern that low school enrolment and high drop-out rates continued to prevail for a large number of children. Underlining the importance of free, universal and compulsory formal education to preventing and combating child labour, the Committee strongly urged the Government to develop and enhance the education system, including by taking the necessary measures, within the framework of the Plan of Action on Education for All, to ensure access to free basic education for all children under the minimum age, with special attention to the situation of girls. The Committee requested the Government to provide comprehensive information in its report when it is next due, on the manner in which the Convention was applied in practice, including, in particular, statistical data on the number of children working in the informal economy, their ages, gender, sectors of activity, extracts from the reports of inspection services, and information on the number and nature of contraventions reported and penalties applied. Finally, the Committee asked the Government to avail of ILO technical assistance with a view to giving effect to the Convention in law and in practice as a matter of urgency.
220. As regards the application by **Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee took note of the statement made by the Government representative and the detailed discussion that

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followed. The Committee also recalled that it had discussed this serious case on numerous occasions over the last two decades and that its conclusions had been listed in a special paragraph for continuous failure to implement the Convention since 1996. The Committee observed that the Committee of Experts had for many years now deplored the gravity of the allegations of arrest, detention, long prison sentences, torture and denial of workers' basic civil liberties, as well as the long-standing absence of a legislative framework for the establishment of free and independent trade union organizations. The Committee took note of the statement made by the Government representative in which he stressed that, in accordance with its Road Map, Myanmar was committed to pursuing its transformation to a democratic society. Freedom of association rights, as well as other basic civil liberties, were provided for in the new Constitution and would set out the framework within which new trade union legislation would be developed. The Government representative added that no one had been or was apprehended in Myanmar for implicit or explicit exercise of the rights derived from the Convention. As regards requests for recognition of a certain organization, the Government representative reiterated that the Ministry of Home Affairs had declared the FTUB to be a terrorist organization and it could therefore not be recognized as a legitimate workers' organization. Recalling the long-standing and fundamental divergences between the national legislation and practice, on the one hand, and the Convention, on the other, and observing that the Government itself had admitted that there could be no legal trade unions in the country as yet, the Committee once again urged the Government in the strongest terms to adopt immediately the necessary measures and mechanisms to ensure all workers and employers the rights provided for under the Convention. It once again urged the Government to repeal Orders Nos 2/88 and 6/88, as well as the Unlawful Association Act. The Committee once again highlighted the intrinsic link between freedom of association and democracy and observed, with regret, that the Government had yet to ensure the freedom of association ground rules necessary for any credible transition to democracy. The Committee therefore called upon the Government to take concrete steps prior to the upcoming election process to ensure the full and genuine participation of all sectors of society, regardless of their political views, in the review of the legislative framework and practice so as to bring them fully into line with the Convention. It emphasized that it was crucial that the Government take all necessary measures to ensure a climate wherein workers and employers could immediately exercise their freedom of association rights without fear, intimidation, threat or violence. The Committee continued to observe, with extreme concern, that many people remained in prison for exercising their rights to freedom of expression and association, despite the calls for their release. The Committee was bound once again to call upon the Government to ensure the immediate release of: Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min, as well as all other persons detained for exercising their basic civil liberties and freedom of association rights. The Committee once again recalled the recommendations made by the Committee of Experts and the Committee on Freedom of Association for the recognition of trade union organizations, including the FTUB, and urged the Government immediately to put an end to the practice of persecuting workers or other persons for having contact with workers' organizations, including those operating in exile. The Committee recalled its previous conclusion that the persistence of forced labour could not be disassociated from the prevailing situation of a complete absence of freedom of association and the systematic persecution of those who tried to organize. It reiterated its previous request to the Government to accept an extension of the ILO presence to cover the matters relating to Convention No. 87 and to establish a complaints mechanism for violation of trade union rights. The Committee urged the Government to transmit any relevant draft laws as well as a detailed report on the concrete measures taken to ensure significant improvements in the application of the Convention both in law and in practice to the Committee of Experts at its meeting this year. In light of the assurances provided by the Government, the Committee expected that it would be in a position to observe significant progress on all the above matters at its next session.

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**221.** As regards the application by **Swaziland of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee took note of the statement made by the Government representative and the discussion that took place thereafter. The Committee observed that the comments of the Committee of Experts had referred, for many years, to the need to amend the provisions of the legislation containing restrictions to the right to organize of prison staff and domestic workers, the right of workers' organizations to elect their officers freely and to organize their activities and programmes of action, as well as the need to repeal the 1973 Decree/State of Emergency Proclamation and its implementing regulations and to amend the 1963 Public Order Act, which could be used to repress lawful and peaceful strikes. The Committee noted the information provided by the Government representative that an Industrial Relations (Amendment) Bill, which amended a number of provisions objected to by the Committee of Experts, was now before Parliament under consideration by the relevant committee. He indicated that the tripartite National Steering Committee on Social Dialogue for Swaziland, had been established and a schedule of monthly meetings had been agreed. The Government representative added that a Commission on Human Rights and Public Administration had been appointed in September 2009 to further strengthen the protection of human rights, including workers' rights. Finally, the Government representative repeated its previous statements made on the 1973 Decree/State of Emergency Proclamation and its implementing regulations and on the 1963 Public Order Act. The Committee recalled that this case had been discussed on numerous occasions over the past ten years and that last year it had decided to include its conclusions in a special paragraph of its report. The Committee noted with concern the continuing allegations concerning acts of brutality from the security forces against peaceful demonstrations, threats of dismissal against trade unionists, and the repeated arrests of union leaders, and firmly recalled the importance it attached to the full respect of basic civil liberties such as freedom of expression, of assembly and of the press and the intrinsic link between these freedoms, freedom of association and democracy. The Committee once again stressed that it was the responsibility of governments to ensure respect for the principle according to which the trade union movement can only develop in a climate free from violence, threat or fear and called upon the Government to ensure the release of any persons being detained for having exercised their civil liberties. The Committee expressed the firm hope that the Industrial Relations (Amendment) Bill would be adopted in the very near future and that its provisions would be in full conformity with the Convention. Recalling that it was the Government's responsibility to ensure an environment of accountability, the Committee urged the Government to take concrete and definitive measures without delay to effectively repeal the 1973 Decree/State of Emergency Proclamation, and to ensure the amendment of the 1963 Public Order Act in order to fully comply with the requirements of Convention No. 87 so that it could no longer be used to prevent legitimate and peaceful trade union activities. The Committee urged the Government to accept a high-level tripartite mission in order to assist the Government in bringing the legislation into full conformity with Convention No. 87, to inquire into the May Day 2010 incident and to facilitate the promotion of meaningful and effective social dialogue in the country. The Committee expressed the firm hope that the National Steering Committee on Social Dialogue for Swaziland would be immediately convened in order to achieve meaningful and expedited progress with respect to the issues raised. The Committee requested the Government to transmit detailed information in its next report due to the Committee of Experts, including on the progress made in the adoption of the Industrial Relations (Amendment) Bill and the concrete steps taken on the pending issues. The Committee expressed the firm hope that it would be in a position to note tangible progress next year.

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## Continued failure to implement

222. The Committee recalled that its working methods provide for the listing of cases of continued failure over several years to eliminate serious deficiencies, previously discussed, in the application of ratified Conventions. This year the Committee noted with great concern that there had been continued failure over several years to eliminate serious discrepancies in the application by **Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**.
223. The Government of the country to which reference was made in paragraph 220 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

224. The Committee wished to express its gratitude to the 46 governments which had collaborated by providing information on the situation in their countries and participating in the discussion of their individual cases.
225. The Committee regretted that, despite the invitations, the governments of the following States failed to take part in the discussions concerning their countries and the fulfilment of their constitutional obligations to report: **Antigua and Barbuda, Armenia, Bangladesh, Belize, Burundi, Cape Verde, Comoros, Côte d'Ivoire, Czech Republic, Dominica, Equatorial Guinea, France, Georgia, Guinea, Guinea-Bissau, Guyana, Haiti, Kiribati, Kyrgyzstan, Lao People's Democratic Republic, Papua New Guinea, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Seychelles, Sierra Leone, Solomon Islands, Somalia, Tajikistan, The former Yugoslav Republic of Macedonia, Timor-Leste, Turkmenistan, Bolivarian Republic of Venezuela and Vanuatu**. Likewise, the Governments of the following States did not take part in these discussions while informing the Committee of the reasons for their non-participation: the **Democratic Republic of the Congo and Djibouti**. The Committee decided to mention the cases of all these States in the appropriate paragraphs of its report and to inform them in accordance with the usual practice.
226. The Committee noted with regret that the governments of the States which were not represented at the Conference, namely: **Antigua and Barbuda, Armenia, Belize, Dominica, Equatorial Guinea, Kyrgyzstan, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Solomon Islands, Tajikistan and Turkmenistan**, were unable to participate in the Committee's examination of the cases relating to them. It decided to mention these countries in the appropriate paragraphs of this report and to inform the Governments, in accordance with the usual practice.

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## F. Adoption of the report and closing remarks

227. The Committee's report was adopted as amended.
228. The Worker member of the Bolivarian Republic of Venezuela referenced the existence of the trade union confederation (UNETE), established in accordance with the provisions of Convention No. 87. Collective agreements had been concluded in a variety of sectors, and

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a new model of development was being established to maintain employment and the supply of essential products for the Venezuelan people. She called on the Committee to recommend the holding of a seminar organized by the ILO on the experiences and innovations that were currently being undertaken to promote decent work.

- 229.** The Government member of Algeria expressed reservations concerning the content of paragraph 13 of the draft General Report of the Committee concerning the refusal to recognize the right to strike and to establish trade unions in his country. The situation as described in this paragraph did not reflect the real situation of the trade union movement in Algeria. The right to organize was a constitutional right and numerous strikes had been called in several economic sectors. What were prohibited were demonstrations on the public thoroughfare. With regard to the allegations contained in the same paragraph concerning the so-called closing down of the “headquarters of the coalition of independent trade unions”, he emphasized that they had only consisted of premises on a short-term lease, as the various trade union organizations each had their own headquarters. Moreover, the trade union confederation in question had no legal status. In view of the situation that prevailed in the country, and despite the improvement in terms of security, it was necessary to maintain vigilance. In that respect, meetings of organizations of all types, including trade union organizations, had to be held at their officially declared and recognized headquarters so as to ensure all the necessary security.
- 230.** The Chairperson recalled that the examination of this case had been concluded and explained that the discussion on matters of substance could not be re-opened. In addition, paragraph 13 referred to by the Government of Algeria related to a statement made by the Worker members. Therefore, modifications could only be requested by members of the Committee with respect to their own intervention and not that of another speaker.
- 231.** The Government member of the Bolivarian Republic of Venezuela expressed surprise at the fact that his Government was listed in paragraph 225 of the General Report as one of the governments that had failed to take part in the discussions concerning constitutional obligations to report, while the Committee of Experts, in its last report, had expressed gratitude to the Government for having provided all the reports due within the required deadline.
- 232.** The representative of the Secretary-General indicated that she would clarify the matter and make any corrections that might be necessary to the Committee’s General Report.
- 233.** The Worker members indicated that this year had been rather difficult, a matter they would come back to in the plenary discussion. With regard to the methods of work of the Committee, there had been several changes this year. For example, for the first time, the General Survey had been included in the framework of the follow-up to the ILO Declaration on Social Justice for a Fair Globalization of 2008. The 2008 Declaration provided for an evaluation of its impact by the Conference, which was called upon to determine the need for further evaluations or other appropriate forms of action and this should be followed up on.
- 234.** The Worker members emphasized that they had been forced to give up on the examination by the Committee of several cases that were of a certain interest to them in view of the refusal of the Employer members, even though the work of the Committee was based on seeking a balanced consensus. They referred in particular to the case of the application of Convention No. 87 by Colombia, even though the agreement of the Employer members to the sending of a high-level tripartite mission to the country in September 2010 appeared to indicate that they recognized the absence of progress in that respect.

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- 235.** The Worker members appealed for the adoption of the Committee's report in the plenary session of the Conference. They thanked the members of the Workers' group, who had collaborated closely in the framework of the coordination groups to facilitate the work of the Committee. They also thanked the Employer Vice-Chairperson for the balance and feeling for consensus that he had shown, as well as the Chairperson and the Reporter of the Committee, the Representative of the Secretary-General, the Secretariat and the interpreters.
- 236.** The Employer members stated that they would also address certain issues in the plenary sitting of the Conference. They considered that overall the Committee had worked much better this year and, once the list of cases had been adopted, was able to work on the scheduled basis of five cases a day. They thanked the Office for having taken the initiative to propose new working methods to the Tripartite Working Group on the Working Methods of the Conference Committee on the Application of Standards, and the Chairperson for the excellent and constructive handling the discussions of this Committee. Furthermore, the Employer members expressed special thanks to the Worker Vice-Chairperson for his pragmatic approach and willingness to find solutions. They also thanked the Worker members for their spirit of cooperation, which was fundamental to the work of this Committee, as well as the government members of the Committee whose interventions had, overall, been of a high quality. Lastly, they thanked the members of the Employers' group for their support, as well as the Reporter of the Committee, the Representative of the Secretary-General, the secretariat and the interpreters for their dedication and hard work.
- 237.** The Government member of the Bolivarian Republic of Venezuela expressed concern, as in previous years, at the fact that the conclusions bore no relation to the discussions that had been held. Despite the fact that the Committee had noted the Government's statements, it had shown a clear imbalance towards a previously determined position, assuming without any support that certain assessments were correct, with the inclusion of elements that were unrelated to Convention No. 87. Human rights were fully respected in the country including personal freedom, freedom of information and speech. The right to private property was subordinate to social interest and public utility, with a view to meeting the needs of the greatest numbers. He indicated that his Government would provide information in its next report on the aspects that were strictly related to Convention No. 87.
- 238.** The Government member of Sudan indicated that when his Government had wished to make an amendment to the conclusions on the case of Sudan with respect to the Forced Labour Convention, 1930 (No. 29), the Office had indicated that it could not accept such an amendment, but that the matter could be brought to the attention of the Committee. He pointed out that in its conclusions the Committee had noted the request by the Government of Sudan for ILO technical assistance and had invited the Office to provide this technical assistance, including as regards an independent verification of the situation in the country. He observed that the phrase "including as regards an independent verification of the situation in the country" had been added and not agreed upon. It had not been mentioned by the Employer members, the Worker members or any Government member. The Worker members had only requested the Government to accept technical assistance. The conclusions on the case did therefore not reflect the proposals made. Moreover, the conclusions had been adopted in the absence of the representative of the Government of Sudan. He objected to the conclusions and requested the deletion of the phrase "including as regards an independent verification of the situation in the country". Technical assistance would only be accepted by the Government of Sudan if this phrase was removed. Finally, there should be an investigation into the manner of the formulation of these conclusions, which had not ensued from the Committee's discussion of the case.



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- 239.** In reply to the statement made by the Government member of Sudan, the Worker members indicated that if no Government representative was present when the conclusions were read out on a case that concerned it during the last of the Committee's sittings devoted to the examination of cases, the Committee had no choice but to read the conclusions. The Worker members expressed their acknowledgement to the Government of Sudan for having accepted ILO technical assistance and indicated that they did not wish to insist formally on the issue of the independent verification of the situation in the country.
- 240.** The Government member of Austria speaking on behalf of the Government members of the member states of the Industrialized Market Economy Countries (IMEC), expressed support for the Committee and the ILO's supervisory system, given the important role they play. While recognizing that ILO supervisory bodies were not infallible, IMEC supported the independence, objectivity and impartiality of the Committee of Experts. The Committee of Experts was a critical element in a supervisory system that was uniquely equipped to promote the application of international labour standards in all countries, regardless of their economic, social and cultural conditions. Possible inaccuracies in the Committee of Experts' report demonstrated the need for adequate resources to enable the International Labour Standards Department to cope with an increased workload. The Director-General was called upon to ensure that the essential work of this Department was among his top priorities.
- 241.** Turning to the working methods of the Committee, the speaker underlined that the new procedure for strict time management had brought notable progress in the management of discussions. All participants of the discussion had respected the established time limits. A short meeting for the finalization of conclusions had still been necessary on 13 June 2010, and it was hoped that such a session could be avoided in following years. Improvements regarding the decorum of meetings were also necessary. The established good practice of the distribution of a preliminary list of cases, in combination with the new system for the automatic scheduling of individual cases, helped countries to prepare in a timely manner for their cases. It would be helpful if the final list of cases could always be distributed on the Friday of the first week of the Conference. Many of the difficulties of the Committee involved the composition of the list of individual cases, which was a process that required significant compromise. Agreement on the list of cases was essential for the functioning of the Committee, and governments should not be involved in this process. Worker members and Employer members were urged to bridge their differences in this regard before the next session of the International Labour Conference, so as to facilitate the productive work of the Committee. IMEC was confident that the Worker members and Employer members were committed to the working methods of the Committee and that the list of cases would continue to be based on respectful consultations resulting in a balanced list consistently following the criteria of selection agreed to by the social partners.
- 242.** The speaker further emphasized the importance of freedom of expression in all ILO bodies, which required that opinions be expressed in an atmosphere of respect and dignity. It was regrettable that decorum had not been maintained in the final sitting of the Committee. It would have been unfortunate if the Committee had to consider more drastic measures in this regard. The Tripartite Working Group on the working methods of the Conference Committee on the Application of Standards should continue to meet with a view to assessing any changes in the Committee's working methods and examining the possibility of further improvements, particularly with regard to time management and decorum in the Committee's sessions.
- 243.** The Chairperson said that the Committee had achieved its objectives. The new rules on speaking time had been respected during the discussion and had led speakers to express what was essential as briefly as possible. The spirit of collaboration and participation had prevailed in the Committee and had produced positive results. In conclusion, he gave

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thanks to the Worker and Employer Vice-Chairpersons, as well as the Reporter of the Committee, for the work accomplished. He also expressed the thanks of the Committee as a whole to the Representative of the Secretary-General, the secretariat and the interpreters.

Geneva, 15 June 2010

*(Signed)* Mr Sérgio Paixão Pardo  
Chairperson

Mr Christiaan Horn  
Reporter

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## Annex 1

INTERNATIONAL LABOUR CONFERENCE  
99th Session, Geneva, June 2010

C. App./D.1

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### Committee on the Application of Standards

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## Work of the Committee

### I. Introduction

This document briefly sets out the manner in which the work of the Committee on the Application of Standards is carried out and has evolved over recent years. Since 2002, ongoing discussions and informal consultations have taken place concerning the working methods of the Committee. In particular, following the adoption of a new strategic orientation for the ILO standards system by the Governing Body in November 2005,<sup>1</sup> new consultations were held in March 2006 regarding numerous aspects of the standards system,<sup>2</sup> starting with the question of the publication of the list of individual cases discussed by the Committee. A Working Group on the Working Methods of the Committee was set up in June 2006 and has met eight times since then. The last meeting took place on 20 March 2010. On the basis of these consultations and of the recommendations of the Working Group, the Committee has made certain adjustments to its working methods.

As a result, since 2006, an early communication to Governments (at least two weeks before the opening of the Conference) of a preliminary list of individual cases has been instituted. Since June 2007, following the adoption of the list of individual cases, an informal briefing session has been hosted by the Employer and Worker Vice-Chairpersons for Governments to explain the criteria used for the selection of cases. Changes have been made to the organization of work so that the discussion of cases could begin on the Monday morning of the second week. Improvements have been introduced in the preparation and adoption of the conclusions relating to cases. In addition, the Conference Committee's report has been published separately to increase its visibility. In June 2008, new measures were adopted for the cases in which Governments were registered and present at the Conference, but chose not to be present before the Committee; in particular, the Committee may now discuss the substance of such cases. Specific provisions have also been adopted concerning the respect of parliamentary rules of decorum.<sup>3</sup>

<sup>1</sup> See documents GB.294/LILS/4 and GB.294/9.

<sup>2</sup> See para. 22 of document GB.294/LILS/4.

<sup>3</sup> See below, Part V, D, footnote 12 and Part V, F.

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Concerning time management, arrangements adopted by the Conference Committee in June 2007<sup>4</sup> proved to be insufficient in view of the difficulties experienced last year. Therefore in November 2009 and March 2010, the Working Group discussed important measures for further improvements. These proposals are contained in Part V, B – Supply of information and automatic registration – and E.

During these last two meetings, the Working Group also discussed the modalities for the discussion of the forthcoming General Survey on employment in the light of the parallel discussion of the recurrent report on employment during the June 2010 International Labour Conference. The outcome of the discussion of the Working Group is reflected in Part V, A and proposals concerning the working schedule for the discussion of the General Survey are included in the document C. App/D.0.

## **II. Terms of reference of the Committee**

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

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

## **III. Working documents**

### **A. Report of the Committee of Experts**

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

Volume A of this report contains, in Part One, the General Report of the Committee of Experts (pages 5–40), and in Part Two, the observations of the Committee concerning the application of ratified Conventions and the submission of Conventions and Recommendations to the competent authorities in member States (pages 41–802). At the beginning of the report there is a list of Conventions by subject (pages v–x), an index of comments by Convention (pages xi–xix), and by country (pages xxi–xxx).

<sup>4</sup> Governments were invited to register as early as possible and in any event by the Friday of the first week at 6 p.m. at the latest and the Office was authorized to slot countries that had not registered by the deadline. Basic guidelines to improving the management of time in the Committee were adopted.

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It will be recalled that, as regards ratified Conventions, the work of the Committee of Experts is based on reports sent by the governments.<sup>5</sup>

Certain observations carry footnotes asking the government concerned to report in detail, or earlier than the year in which a report on the Convention in question would normally be due, and/or to supply full particulars to the Conference.<sup>6</sup> The Conference may also, in accordance with its usual practice, wish to receive information from governments on other observations that the Committee of Experts has made.

In addition to the observations contained in its report, the Committee of Experts has, as in previous years, made direct requests which are communicated to governments by the Office on the Committee's behalf.<sup>7</sup> A list of these direct requests can be found at the end of Volume A (see Appendix VII, pages 845–857).

In accordance with the decision taken in 2007, the Committee of Experts may decide to highlight cases of good practices to enable governments to emulate these in advancing social progress and to serve as a model for other countries to assist them in the implementation of ratified Conventions.<sup>8</sup> At its last session, the Committee of Experts has provided further explanations on the criteria to be followed in identifying cases of good practices by clarifying the distinction between these cases and cases of progress. However, no specific cases of good practices have been identified by the Committee of Experts this year.

Furthermore, the Committee of Experts has also continued to highlight the cases for which, in its view, technical assistance would be particularly useful in helping member States to address gaps in law and in practice in the implementation of ratified Conventions, following up on the practice established by the Conference Committee in this regard since 2005.<sup>9</sup>

Volume B of the report contains the General Survey by the Committee of Experts, which this year concerns employment instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization, including the Employment Policy Convention, 1964 (No. 122), the Human Resources Development Convention, 1975 (No. 142), the Employment Service Convention, 1948 (No. 88), the Private Employment Agencies Convention, 1997 (No. 181), the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), and the Promotion of Cooperatives Recommendation, 2002 (No. 193).

## **B. Summaries of reports**

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

<sup>5</sup> See paras 23–26 of the Committee of Experts' General Report.

<sup>6</sup> See paras 51–53 of the Committee of Experts' General Report.

<sup>7</sup> See para. 45 of the Committee of Experts' General Report.

<sup>8</sup> See paras 64–65 of the Committee of Experts' General Report.

<sup>9</sup> See paras 66–67 of the Committee of Experts' General Report.

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- (i) information concerning reports supplied by governments on ratified Conventions (articles 22 and 35 of the Constitution), which now appears in simplified form in two tables annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A) (Appendices I and II, pages 805–820);
  - (ii) information concerning reports supplied by governments as concerns General Surveys under article 19 of the Constitution (this year concerning employment instruments) appears in simplified form in a table annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B) (Annex B, pages 195–198);
  - (iii) summary of information supplied by governments on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference (article 19 of the Constitution), which now appears as Appendices IV, V and VI to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A) (pages 830–844).

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

### **C. Other information**

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

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

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

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

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

## **V. Schedule of work**

### **A. General discussion**

1. *General Survey.* In accordance with its usual practice, the Committee will discuss the General Survey of the Committee of Experts, Report III (Part 1B). This year, for the first time, the subject of the General Survey has been aligned with the strategic objective that will be discussed in the context of the recurrent report under the follow-up to the 2008

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Social Justice Declaration. As a result, the General Survey concerns employment instruments and will be discussed by the Committee on the Application of Standards, while the recurrent report on employment will be discussed by the Committee on the Strategic Objective of Employment. In order to ensure the best interaction between the two discussions, including how the output of the Committee on the Application of Standards can best be taken into account by the Committee on the Strategic Objective of Employment, adjustments are proposed in the working schedule for the discussion of the General Survey – they are reflected in the document C. App/D.0 – and the Selection Committee is expected to take a decision to allow the official transmission of the possible outcome of the Committee on the Application of Standards to the Committee on the Strategic Objective of Employment as a contribution to its work. In addition, the Officers of the Committee on the Application of Standards could present information on the discussion to the Committee on the Strategic Objective of Employment.

2. *General questions.* In addition, the Committee will hold a brief general discussion which is primarily based on the General Report of the Committee of Experts, Report III (Part 1A) (pages 5–40).

## **B. Discussion of observations**

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

### ***Cases of serious failure by member States to respect their reporting and other standards-related obligations***<sup>10</sup>

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

#### ***Individual cases***

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

- the nature of the comments of the Committee of Experts, in particular the existence of a footnote (see Appendix I);

<sup>10</sup> Formerly “automatic” cases (see *Provisional Record* No. 22, International Labour Conference, 93rd Session, June 2005).

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- the quality and scope of responses provided by the government or the absence of a response on its part;
  - the seriousness and persistence of shortcomings in the application of the Convention;
  - the urgency of a specific situation;
  - comments received by employers’ and workers’ organizations;
  - the nature of a specific situation (if it raises a hitherto undiscussed question, or if the case presents an interesting approach to solving questions of application);
  - the discussions and conclusions of the Conference Committee of previous sessions and, in particular, the existence of a special paragraph;
  - the likelihood that discussing the case would have a tangible impact.

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

### **Supply of information <sup>11</sup> and automatic registration**

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

Cases will be divided in two groups: the first group of countries to be registered following the above alphabetical order will consist of those cases in which a double footnote was inserted by the Committee of Experts and are found in paragraph 52 of that Committee's report. The second group of countries will constitute all of the other cases on the final list and they will be registered by the Office also following the abovementioned alphabetical order. Representatives of governments *which are not members* of the Committee are kept informed of the agenda of the Committee and of the date on which they may be heard:

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

2. *Written replies.* The written replies of governments – which are submitted to the Office prior and in addition to oral replies – are summarized and reproduced in the documents which are distributed to the Committee (see Part III, C, and Part V, E). These written replies should not exceed five pages.

<sup>11</sup> See also section E below on time management.



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## **Adoption of conclusions**

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

### **C. Minutes of the sittings**

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

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

### **D. Special problems and cases**

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

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

- none of the reports on ratified Conventions have been supplied during the past two years or more;
- first reports on ratified Conventions have not been supplied for at least two years;
- none of the reports on unratified Conventions and Recommendations requested under article 19, paragraphs 5, 6 and 7, of the Constitution have been supplied during the past five years;

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- no indication is available on whether steps have been taken to submit the Conventions and Recommendations adopted during the last seven sessions of the Conference<sup>12</sup> to the competent authorities, in accordance with article 19 of the Constitution;
  - no information has been received as regards all or most of the observations and direct requests of the Committee of Experts to which a reply was requested for the period under consideration;
  - the government has failed during the past three years to indicate the representative organizations of employers and workers to which, in accordance with article 23, paragraph 2, of the Constitution, copies of reports and information supplied to the Office under articles 19 and 22 have been communicated;
  - The government has failed, despite repeated invitations by the Conference Committee, to take part in the discussion concerning its country.<sup>13</sup>

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

- cases of progress (see Appendix II), where governments have introduced changes in their law and practice in order to eliminate divergences previously discussed by the Committee;

<sup>12</sup> This year the sessions involved would be the 89th–95th Sessions (2001–07).

<sup>13</sup> In conformity with the decision taken by the Committee at the 73rd Session of the Conference (1987), as amended at the 97th Session of the Conference (2008), for the implementation of this criterion, the following measures will be applied:

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

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- discussions it had regarding certain cases, which are mentioned in special paragraphs of the report;
  - continued failure over several years to eliminate serious deficiencies in the application of ratified Conventions which it had previously discussed.

## **E. Time management**

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

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

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

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

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## Appendix I

### Criteria for footnotes

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

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

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

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

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

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## Appendix II

### Criteria for identifying cases of progress

At its November–December 2005 session, the Committee of Experts defined criteria for identifying these cases in the following manner (paragraphs 42, 43 and 46):

... The Committee has developed a general approach concerning the identification of cases of progress. In describing the approach below, the Committee wishes to emphasize that an expression of progress can refer to many kinds of measures. In the final instance, the Committee will exercise its discretion in noting progress having regard in particular to the nature of the Convention as well as to the specific circumstances of the country.

Since first identifying cases of satisfaction in its report in 1964,<sup>1</sup> the Committee has continued to follow the same general criteria. The Committee expresses **satisfaction** in cases in which, following comments it has made on a specific issue, governments have taken measures through either the adoption of an amendment to the legislation or a significant change in the national policy or practice thus achieving fuller compliance with their obligations under the respective Conventions. The reason for identifying cases of satisfaction is twofold: to place on record the Committee's appreciation of the positive action taken by governments in response to its comments, and to provide an example to other governments and social partners which have to address similar issues. In expressing its satisfaction, the Committee indicates to governments and the social partners that it considers the specific matter resolved. In so doing, the Committee must emphasize that an expression of satisfaction is limited to the particular issue at hand and the nature of the measure taken by the government concerned. Therefore, in the same comment, the Committee may express satisfaction on a particular issue, while raising other important issues which in its view have not been satisfactorily addressed. Further, if the satisfaction relates to the adoption of legislation, the Committee may also consider appropriate follow-up on its practical application.

...

Within cases of progress, the distinction between cases of satisfaction and cases of interest was formalized in 1979.<sup>2</sup> In general, cases of **interest** cover measures that are sufficiently advanced to justify the expectation that further progress would be achieved in the future and regarding which the Committee would want to continue its dialogue with the government and the social partners. This may include: draft legislation before parliament, or other proposed legislative changes not yet forwarded or available to the Committee; consultations within the government and with the social partners; new policies; the development and implementation of activities within the framework of a technical cooperation project or following technical assistance or advice from the Office. Judicial decisions, according to the level of the court, the subject matter and the force of such decisions in a particular legal system would normally be considered as cases of interest unless there was a compelling reason to note a particular judicial decision as a case of satisfaction. The Committee may also note as cases of interest progress made by a State, province or territory in the framework of a federal system. The Committee's practice has developed to a certain extent, so that cases in which it expresses interest may now also encompass a variety of new or innovative measures which have not necessarily been requested by the Committee. The paramount consideration is that the measures contribute to the overall achievement of the objectives of a particular Convention.

<sup>1</sup> See para. 16 of the report of the Committee of Experts submitted to the 48th Session (1964) of the International Labour Conference.

<sup>2</sup> See para. 122 of the report of the Committee of Experts submitted to the 65th Session (1979) of the International Labour Conference.

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## **Annex 2**

INTERNATIONAL LABOUR CONFERENCE  
99th Session, Geneva, June 2010

C. App./D.4/Add.1(Rev.)

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### **Committee on the Application of Standards**

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## **Final list**

### **Cases regarding which governments are invited to supply information to the Committee**

The list of the individual cases on the application of ratified Conventions  
appears in the present addendum to document D.4.

The text of the corresponding observations concerning these cases  
can be found in document C. App./D.4/Add.2.

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B

**Index of observations regarding which  
governments are invited to supply  
information to the committee**

Report of the Committee of Experts  
(Report III (PART 1A), ILC, 99th Session, 2010)

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Country	Convention number (The page numbers in parentheses refer to the English version of the report of the Committee of Experts)
Belarus	87 (page 69)
Burundi	182 (page 287)
Cambodia	87 (page 87)
Canada	87 (page 90)
Central African Republic	138 (page 289)
Costa Rica	98 (page 111)
Czech Republic	111 (page 412)
Egypt	87 (page 132)
Georgia	98 (page 145)
Guatemala	87 (page 149)
India	100 (page 422)
Islamic Republic of Iran	111 (page 426)
Mauritania	29 (page 248)
Mexico	155 (page 672)
Morocco	182 (page 327)
Myanmar	29 (page 252) – Special sitting 87 (page 175)
Peru	169 (page 781)
Russian Federation	111 (page 450)
Sudan	29 (page 267)
Swaziland	87 (page 199)
Thailand	122 (page 582)
Turkey	87 (page 204)
Ukraine	95 (page 622)
Uzbekistan	182 (page 388)
Bolivarian Republic of Venezuela	87 (page 210)

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**99th Session of the International Labour Conference, June 2010**  
**Committee on the Application of Standards – Working schedule for the examination of Individual Cases**

<b>Monday</b> 7 June morning	<b>Tuesday</b> 8 June morning	<b>Wednesday</b> 9 June morning	<b>Thursday</b> 10 June morning	<b>Friday</b> 11 June morning
<b><u>Cambodia:</u></b> Convention No. 87	<b><u>Czech Republic:</u></b> Convention No. 111	<b><u>Costa Rica:</u></b> Convention No. 98	<b><u>Islamic Republic of Iran:</u></b> Convention No. 111	<b><u>Sudan:</u></b> Convention No. 29
<b><u>Central African Republic:</u></b> Convention No. 138	<b><u>Ukraine:</u></b> Convention No. 95	<b><u>Egypt:</u></b> Convention No. 87	<b><u>Mauritania:</u></b> Convention No. 29	<b><u>Swaziland:</u></b> Convention No. 87
<b><u>Morocco:</u></b> Convention No. 182	<b><u>Belarus:</u></b> Convention No. 87	<b><u>Georgia:</u></b> Convention No. 98	<b><u>Mexico:</u></b> Convention No. 155	<b><u>Thailand:</u></b> Convention No. 122
<b>Monday</b> 7 June afternoon	<b>Tuesday</b> 8 June afternoon	<b>Wednesday</b> 9 June afternoon	<b>Thursday</b> 10 June afternoon	<b>Friday</b> 11 June afternoon
<b><u>Uzbekistan:</u></b> Convention No. 182	<b><u>Burundi:</u></b> Convention No. 182	<b><u>Guatemala:</u></b> Convention No. 87	<b><u>Myanmar:</u></b> Convention No. 87	<b><u>Turkey:</u></b> Convention No. 87
<b><u>Russian Federation:</u></b> Convention No. 111	<b><u>Canada:</u></b> Convention No. 87	<b><u>India:</u></b> Convention No. 100	<b><u>Peru:</u></b> Convention No. 169	<b><u>Bolivarian Republic of Venezuela:</u></b> Convention No. 87

