



Third Item on the Agenda: Information and Reports on the Application of Conventions and Recommendations

Report of the Committee on the Application of Standards

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Report of the Committee on the Application of Standards

PART ONE

GENERAL REPORT

A. Introduction

1. In accordance with article 7 of the Standing Orders, the Conference set up a Committee to consider and report on item III on the agenda: “Information and reports on the application of Conventions and Recommendations”. The Committee was composed of 232 members (125 Government members, 24 Employer members and 83 Worker members). It also included 10 Government deputy members, 60 Employer deputy members and 137 Worker deputy members.¹ In addition, 36 international non-governmental organizations were represented by observers.

2. The Committee elected its Officers as follows:

Chairperson: Mr. Jorge Sappia (Government member, Argentina);

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

Mr. Luc Cortebeeck (Worker member, Belgium);

Reporter: Ms. Kerstin Wiklund (Government member, Sweden).

3. The Committee held 19 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 Night Work (Women) Convention, 1919 (No. 4), the Night Work (Women) Convention (Revised), 1934 (No. 41), the Night Work (Women) Convention (Revised), 1948, and the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948.² By decision of the Governing Body and the Conference, the Committee was also called on to examine the report of the Seventh Special Session (September 2000) of the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendation concerning the Status of Teachers. The Committee was also called on by the Governing Body to hold a special sitting concerning the application by Myanmar of the

¹ For changes in the composition of the Committee, refer to the reports of the Selection Committee, *Provisional Record* Nos. 3-1 to 3-1L.

² Report III to the International Labour Conference – Part 1A: Report of the Committee of Experts on the Application of Conventions and Recommendations; [Part 1B](#): Night Work of Women in Industry.

Forced Labour Convention, 1930 (No. 29), in application of the resolution adopted by the Conference in 2000.³

Tribute to the memory of André Zenger

5. During its opening session, the Committee observed one minute of silence in memory of André Zenger, who passed away on 18 May 2001. In his statement, the Chairperson of the Committee of Experts, Sir William Douglas, paid tribute to Mr. Zenger, noting aspects of his distinguished career, first in the diplomatic service of Switzerland, and later in the ILO. He noted that Mr. Zenger had carried out sensitive missions, including in the Middle East, and as head of the secretariat of the Commission of Inquiry which had examined the observance by Myanmar of the Forced Labour Convention. According to the speaker, who was a member of the Commission of Inquiry, Mr. Zenger's cheerful disposition and his courtesy and kindness had inspired the Commission to overcome difficult conditions and to produce its comprehensive report. He felt that those who had been privileged to have him as a colleague or as a friend were now the poorer from his passing.
6. In a special commemorative sitting, attended by the Director-General of the ILO as well as many colleagues and friends, the Committee paid tribute to the memory of Mr. Zenger. The Committee expressed its deep sadness at Mr. Zenger's death, noting that his passing was a great loss to both the Committee and to the ILO. It extended its sincere condolences to Mr. Zenger's family and friends, as well as to his colleagues in the International Labour Office. The Committee recalled Mr. Zenger's many years of service, both as a representative of the Government of Switzerland and, after joining the International Labour Office in 1986, as an international civil servant of the highest calibre. Committee members described him as a dedicated and distinguished jurist, and an ILO official with a vast range of experience in the area of international labour standards, on which he drew to teach and inspire others. The Committee recalled that, as a Government representative, Mr. Zenger had presided over the Conference Committee on the Application of Standards during difficult times in the 1980s, when the continued existence of the supervisory system had been threatened, and that he had faced those challenges successfully, with tact, diplomacy and a jurist's dedication to the pivotal role of international labour standards in protecting fundamental human rights worldwide. The members of the Committee also shared warm personal memories of Mr. Zenger, painting a moving portrait of an individual of great kindness, generosity, intelligence, loyalty and integrity who will be greatly missed.⁴

Work of the Committee

7. As usual, the Committee began its work with a discussion of general aspects of the application of Conventions (particularly ratified Conventions) and Recommendations and the discharge by member States of standards-related obligations under the ILO Constitution. It then discussed the report of the Joint ILO-UNESCO Committee of Experts.

³ ILC, 88th Session (2000), *Provisional Record* No. 6-1 to 5.

⁴ Statements in memory of Mr. Zenger were made by the Government member of Switzerland, Secretary of State, the Employer and Worker members, the Government member of the Netherlands, the Government member of France, the Government member of Brazil, the Government member of the United States, the Employer member of the United States, the Employer member of Australia, the Government member of Uruguay and the Worker member of Pakistan. Throughout the duration of the Committee other speakers joined in the condolences expressed by previous speakers at the death of Mr. Zenger.

The final part of the general discussion dealt with the General Survey carried out by the Committee of Experts on the Application of Conventions and Recommendations, dealing with night work of women in industry. Following that, the Committee held a special sitting concerning the case of Myanmar. As usual, the Committee finally considered various individual cases relating to the application of ratified Conventions or compliance with the obligations to supply reports and to submit Conventions and Recommendations to the competent national authorities.

8. The examination of those cases, which is the essential work of the Committee, was based principally on the observations contained in the report of the Committee of Experts and the oral and written explanations provided by the governments concerned. The Committee also referred to its discussions in previous years, comments received from employers' or workers' organizations and, where appropriate, the reports of other supervisory bodies of the ILO and other international organizations. In view of the short time available, the Committee made a selection among the Committee of Experts' observations and thus discussed a limited number of cases. The Committee trusts that those governments will pay close attention to the requests of the Committee of Experts and will not fail to take the measures required to ensure fulfilment of the obligations they have undertaken. A summary of the information supplied by governments, the discussions in the present Committee and any conclusions it has drawn are set out in Parts Two and Three of this report.
9. The Worker members submitted a draft list of individual cases, following a lengthy discussion within the Workers' group. The selection of priority cases for tripartite discussion was always a difficult task given the time constraints, the large number of problems in implementation in all the regions of the world, and the relevance of the Committee's work to the development of the standards policy. They considered it inappropriate for governments who are responsible for the application of ratified Conventions to be both judge and accused at the same time. The Worker members recalled the criteria they applied to choosing individual cases, namely the nature of observations by the Committee of Experts; the footnotes in the report of the Committee of Experts requesting governments to provide information to the Conference; the extent to which governments responded to these requests as well as the quality of responses reproduced in the report, or the absence of responses; the observations made by employers' and workers' organizations; the reports of the other supervisory bodies of the ILO and of other international organizations; the most recent developments in the field; the discussions and conclusions of the Conference Committee's previous sessions with particular attention to the cases in the special paragraphs; and the statements made by the Worker members at the time of adopting the list of individual cases the previous year. The criteria referred to concerned not only the form but also the substance of cases. The search for equilibrium among the regions and the different Conventions was a further criterion for consideration. While it was important to discuss the application of fundamental Conventions, it was equally important to examine the problems encountered and new developments in applying the so-called technical Conventions.
10. The Worker members directed a number of comments to the Committee of Experts, the Office, the governments concerned and the Conference Committee. They expressed a very clear wish to discuss certain cases at the appropriate time, unless positive developments in these cases had been observed in the interim, and indicated that the Committee of Experts' report for 2002 should include the following cases for re-examination. *Cameroon*, in regard to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which had been mentioned in a special paragraph in 2000. *Cuba* in regard to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the refusal of the Government to recognize trade unions. The Committee of

Experts has requested a detailed report for 2001. *Indonesia*, in regard to the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the difficulties encountered in applying the Convention in particular by acts of anti-union discrimination, military intervention in social conflicts and the enactment of anti-terrorist legislation. Ratifications of the fundamental Conventions were welcomed and it was hoped that the Government would apply the Conventions it had ratified. *Japan*, in regard to the Forced Labour Convention, 1930 (No. 29). This was a difficult case in which the Worker members regretted that a consensus could not be reached with the Employer members to discuss the case. While some Worker members recognized that real efforts had been made, they would continue to monitor the situation and come back to this case to ensure that the necessary measures had been taken. *Kenya*, in regard to the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and limitations on the right of public employees to collective bargaining, the Government's refusal to register the Kenya Civil Servants Union in 1980, as well as its refusal to register other trade unions. The Committee of Experts was requested to examine the case to allow this Committee to return to it. *Mauritania*, in regard to the Forced Labour Convention, 1930 (No. 29), and the continuation of slavery and forced labour practices. The Government was requested to supply information to the Committee of Experts on the measures taken to improve the situation and the Worker members would return to the case if real progress had not been noted. *Pakistan*, in regard to the Abolition of Forced Labour Convention, 1957 (No. 105), as concerns the public service, the merchant marine and freedom of expression, limited by the sanction of imprisonment that could include an obligation to work. *Qatar*, in regard to the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), as concerns discrimination on grounds of sex, race and religion. The Worker members indicated that they would return to the case if real progress had not been noted.

11. The Worker members stressed the importance of cooperation by the representatives of governments mentioned in the list. The choice of individual cases to be examined was a very difficult one and it would be regrettable if certain cases could not be discussed because the government in question had refused to enter into dialogue with the Committee.
12. The Employer members acknowledged that the list of individual cases to be examined was not a perfect one, but in their view no system would satisfy all of the members of the Committee. They considered that the selection procedure and results were sound and that the present practice should continue until a better system was devised. With regard to suggestions that the list be drawn up before the Conference, they raised the questions of how this would be done and how the Conference Committee could participate.
13. The Employer members made reference to two cases that had not been placed on the list. With respect to the case of *Japan* under [Convention No. 29](#), they pointed out that the Committee's mandate was to place on the list cases where there had been non-compliance and where amendments to the national legislation and practice would be required in the future. Commenting on Japan's implementation of Convention No. 29, it was indisputable that this was a serious case of non-compliance, regardless of the fact that the issues involved dated back 50 years. However, any changes made would apply only to Japan's future application of the Convention. A repetition of the issues concerned was not to be feared and compensation was being paid. They believed that it was best not to deal with this case and to discuss other cases. The Employer members would have liked to place the case of the observance of [Convention No. 98](#) by *Zimbabwe* on the list but it had not been included in the report of the Committee of Experts. They understood that there were serious problems in both law and practice and serious non-compliance with Convention No. 98, especially concerning Articles 1, 2 and 4 of the Convention. They remained convinced that these violations had a serious negative impact on the national economy and on the employers' and workers' organizations in the country. They expressed the hope that

the Committee of Experts would examine the case in its next report so that it could be determined whether or not to place the case on the list.

- 14.** The Worker member of the Republic of Korea, supported by the Government member of the Republic of Korea, regretted that the Committee had declined to place the case of Japan's implementation of [Convention No. 29](#) on this list of individual cases to be discussed. He expressed his gratitude to the Worker members for their statements emphasizing the importance of the case. The Government member of the Republic of Korea also noted that the question of wartime comfort women, systematic rape and sexual slavery had been the subject of findings of several international bodies including the United Nations Commission on Human Rights and United Nations Special Rapporteurs. He regretted that the issue of comfort women had been either omitted, from recent Japanese history textbooks, or described in imprecise terms in contradiction to the findings of the ILO Committee of Experts, United Nations resolutions and the 1998 Korea-Japan Joint Declaration in which the Japanese Government acknowledged past wrongful conduct. He urged the international community, including the ILO, to continue to address these issues.
- 15.** The Government member of the United States, speaking on behalf of the IMEC (Industrialized Market-oriented Economy Countries) group members of the Committee stated that the Committee should reach a tripartite consensus on specific criteria for the selection of cases, keeping in mind the need to ensure that the criteria were fair and equitable and applied in an appropriate manner. The identification by the Worker members of their criteria could serve as a starting point for such a discussion. Constitutionally acceptable means should be found to determine the list by the beginning of the first week of the Conference, so that individual governments would be fully prepared to participate in the discussion of their cases. Furthermore, the list of cases should be a balanced selection of cases dealing with fundamental and priority Conventions and cases arising out of special procedures, and cases concerning emerging technical issues involving a significant number of countries.
- 16.** The Government member of Norway, speaking on behalf of the five Nordic governments (Denmark, Finland, Iceland, Norway and Sweden), represented on the Committee stated that it would be desirable to review the process for the selection of cases to determine if it would facilitate the Committee's work if the list were developed by the Committee of Experts in its report, by the Governing Body in March or by some other more appropriate method. In addition, the criteria for the selection of cases could be reviewed to determine whether they were equitable and whether they were applied in an appropriate manner. It would also be desirable to develop a method for reviewing cases of a more political nature, particularly with regard to countries which had failed over a period of several years to eliminate serious deficiencies, and whose situation had been previously discussed.
- 17.** The Government member of Guatemala emphasized the importance of the review of the supervisory system, particularly with regard to the methods of work of the Conference Committee and especially the selection of individual cases. The list of cases studied by the Committee in June is adopted on the basis of the report of the Committee of Experts, which meets in November in order to review the reports that the governments must submit in September. The countries which receive recommendations from the Committee on the Application of Standards in the month of June have only two months to implement them for the Committee of Experts to integrate them in the report, providing thus the relevant information to the Committee on the Application of Standards in order to determine which cases in particular require special attention during the Conference. A formal mechanism should be adopted to bridge this gap and to allow its members to receive all the relevant information in a timely manner. In practice, the list is prepared on the basis of the

proposals made and discussed among the Employers' and Workers' groups of the Committee. However, the criteria followed to select the cases to be included in the list have not been discussed nor agreed upon as part of the Committee's working methods. In his Government's opinion, in order to enhance the transparency, coherence and objectivity of the Committee's working methods, it is necessary to agree, on a tripartite basis, upon the criteria followed for the selection of cases to be included in the list. It is also important to avoid duplication of tasks when other supervisory mechanisms for standards are analysing the same request made to a Government, as is the case, for instance, with a direct contacts mission of the Committee on Freedom of Association. His Government was not opposed to being included in the list, as had been the case for the last two years, adding that this inclusion has led to the two reforms of the Labour Code in the area of freedom of association. The Government members of Argentina and Brazil also emphasized the involvement of governments in the selection of individual cases.

18. Another Government member of Guatemala, supported by the Government member of Chile, suggested that the Conference Committee should contribute to the debate, as requested in paragraph 87(c) of GB.280/12/1, 2001, by the Legal Issues and International Labour Standards Committee of the Governing Body, in relation to possible improvements in the ILO's standards-related activities. She proposed that the Conference Committee include on its agenda at the next Conference, a point on the establishment of clear methods and criteria for the selection of individual cases. This concrete proposal did not necessarily imply that it would be necessary to change the present methods, as its objective was to strengthen the supervisory bodies by the establishment of criteria which would give the Conference Committee greater objectivity, coherence and transparency.
19. The Worker member of the Netherlands recalled that the selection of a given country for discussion had a legitimate basis in the report of the Committee of Experts, the discussions in this Committee as well as the Committee on Freedom of Association. He felt that taking into account elements concerning political developments was justified and did not constitute a politicization of the issues. He questioned why due regard had not been given to the requests of the Worker members as indicated in paragraph 8 of the 2000 report of this Committee, to include in the Committee of Expert's report an examination of the situation in Indonesia and Kenya under [Convention No. 98](#). The representative of the Secretary-General provided explanations on why the Committee of Experts had not examined the application of these two cases.
20. With reference to the proposal of the Government member of Guatemala, the Employer and Worker members noted that the Committee's working methods, including the issue of selection of cases, was discussed every year, and thus it was not necessary to place it on the agenda, particularly as there was no consensus on amending the current procedure. In any event it was clear from the Standing Orders that the Committee could not make a decision that would bind next year's Committee. The Worker member of France recalled that the current method of selection of cases was tried and true and permitted a consensus to be reached between employers and workers.

B. General questions relating to international labour standards

General aspects of the supervisory procedures

21. The Committee welcomed Sir William Douglas, Chairperson of the Committee of Experts. Sir William thanked the Committee, on behalf of the Committee of Experts, for renewing the invitation for him to attend as an observer. He pointed out that 2001 marked the 50th

anniversary of the adoption of the Equal Remuneration Convention, 1951 (No. 100). The Committee of Experts had devoted a considerable portion of its General Report to discussing the progress made in implementing the Convention and to what remained to be done. He recalled that Convention No. 100 was one of the core Conventions covered by the Declaration on Fundamental Principles and Rights at Work. The Committee had drawn attention to the measures required for the application of the Convention and had expressed the view that wage discrimination could not be tackled effectively unless action was also taken simultaneously against all of its sources. The Committee appreciated the work being done by the Office on equality and human rights and hoped that its comments on the 50th anniversary of Convention No. 100 would be helpful both to member States that had ratified the Convention and to those that were contemplating doing so.

22. The Committee of Experts had also included in its General Report a section on the application of the Forced Labour Convention, 1930 (No. 29), which reflected considerable research carried out by the International Labour Standards Department on the question of forced or compulsory labour. The Committee of Experts' comments focused particularly on prison labour and the involvement of private entities, a matter of great concern to countries that had ratified Convention No. 29, or were considering its ratification. The Committee of Experts had once again returned to the Employment Policy Convention, 1964 (No. 122), an instrument that had elicited much useful discussion in the Conference Committee in previous years, especially with regard to the provision of social safety nets and employment promotion measures.
23. Sir William emphasized the usefulness of the observations made by employers' and workers' organizations in helping the Committee of Experts assess the application of Conventions in particular countries. He assured the Committee that the Committee of Experts would carefully weigh the opinions expressed in the general discussion. In conclusion, he thanked the Committee for inviting him once again to attend its general discussions as an observer. He also invited the two Vice-Chairpersons of the Conference Committee again to meet with the Committee of Experts for an informal exchange of views during its next session. The Committee repeated the invitation for the Chairperson of the Committee of Experts to attend the general discussion of the Conference Committee next year.
24. The Committee noted the introduction by the representative of the Secretary-General to the various items before it and related developments in the Organization including the standards policy, constitutional and other procedures, questions concerning the application of Conventions, and the promotion of standards and related technical assistance. He informed the Committee that as of 1 June 2001 the number of ratifications was 6,898, and that since 31 May 2000, 168 new ratifications had been registered. The Maternity Protection Convention (No. 183), adopted during the previous session of the Conference, had received its second ratification and would enter into force on 7 February 2002. He highlighted the importance of paying tribute to the upcoming anniversaries of the standards supervisory bodies (2001 is the 50th anniversary of the CFA, and the 75th anniversary of the establishment of the Conference Committee and the Committee of Experts), whose contribution to the development of trade union freedom and the implementation of international labour law throughout the world had been and continued to be decisive. Anniversaries presented a time for evaluation, and for creative, prospective and audacious legal thinking to address the new economic, social and political challenges that have emerged. There was an important role for international law to play in addressing these challenges. Each international labour standard, the fundamental and the technical, contribute to the material well-being and development of all workers.

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- 25.** The Government member of France, speaking as the Chairperson of the Working Party on Policy regarding the Revision of Standards of the Governing Body Committee on Legal Issues and International Labour Standards (LILS), informed the Committee members, as in previous years, of the progress of the Working Party, as reflected in the document on this subject put before the Committee. The Working Party's mandate had been to review the whole body of standards developed prior to 1985, with the exception of the fundamental and priority standards. In this respect the Working Party had practically concluded its work. Referring to documents placed at the disposal of the Committee, the Chairperson of the Working Party noted that the proposals of the Working Party adopted by the Governing Body provided a classification which could serve as a starting point for the clarification and modernization of ILO standards.
- 26.** The Employer members once again welcomed the presence of the Chairperson of the Committee of Experts during the general discussion of the Conference Committee. Over the years, his presence at the Conference had facilitated dialogue between the two Committees, including on points on which the Employer members were not in total agreement with the Committee of Experts. The Employer members also wished Mr. Jean-Claude Javillier every success as the Director of the International Labour Standards Department.
- 27.** The Employer members noted that 2001 marked the 75th anniversary of the establishment of the Committee of Experts and of the Conference Committee on the Application of Standards. The importance of the Conference Committee lay in the fact that it associated member States and the social partners with equal rights in the ILO's supervisory mechanisms, thereby increasing the understanding and transparency of the manner in which the ILO carried out its very important task of verifying the fulfilment by member States of the commitments which they had entered into voluntarily under international law. The way in which observance of these commitments was verified in the Committee was not the expression of an attitude of mistrust, such as had prevailed under communist standards, but the adoption of the logic and precepts of free States, particularly through the development of legal provisions which could be realistically implemented in practice. This meant that there should be a process of the testing and monitoring of the comparative requirements of standards and the real situation to verify whether the legislator was still on the right lines, or whether the situation had changed so considerably that the standards would also need to be modified. The supervisory system fulfilled two purposes. Not only did it serve to verify that member States were fulfilling their obligations, but it also involved a process of feedback and interaction that showed whether the standards themselves were still adapted to the times. Many of the ILO's instruments dated back to a time when it had been thought that social issues could only develop in one way, through one-sided laws that improved the protection provided to workers. In the meantime, the knowledge had developed that the working and living conditions of employees could not be improved through one-sided protective legislation and that the correct use of market economic instruments was indeed often more effective and helpful in improving their conditions. Even though in many quarters blame was often attached to the functioning of the market for problems that arose in society and the labour market, problems in practice often arose because market mechanisms were not allowed to function efficiently, and because they were too centrally controlled.
- 28.** The Employer members recalled that article 7 of the Standing Orders of the Conference provided the basis for the reporting requirements on member States. The examination by the Committee of Experts of the written reports submitted by governments provided a very important basis for the work of the Conference Committee. The resulting comments by the Committee of Experts were a valuable source of knowledge for the Conference Committee, but not the only source of such knowledge. In that respect, the Employer

members emphasized that the evaluations made by the Committee of Experts were not binding on the Conference Committee. The constitutional structure of the supervisory mechanisms had been developed in several layers, in which the Conference Committee, with its tripartite composition, and the plenary of the Conference, were the decisive final elements.

- 29.** With regard to the working methods of the Committee of Experts, the Employer members referred to their statement to the Conference Committee in 2000. Although the Committee of Experts had noted once again in paragraph 9 of its report that its aim was that in future its reports should be presented in a style that was more accessible and in a form that was easier to read and comprehend, this year the report was the longest ever submitted to the Conference and its great length contradicted this objective. At the same time the length of the Conference was steadily being reduced, and the Conference Committee was being given additional burdens. There was therefore a growing discrepancy between the amount of information provided by the Committee of Experts and the number of issues that the Conference Committee was able to discuss. The Employer members doubted whether this was desirable and pointed to this trend as one of the reasons why reforms were needed to the supervisory machinery.
- 30.** In general terms, the Employer members believed that it was reasonable to call for the supervisory machinery to focus on the essential aspects of the various questions, that is on significant deviations from provisions that were having very harmful social results. The Employer members stated that the supervisory procedure should not be restricted to only fundamental Conventions as reporting obligations applied to all Conventions that were in force. They noted that in cases of formal infringements of Conventions, the Committee of Experts could include such matters in comments addressed directly to the governments. Moreover, they emphasized that there was no sense in the constitutional requirement on reporting if the supervisory machinery did not follow them up. In all cases, obligations upon member States should be clearly based on the provisions of specific instruments so that it could be ensured that such obligations were clearly understood by member States when developing an instrument. It was not admissible for the requirements of standards to be set by *ex post facto* interpretation. There was a danger that such interpretation would be designed to achieve objectives on which there was no consensus. The Employer members noted that the General Report of the Committee of Experts covered a number of matters that went beyond the obligations deriving from the ILO Constitution and its standards.
- 31.** The Worker members congratulated Mr. Jean-Claude Javillier for his appointment to the post of Director of the International Labour Standards Department. They also thanked the Chairperson of the Committee of Experts, Sir William Douglas, for having once again accepted the invitation of the Committee to attend the discussion of the General Report and the General Survey. The Worker members appreciated the dialogue that existed between the Committee of Experts and the Conference Committee on the Application of Standards and noted that the report contained observations on a majority of the individual cases which they had expressed a wish to review this year. They also appreciated the special efforts made by the Committee of Experts to make the report easier to read and understand which contributed to the work of the Conference Committee and, in general, to a greater understanding of the supervisory system of the ILO.
- 32.** The Worker members felt that the complementary nature of the two Committees was one of the reasons for the ILO supervisory system's success. In effect, the Committee on the Application of Standards provided the analysis, positions and testimony of individuals close to the realities of situations, while the Committee of Experts used this input in the context of an impartial legal and technical analysis. The goal was not only to preserve, but also to improve this complementarity, which constituted an essential element in

strengthening the supervisory system as a whole. In this regard, the Worker members emphasized the fundamental role played by the International Labour Standards Department, which undertook analysis and provided support to the Committee of Experts, as well as to the Conference Committee. Following the large increase in the number of ratifications in recent years, the follow-up work of the Department had also increased and they hoped that it would receive the necessary resources in order to continue to provide high-quality work.

- 33.** The Worker members considered that “standards” should be taken to mean not only principles, but also the interpretation given to them by the different bodies of the ILO, in order to guarantee that ILO standards were applied coherently throughout the world. Although it was obvious that international standards could not always be very specific, it should nevertheless be possible to apply them to specific situations. This was one of the functions of the ILO’s supervisory bodies. Collaboration of workers’ organizations in the supervisory system was vital to improve the knowledge of the national situation.
- 34.** The Worker members considered that the Committee on Freedom of Association deserved particular attention, as it was its 50th anniversary. That Committee meant for many workers and trade unionists the respect of their rights and the re-establishment of their dignity. Since its creation, it had examined over 2,000 cases concerning various aspects of freedom of association by basing itself mainly on the principles set out in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Its decisions were of great importance for other ILO bodies, and particularly the Governing Body, the Committee of Experts and the Conference Committee on the Application of Standards. The Worker members thanked the Committee on Freedom of Association for the remarkable work accomplished and wished it great success for the years to come. They extended their thanks to the Freedom of Association Branch of the International Labour Standards Department, which provided essential support for the work of the Committee on Freedom of Association.
- 35.** The Worker members reaffirmed their attachment to fundamental labour standards, such as those encompassed in the 1998 Declaration on Fundamental Principles and Rights at Work, and indicated that they would follow with interest the discussions that would take place on this year’s Global Report on forced labour. They nevertheless recalled that the Declaration remained a promotional instrument that must lead States in time to adhere formally to the principles and Conventions concerned. The technical assistance provided by the Office had proved helpful not only for member States that had not yet ratified the fundamental Conventions of the ILO, but also for those which had ratified them but were encountering difficulties in their application. The fundamental Conventions of the ILO needed to be taken into account by other international organizations, in particular the World Trade Organization, the International Monetary Fund and the World Bank, as a social framework, not only for the national economy but also, and in particular, for the international or world economy. The Declaration constitutes, therefore, a key element in the struggle for global justice.
- 36.** The Worker members emphasized the great importance of ratifications, which constituted the basis of the ILO’s system, as well as of the supervisory system. They noted a remarkable rise in the number of ratifications of the Minimum Age Convention, 1973 (No. 138), which had received more than 100 ratifications, a figure which a few years ago would not have seemed attainable. With regard to the Worst Forms of Child Labour Convention, 1999 (No. 182), it had been ratified by more than 70 member States, which constituted a record considering that the instrument had been adopted by the Conference only two years ago. The campaigns undertaken by trade union organizations to convince

governments to ratify and apply the ILO Conventions on child labour had helped to achieve these results. The promotional campaign for the fundamental Conventions of the ILO initiated by the Director-General in 1995 had also greatly contributed to this success, which proved that it was possible, if enough energy and resources were devoted to the task, to promote more Conventions. The priority Conventions, such as the Labour Inspection Convention, 1947 (No. 81), the Employment Policy Convention, 1964 (No. 122), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), had also received a high number of ratifications. With regard to the so-called “technical” Conventions, the number of ratifications was generally lower. However, a certain number of technical Conventions also had been ratified by a large number of Members, such as the Protection of Wages Convention, 1949 (No. 95), which had currently been ratified by 94 countries. The Worker members maintained that when the political will to apply international labour standards existed, ratification was not, or did not have to be, an obstacle.

- 37.** A number of Governments including Bahrain (speaking on behalf of the Gulf Cooperation Council members of the Committee, Kuwait, Oman, Qatar, United Arab Emirates and Saudi Arabia), Brazil, Guatemala, Italy and Portugal commended the Committee of Experts for the quality of its report. The Worker member of Germany noted positively the gender mainstreaming approach referred to in the Committee of Experts’ report.
- 38.** The Government members of Germany, Lebanon and the United States noted that the work of the Committee of Experts and the size of the report had significantly increased. The Government member of Lebanon raised the question of whether the number of experts was sufficient to deal with the increasing number of topics under examination and whether the Committee of Experts’ goal of changing its methods of work was being undermined by the many tasks entrusted to it. The Government member of Germany, indicated that it was only logical that the report of the Committee of Experts, was long, since the number of ratified Conventions was increasing while the number of violations of such Conventions was not decreasing. Further, he indicated his concern over the idea that the Committee of Experts should concentrate on the essential aspects of cases and he suggested not to include the full texts of the repetitions in the report. The Government member of the United States highlighted the burden on member States, as well as on workers’ and employers’ organizations, to submit more and more information on developments in law and practice. The speaker therefore supported IMEC’s call on the Office to develop creative ways to solicit and gather that information. There was also a burden on the Office to process the information and reports submitted by governments, workers and employers. Therefore, the speaker encouraged the Organization and the Director-General to ensure that the Standards Department had adequate resources to manage its expanding workload. As for the burden on the Committee of Experts to review more and more reports, the speaker urged the Director-General to take the necessary steps so that the Governing Body could appoint another expert and bring the Committee of Experts to its usual complement of 20.
- 39.** The increased number of ratifications was welcomed by the Government members including Belgium, China and Portugal. The Government member of China considered that international labour standards were of great significance in protecting the rights of workers and promoting economic and social development worldwide. Differences in the economic, cultural and social conditions in the various countries meant that there was no ideal way of implementing international labour standards and that different countries had different capacities to ratify Conventions. Developing countries could gradually ratify Conventions, including the fundamental Conventions, and the ILO should continue with its promotional activities. However, the situation should be avoided whereby countries ratified Conventions under pressure and were unable to implement them.

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40. While supporting the positive development in ratifications, the Worker members of Greece, Swaziland and Tunisia emphasized the importance of applying the standards in law and practice.
41. A Worker member of France emphasized that the work of the Committee of Experts consisted of efficiently assisting the Conference Committee and thus merited respect, regardless of whether there was agreement with its interpretations. Interpretation was indispensable to evaluate the implementation of the Conventions and Recommendations, and was carried out by all the ILO's tripartite bodies. Consequently, it was necessary to consider the work accomplished by the Committee of Experts which was done with objectivity and in good faith. The Worker member of the Netherlands stated that the Committee of Experts was the body competent to interpret Conventions and it should remain so. While this Committee had a role to play and could give its ideas, it would be dangerous for the supervisory system if it engaged in interpreting Conventions. It would certainly be absurd if governments themselves had any role in the interpretation of Conventions. The Worker member of Tunisia noted that this year's report did not confine itself to identifying violations of ILO Conventions by member States, but sought out the underlying reasons behind these violations. He considered that the contents of the report showed that one of the reasons behind the many violations lay in the impact of liberalization, globalization, and privatization, on the world of work. He recalled the disastrous consequences of these phenomena on wage levels, the implementation of equality of opportunity and treatment, freedom of association, collective bargaining, forced labour, and other fundamental rights.
42. Another Worker member of France expressed concern at the proliferation of initiatives seeking to call into question the universal scope, the application, even the very existence of standards. The fact was that the only rights that workers actually had were those guaranteed by law. Social progress had begun when employers' goodwill gave way to workers' rights. Companies could not be considered as being the only ones to reconcile the diverse concerns of citizens, investors, consumers and workers. It was, of course, very welcome that other international organizations, notably the OECD, had recognized that observing fundamental standards in no way impaired a country's economic development. The ILO might thus find new allies among multilateral organizations for the promotion and effective application of fundamental international labour standards. In the context of globalization, such standards were an impassable floor which prevented any social regression. It was worrying to note that, in the Director-General's Report, *Reducing the decent work deficit*, it was suggested that standardization methods were perhaps not particularly relevant to decent work. Of equal concern was the reference to codes of conduct given that they did not offer workers any of the guarantees provided by standards. Reduction of the decent work deficit could be achieved by developing and constantly improving the ILO's standards-related activities. The Worker member of Uruguay stated that international instruments served to regulate international competition between large multinationals, in order to allow fairer competition in the market. For him it was clear that unfair competition led inexorably to work that was not decent work. Those who supported deregulation were disregarding the reports of the Office such as the *World Employment Report*, that showed that in the long run social protection is affordable "because it is essential for people, but also because it is productive in the longer term. Societies which do not pay enough attention to security, especially the security of their weaker members, eventually suffer a destructive backlash". The Worker member of Tunisia questioned whether the core Conventions constituted a satisfactory minimum social threshold in the light of the current trend of globalization, which every day undermined the conditions under which certain professional activities were carried out. He explained that he was referring in particular to the trend by employers to denounce systematically all the existing protective provisions, which aggravated the precarious situation of many workers and

weakened the capacity of the social partners to conclude agreements. The Worker member of Pakistan stated that the objective of improving the living conditions of workers was reflected in many ILO instruments including the 1998 ILO Declaration on Fundamental Principles and Rights at Work. The ILO, however, was more than just a world parliament of labour, it was but also its social conscience.

43. The Worker member of India noted that most cases before the Committee concerned developing countries. It was clear that economic development should be taken into account in the discussion of international labour standards. This did not mean that special standards should be created for developing countries. Rather, there was a need to improve terms of trade for developing countries and to increase investment in development. Structural adjustment in developing countries had resulted in high unemployment: India alone had 120 million unemployed persons. People wanted to work in the first place before they worried about decent work. One means of strengthening the economies of developing countries would be for the developed countries to invest a percentage of their GDP in development. In this regard he noted that the most developed countries enjoyed a GDP 34 times higher than the least developed countries. In his view, the application of international labour standards should also be examined in the context of the economic situation of a particular country. While developing countries could not be expected to apply fully standards to the same degree as developed countries, he pointed out that India had ratified 36 Conventions, while some very developed countries had ratified as few as 11. The Worker member of Swaziland supported the notion of linking core international labour standards to trade, stating that this was the only way to ensure social justice, accountability, transparency and good governance, which remained a taboo in some member States, even though they had a good record in the ratification of Conventions.
44. The Worker member of Hungary noted that, in Central and Eastern Europe, violations of workers' and trade union rights generally did not cause the type of direct physical harm or damage seen in obvious violations such as the killing or detention of trade union leaders or the slavery of child workers. Instead, violations of workers' rights in Hungary were often indirect and of a less obvious nature. It was difficult for workers' organizations to uncover loopholes in the law and to prove violations of ratified Conventions before the ILO supervisory bodies. However, these less obvious violations of workers' rights should not be taken less seriously than other, more direct violations of ratified ILO Conventions.
45. The Committee noted with interest information from Government members of the following countries regarding ratification prospects: *Angola* (the Government has submitted to the Director-General the instrument of ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182) during the present session of the Conference); *Cameroon* (the National Assembly approved, on 17 April 2001, the ratification of the Minimum Age Convention, 1973 (No. 138). The procedures for the ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182) will be concluded in the near future); *Egypt* (legislative authorities are considering necessary legislative changes in view of ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182)); *Lebanon* (the Worst Forms of Child Labour Convention, 1999 (No. 182) had been submitted to Parliament, the Minimum Age Convention, 1973 (No. 138) would soon follow); *Madagascar* (the National Assembly approved by Act No. 2000-023 of 1 December 2000 the ratification of [Convention No. 182](#). The instrument of ratification will be deposited soon at the Office); *Nigeria* (the National Labour Consultative Committee has approved the ratification of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182) and asked the Government to proceed to their ratification); *Syrian Arab Republic*

(the decrees authorizing the ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182) and the Minimum Age Convention, 1973 (No. 138) will soon be submitted to the Council of Ministers for final approval.

Policy on standard_[m1]s

46. For the purposes of developing the integrated approach, the Employer members emphasized that an in-depth examination would be required of the existing body of standards. This examination should be completed as soon as possible. The relevant conclusions should be drawn, obsolete standards should be withdrawn and instruments that were in need of revision could be amended. An examination should look into whether the specific objective of the standard could be achieved and whether it would have any harmful side effects. After new instruments had been adopted, the follow-up action should include analysis of whether or not they had proven successful. The combination of standard-setting activities, supervision and feedback should be the cornerstone of the new integrated approach.
47. The Employer members felt that as not all problems could be solved through standards, such instruments should only be developed where there was an urgent need for them. Standards should be socially desirable and economically sensible in terms of strengthening entrepreneurship and in improving the potential for job creation, or at least in not hindering the capacity to create more jobs. They should be minimum, not over-detailed, and a wide-ranging consensus should be reached on the manner in which the objectives of the standards would be achieved. It should not be forgotten that a wide range of means of action were available to the ILO, including the provision of technical assistance and other support measures, the development of codes of practice and guidelines, as well as the adoption of recommendations, resolutions, conclusions and declarations, and the related follow-up measures.
48. The Worker members recalled the views expressed in the debate on the standards policy. They noted that a significant amount of work had been undertaken on the standards policy that was starting to produce concrete results. However they pointed out that so far the work consisted only in the classification of Conventions into categories and not a discussion of the content of these Conventions. A discussion on content could be the result of this classification, and should be undertaken within the appropriate framework of, inter alia, the International Labour Conference.
49. The Worker members were open to the idea of an evaluation of ILO standards policy, they considered that this evaluation must not lead to the dismantling of the concrete and tangible advantages attained under the pretext of hypothetical progress to be attained in the future. They recalled that the situation of workers would certainly be worse if international labour standards did not exist, since they had a practical effect on the daily lives of millions of workers throughout the world. The Worker members were strongly opposed to the view that it was not necessary to go beyond the fundamental Conventions and that focus should be only on their underlying principles. Indeed, the ILO's goal was to promote universal, international labour standards that applied to all the world's workers in order to achieve social justice. This could not be achieved merely through the adoption of fundamental standards. It was also important to maintain a parallel social framework (for example, through social security and/or safety and health at work), as well as mechanisms for the supervision of the application of these standards, such as labour inspection, employment policy and tripartite consultation.
50. Many members welcomed the important work of the Working Party on Policy regarding the Revision of Standards and the adoption by the Governing Body of the new integrated

approach to ILO standards-related activities (Government members of Argentina, Bahrain (speaking on behalf of the member States of the Gulf Cooperation Council represented in the Committee), Belgium, Italy, Kenya, Lebanon, Norway (speaking on behalf of the five Nordic governments represented on the Committee), Spain, Switzerland, Syrian Arab Republic; Worker members of Cuba and the Syrian Arab Republic). The Government member of Switzerland stated that other efforts should follow, in particular concerning the effectiveness of the supervisory machinery. There was a need to support the process which had been embarked upon and which could result in the development of a consolidated set of standards, thereby giving a real social dimension to globalization. The Government member of Italy, while fully supporting the new approach and the review of standards, cautioned that this process should not entail a diminishment in the level of protection provided to workers. The Government member of Lebanon welcomed the revision policy on the basis of objectivity and considered that the question of revision and denunciation should be dealt with quickly so as to avoid confusion in the ratification process in future.

- 51.** The Government member of Kenya felt that this new approach would serve to enhance the coherence and relevance of standards and the visibility, effectiveness and relevance of the standards system. Special attention should be devoted to ensure that new standards were relevant and sufficiently flexible to facilitate their ratification by countries that were at different stages of development. The Government member of Argentina stated that it was not a matter of replacing the current system but of building on its most solid elements to enable it to meet the enormous social challenges, in particular, technological change and its impact on work and systems of labour relations. Concerning the large number of Conventions which had received an insufficient number of ratifications, he indicated that consideration might be given to a system of selecting priorities to provide guidance in the task of promotion and, if necessary, revision. The efficiency and effectiveness of promotion and supervision should be enhanced through mechanisms to ensure that they complemented each other. Transparency, which some felt was currently lacking, was crucial to achieving that objective. With respect to the creation of standards, the selection of subjects was a critical question and the idea of raising the status of Recommendations deserved serious consideration. With respect to denunciation, the Government member of Spain noted that denunciation of Conventions considered obsolete was always a major and problematical step for a country, since the objective and long-term view taken by international bodies almost always differed from the domestic political environment of a State.
- 52.** The Government member of the United States, speaking on behalf of the IMEC group members in the Committee, stated that the overarching goal of any review of the standards-related activities should be to increase their effectiveness, visibility and transparency while not reducing the level of protection they provided for workers. IMEC sought to ensure the integrity of the entire system of standards-related activities. With regard to reporting and ensuring the timely receipt of responses from governments, the Office should propose means of using the Internet and email to transmit the questionnaires and receive responses, and to create databases of information received. The Office should also propose means of harmonizing the cycle of reports by grouping them in families, or by creating country-specific reporting cycles. For similar reasons, the reporting cycle for the fundamental Conventions should include both Conventions on one fundamental principle in a given year, rather than the current reporting cycle that required reporting on each of the eight Conventions separately. With regard to the supervisory machinery and in addition to the comments made on the selection and discussion of cases (referred to above), the Committee of Experts should report to the Committee on the Application of Standards on the review of its operations so that delegates would have a clear understanding of the Committee of Experts' working methods. The briefing session held at the beginning of the Committee was useful and its continuation should be encouraged. The general discussion

could focus on emerging issues of high importance and be limited to the shortest possible time. IMEC welcomed the section on forced labour in the report and looked forward to the continuing debate on this issue. Article 19 reports could also focus on families of Conventions. Automatic cases could be considered in the first week of the Committee. In the discussion on individual cases, time should be allotted so that a technical, pragmatic and solution-oriented discussion would be possible. The conclusion of each case should be drafted to reflect clearly the discussion that had actually taken place, even if this required a brief adjournment before its adoption. The contents of the Committee's report to the Conference could be reorganized to make it more user-friendly and visible for non-Committee members.

- 53.** The Government member of Norway (speaking on behalf of the five Nordic governments represented on the Committee) supported the views expressed in the statement on behalf of IMEC. Further, the Nordic governments favoured a better organization of the Committee's work to enable it to achieve a higher level of efficiency, transparency and visibility. They welcomed and fully agreed with the position of the Committee of Experts that this new integrated approach formed part of the ILO's efforts to increase the relevance of its standards system, which constituted a political priority for the Organization. In this regard, the Nordic countries considered it important to review the schedule of meetings to determine whether the Committee's time could be put to more efficient use such as had been outlined in the IMEC statement. In individual cases the process for determining whether the Committee's conclusions properly reflected the substance of the oral responses provided by member States in the Committee should also be reviewed. Finally, it was important to enhance the visibility of the results achieved by the Committee. The Government member of Belgium emphasized the need for the ILO to make its standards policy more widely known by all possible means, as well as the purpose of its supervisory system. The ILO should continue to devise new methods which could be adapted depending on the target populations it wished to reach. He therefore approved of the statement made by the Committee of Experts that it would reflect on ways of improving the style and presentation of its report.
- 54.** The Government member of Bahrain, also speaking on behalf of the member States of the Gulf Cooperation Council, hoped that in the future the Government group, in addition to the Employer and Worker members, also would have an opportunity to convey its views to the Committee of Experts. The Government member of Cuba hoped that, when reviewing its working methods, the Committee of Experts would consult governments. The Government members of Argentina and Brazil also emphasized the involvement of governments of selecting individual cases.
- 55.** The Worker member of Côte d'Ivoire emphasized that international labour Conventions provided the best guarantee to workers in the context of globalization. More Conventions were needed and these should be detailed and explicit. The Worker member of Germany noted that all efforts should be made to reject attempts to limit the supervisory machinery and in this regard called for human resources in the Standards Department to be strengthened. The Worker member of Hungary drew attention to the need to reform the supervisory mechanism to expedite the relevant procedures and to facilitate the methods of proving violations. She suggested that the ILO could involve national experts in the supervisory process on a tripartite basis in order to facilitate its understanding of the situation at the national level.
- 56.** The Worker member of the Netherlands noted that many Government and Employer members had stated, in recent years, that there were too many ILO standards and that they were too detailed, which was the justification for their reluctance to adopt new Conventions. As they saw it, labour market regulation was declining in importance and

was much too cumbersome and archaic in the era of globalization. He recalled that the ILO presently had 70 Conventions which were of contemporary relevance and should be promoted. Several of those Conventions were not applicable to all countries, notably those concerning seafarers and plantation workers. The Governing Body had performed a major task in clarifying the collection of standards. In that respect, the reform of the ILO's system of standards should seek to strengthen it and not bring it down to the lowest common denominator. In the context of globalization, it was necessary to move towards more and better regulation and not liberalization. The social and economic consequences of the financial markets and the acknowledged setbacks of the World Bank and IMF structural adjustment policy proved it. This meant regulating new sectors, the informal sector, new conditions of work, meeting the challenges of transnational management of economic, financial and social issues and meeting the new demands of workers to participate in economic lives. International labour standards were a specific response to a specific problem and they must continue to be the basis of all supranational social regulation and their future must be managed on a tripartite basis. Standards policy should not be left to specialists, but should be part of the common heritage of the international community.

- 57.** With respect to the ratification of the 1997 Constitutional amendment which authorized the abrogation or withdrawal of obsolete ILO Conventions and Recommendations, the Employer members stated that, although the ILO had been developing standards for over 80 years, until comparatively recently there had not been any real opportunity under the Constitution to remove obsolete instruments. The amendment to the Constitution, which had been adopted very belatedly for this purpose, was still not in force. The Employer members wondered whether the ILO could not make further efforts to promote the ratification of the instrument of amendment of the Constitution, in the same way that it promoted very successfully the ratification of certain Conventions.
- 58.** The Government member of Germany once again recalled the problems grounded in public international law. Upon ratification of a Convention, the ratifying States entered into a contractual relationship. It was therefore not possible for a third party to dissolve this legal relationship. The Employer members recalled that this concern had been raised in the past and was based on a rather traditional understanding of public international law. It should be possible for an Organization which had adopted standards to establish a procedure to abrogate them if they were considered obsolete. Another issue related to the consequences such an abrogation would have on the member States which had ratified the Convention in question. The Office was requested to provide any information concerning legal studies carried out in this regard.
- 59.** The Government member of Lebanon, indicating that her country had ratified the constitutional amendment, asked whether the abrogation of a Convention required the withdrawal of the related Recommendation, since some Recommendations provided for their application in conjunction with a related Convention. She also asked what should be done in cases where a shelved Convention continued to be the subject of complaints and representations.
- 60.** The representative of the Secretary-General praised the value of the general discussion and especially in regard to the examination of improvements in the ILO standards-related activities. He replied to the question by the Government member of Lebanon as to whether abrogation of a Convention would also involve or require abrogation of the accompanying Recommendation. He noted that, according to the methodology adopted by the Working Party on Policy regarding the Revision of Standards, in principle a Recommendation should be treated in the same way as the Convention that it accompanied. That meant that if a Convention had been considered obsolete, its accompanying Recommendation should,

unless otherwise justified, also be considered obsolete. He also responded to her question whether obsolete Conventions which had been shelved could continue to be the subject of complaints and representations. He noted that shelving a Convention had the consequence that reports on its application were no longer required on a regular basis under article 22 of the Constitution. Nevertheless, it left certain rights intact, such as the right to invoke provisions relating to representations and complaints under articles 24 and 26 of the Constitution, or the right of employers' and workers' organizations to continue to submit observations in accordance with the regular supervisory procedures, for a review by the Committee of Experts, resulting in requests for information in the form, where necessary, of a detailed report. In reply to the question concerning a possible General Survey on [Convention No. 29](#), he noted that it was the Governing Body which periodically decided the subject in respect of which reports were requested under article 19 of the Constitution.

- 61.** The Legal Adviser replied to the request by the Employer members to the Office to provide any available information on legal studies into the effects of the abrogation of a Convention for the Members which had ratified it, bearing in mind the Vienna Convention on the Law of Treaties, adopted in 1969.⁵

⁵ The Instrument of Amendment adopted in 1997 had added a new paragraph 9 to article 19 of the Constitution intended to enable the International Labour Conference to abrogate any Convention considered obsolete by the Governing Body. The reason for that amendment was to allow the Organization's body of standards to be brought up to date. The amendment aimed essentially to confirm that the power to abrogate a Convention was the corollary of the power to adopt and that the body empowered to adopt international labour Conventions should also have the power to abrogate them when they no longer served to promote the objectives of the Organization. The adoption of the Instrument of Amendment had been preceded by in-depth discussions at the 265th and 267th Sessions of the Governing Body which had allowed all the legal or practical aspects of the issue, together with possible solutions, to be examined. As for the Vienna Convention, the Legal Adviser indicated to the Constitutional Amendment and Standing Orders Committee that Article 54 of the Convention provided that a treaty could be terminated, among other means, in conformity with its terms. An international labour Convention was a treaty adopted within the framework of and by reference to another treaty, namely the ILO Constitution. [...] Article 5 of the same treaty of Vienna further provided that that Convention applied to a treaty which was the constituent instrument of an international organization, and to any treaty adopted within an international organization, "without prejudice to any relevant rules of the organization". The Vienna Convention thus referred back to the constitutional system and practice of the Organization. Therefore, once the Constitution contained a provision on abrogation, the Vienna Convention would be respected.

In reply to a question raised by members of the Constitutional Amendment and Standing Orders Committee as to the effect of abrogation on relations between States for which the Convention was in force, the Legal Adviser recalled the reason why the Governing Body had considered that it was not necessary to include an "opting out" clause enabling ratifying States to remain bound by the Convention. This was because abrogating an obsolete international labour Convention did not as such affect the national legislation which might have been adopted following the ratification of that Convention. There should also be no doubt that abrogation did not prevent two or more member States from deciding to continue to apply *inter se* the abrogated Convention which would no longer be an ILO Convention. The sole effect of abrogation was to eliminate the legal effects vis-à-vis the Organization and other parties, and this explains why the Working Party did not consider it necessary to provide for "contracting out". Finally, in reply to a letter from a Member expressing its reservations concerning ratification of the amendment as it stood, the Legal Adviser had indicated that, if in extremely limited cases, a Convention was abrogated against the views of certain States parties who wished to remain bound, nothing prevented them. It had been indicated in the preparatory work that, in law, abrogation sought to eliminate the effects of the Convention with respect to the Organization. The fact that States wished to continue to be bound by a Convention was in no way incompatible with that objective, even if that had not been officially foreseen in the form of a "contracting out" clause. The only difference arising from the amendment was that States

Other international aspects

62. With regard to the application of various human rights Conventions and to the relationship of the ILO with the United Nations and other specialized agencies, several Worker members (Brazil, Côte d'Ivoire and Luxembourg) welcomed the collaboration and activities listed in the report of the Committee of Experts. The Worker member of Brazil recalled that the Committee of Experts had demonstrated the importance of mutual collaboration and cooperation.
63. The Worker members of Brazil, France, India and Pakistan addressed the relationship between the ILO and the WTO. The Worker member of Brazil suggested that the ILO could set in motion a regular consultation exercise with the WTO. This type of information activity could strengthen the policy aimed at combating the decent work deficit in the world. The Worker member of India noted that the ILO needed to examine the role of the international financial institutions, the WTO and multinational enterprises and their responsibility in creating a deficit of decent work. He also thought the ILO should play a more effective role to influence the financial institutions for ensuring social safety nets to the workers in countries in the process of restructuring of the public sector. The Worker member of Luxembourg addressed the problem of the social dimension of international trade and the relationship between the ILO and the WTO. He was concerned, on the one hand, by the existence of hidden protectionism in some member States and, on the other, by the wild and uncontrolled deregulation that could result from the liberalization of markets. He suggested that an examination should be made of the proposal made by the European Union to establish a permanent and joint forum between the ILO and the WTO in order to facilitate dialogue between the social partners and international organizations with a view to encouraging mutual cooperation and understanding. Nevertheless, he reiterated that the ILO's tripartite structure made it perfectly capable of addressing the new challenges arising out of the relations between international labour standards and international trade. He considered that, like other international organizations, it would be important for the ILO to obtain the status of observer at the WTO. A Worker member of France warned the WTO not to overlook the conditions in which certain goods and merchandise were produced and exchanged, that is to say in violation of the fundamental rights of workers. Above and beyond the universality of fundamental rights, these violations distorted competition and generally affected labour conditions by increasing social inequalities, thereby contributing to poverty. Following the collapse of the ministerial meeting in Seattle, the ball was now in the WTO's court and it should acknowledge the primacy of human rights over strictly commercial considerations. In the field of health, that meant that the action taken against the HIV/AIDS pandemic should prevail over the narrow and restrictive vision of intellectual property developed recently by pharmaceutical companies. The ILO and the Conference Committee should assist the WTO to find a consensus and ensure that globalization was not achieved to the prejudice of international labour standards and human rights.

could not force the Organization to maintain procedural obligations in respect of Conventions which no longer served its objectives and impose the cumulative budgetary constraints which that might represent to the detriment of more needed legislative measures. That being the case, even in the absence of such a clause, it was perfectly permissible for States parties to a Convention to maintain between them the obligations arising under that Convention when the obligations with respect to the Organization (in particular relating to periodic reports and dispute procedures) disappeared. It would likewise certainly be conceivable that the Director-General as depository of the instrument of ratification, could continue to perform that function in a residual manner in respect of notification to Members and to the Secretary-General of the United Nations of the maintenance of the fundamental obligations under the abrogated Convention between this or that State.

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64. The Worker member of Luxembourg, referring to paragraphs 61-71 of the Committee of Experts' report, noted that the ratification campaign launched in 1995 had benefited from the support of the United Nations, the OECD and member States of the European Union. Democratic States could work through the United Nations and other financial and economic organizations to try to place pressure on certain regimes to promote individual rights.

Fiftieth anniversary of the Equal Remuneration Convention, 1951 (No. 100)

65. The Employer members considered that this Convention addressed a very important subject, and drew the link to the broader prohibition of discrimination on the grounds, *inter alia*, of gender being covered by the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). They noted that the principle of equality had already been set out in many international instruments including the Declaration of Philadelphia, and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. It was of great importance from the point of view of human dignity that no one should be placed at a disadvantage on the grounds of gender. However, in their view, just as there were unjustified differences, a distinction needed to be made between the necessary level of equality of opportunity and harmful provisions requiring equal treatment at all costs. Both equality of opportunity and the freedom to conclude contracts with employers, which also included the freedom to determine its content, were necessary, with the latter being an expression of self-determination and self-fulfilment. Referring to the comments made by the Committee of Experts in paragraph 40 on the existence of wage differentials between men and women, the Employer members noted that the reasons for such differences included a lack of education, training and skills. However, they did not believe that the references to globalization and privatization in paragraph 39, as well as in other places in the report, were justified. Many countries needed to have a wide range in the wages paid in order to combat unemployment. In this regard the Employer members recalled that [Convention No. 100](#) was not aimed at achieving equal wages for everyone, but rather equal remuneration for men and women for work of equal value.
66. The Employer members drew attention to the difficulty of job evaluation. The essential dilemma was that there was no generally agreed upon correct system for establishing the value of work. While job appraisal and evaluation were required, it was not possible to lay down binding methods for such processes in practice. Clearly, it was not fair for women if jobs were evaluated on the basis of the need for physical strength. Women had skills in other areas that needed to be taken into account in the evaluation criteria. One essential element was that employers and workers had to agree on the value of a job. As for minimum wages, which should only be at the lowest wages levels, equality could be ensured. However the role of the social partners in fixing wages could only be guaranteed if the State withdrew completely from the wage-fixing process.
67. The Employer members believed that a more effective approach to achieving equality was to provide everyone with the opportunity to benefit from training and skills. The actual use of such opportunities depended greatly on the manner in which society saw the role of women. Deep-rooted traditions often played an exaggerated role in that respect. It would only be possible to achieve progress in this area by changing attitudes. It was only if equality came to be accepted in the heads and hearts of people that unjust differences in working life would be eradicated.
68. The Worker members noted that 85 per cent of ILO member States had ratified [Convention No. 100](#), which bore witness to the importance attached by countries to the principle of equal remuneration for men and women for work of equal value. The

remaining 15 per cent of member States that had not yet ratified [Convention No. 100](#) were bound to respect the principle enshrined in the Convention by virtue of the 1998 Declaration on Fundamental Principles and Rights at Work. The Committee of Experts had made an interesting analysis of the difficulties of the application of the Convention in practice and, in particular, the wage gaps which persisted between men and women. They noted that a number of these difficulties encountered by member States at the time of the 1986 General Survey on equal remuneration between men and women still persisted today. Women were still paid less than men for work of equal value.

- 69.** Nevertheless, the Worker members noted that the Committee of Experts had drawn attention to the substantial progress that had been made. An example was the recognition by a large majority of countries of the very broad definition of the term “remuneration” contained in the Convention. This was an important point, since the financial situation of workers was not only dependent on the level of their wages in the strict sense of the term, but also on other advantages linked to employment, including the possibility of taking a temporary career break for a number of reasons (in particular for family reasons). The importance of evaluation of jobs was also noted. The Worker members welcomed the action being taken to remove inequalities that could creep into methods for the classification of jobs as a result of the use of criteria that were frequently too “male-oriented”.
- 70.** The Worker members recalled that, while equality between men and women was a fundamental right, women throughout the world nevertheless continued to be victims of social injustice and that they suffered the highest rates of poverty and violence. The World March for Women which had taken place at the end of 2000 had well and truly highlighted a number of these injustices and had encouraged governments, as well as regional and universal institutions, to adopt concrete measures to put an end to the situation of inequality faced by the majority of women. Member States should, in accordance with Article 4 of that Convention, collaborate with workers’ and employers’ organizations to ensure better application of the Convention in practice. While the Employer members considered that the problem simply lay in the balance between equality of opportunity on the one hand, and contractual freedom on the other, the Worker members, for their part, considered that it was precisely that contractual freedom, at least to a large extent, which led to wage differentials between men and women for work of equal value.
- 71.** A number of speakers emphasized the importance of the [Convention No. 100](#). They supported the comments made by the Committee of Experts in its general report, and stressed the need for greater effort to be taken to implement this fundamental right into practice, even though it had been highly ratified (Government members of Brazil, Canada, China, Egypt, Kenya, Lebanon, Spain; Worker members of Brazil, Colombia, Côte d’Ivoire, Germany, Netherlands, Norway, Swaziland, Uruguay). Some speakers also noted the importance of the link between Convention No. 100 and the other related instruments on equality, such as the Discrimination (Employment and Occupation) Convention, 1958 ([No. 111](#)), and the Workers with Family Responsibilities Convention, 1981 ([No. 156](#)) (Government members of Brazil, Egypt, Kenya, Portugal; and the Worker member of Brazil).
- 72.** The Government member of Spain highlighted the current practice of setting wages in Europe by the social partners in collective bargaining and the structure of wages broken down into basic wage and wage supplements. It was often in supplements and other emoluments, which constituted a potential source of wage differentials. He emphasized the need to review all occupational classifications under current collective agreements, and replace them with others based on job evaluation systems using objective, impartial and technical criteria. Job evaluation was the only tool that could determine the relative value

of jobs and establish equality of value between two different jobs, albeit in a conventional format. This was not to say that evaluation methodology was without criticism although he noted that analytical systems left the least scope for subjectivity. He concluded that the subject of equality of remuneration was less and less a matter of discrimination between the sexes, and increasingly a matter of human relations management within the company. The Government member of Cuba pointed out that the concept of gender equality should be applied from the moment that jobs were evaluated and should be based on elements relating to performance, qualifications, responsibility, quality, complexity and the rational use of working time. Cuba had been included in the list of countries that the Committee of Experts had noted with interest as having adopted the measures to give effect to [Convention No. 100](#). She emphasized the importance of the technical assistance on development of gender statistics to the implementation of the Convention.

- 73.** The Government member of Lebanon stated that women should be given the same opportunities as men with regard to access to education, training, skills and promotions. Furthermore, the evaluation of jobs should be carried out in view of the continuing horizontal and vertical segregation between work performed by men and that performed by women. Gender equality was at the heart of the concept of decent work and the ILO therefore had the responsibility of promoting the principle of equal pay for work of equal value through more focused and effective methods. In this context, she noted that Lebanon had taken a number of measures to give women the right to family compensation on the same basis as men. The Government member of Canada emphasized that equality was a principle well reflected in Canadian values and legislation. She noted that further efforts and contributions, not only by governments, but also by the social partners, were needed if the aims of [Convention No. 100](#) were to be fully realized.
- 74.** The Worker member of Norway noted that, although Scandinavian women had made advances with regard to gender equality at the workplace, in general, the annual wages and salaries of women were only 80-85 per cent of men's wages. This wage gap had not decreased in recent years and was in fact becoming wider in some sectors. One reason for this wage gap was that the Scandinavian labour market was highly gender segregated. Women worked mainly in the public and commercial sectors or were employed in atypical employment relationships, such as part-time, shift work and fixed-term relationships, where wages were lower. Many working in part-time jobs wished to work full time. It also had to be considered that women had the responsibility of balancing the home, family and work and therefore many chose to work fewer hours, causing them to receive less pay than men and to lack full pension benefits upon retirement. To address the problem of wage discrimination between men and women, more research had to be carried out on this unfair practice in order to understand why men still received higher wages than women, despite an equal level of education and training. One known way that should be taken was to increase the percentage of women in leadership positions, thereby increasing their wages.
- 75.** The Worker members of Colombia and Uruguay noted that serious wage differentials between men and women were compounded by insecurity of employment and the growing disappearance of sources of work, which particularly affected women. The Worker member of Uruguay recalled the rates of poverty in single-mother households and noted the lack of voice of domestic workers in regard to their wages and conditions of work. He agreed with the Committee's comment that "a comprehensive approach to the reduction and elimination of pay disparity between men and women involving societal, political, cultural and labour market intervention is required". The Worker member of Cuba considered the report of the Committee of Experts on this topic to be very thorough. However, he questioned the statement in paragraph 43, that "wherever the State is not in a position to ensure the application of the principle of equal remuneration, it must

nevertheless promote its application". In the view of the speaker the State must not be able to waiver from ensuring compliance with the law and the equality of all persons.

76. The Worker members of Brazil, Netherlands and Swaziland highlighted the importance of the role of the social partners in the implementation of the Convention. Several Worker members wondered whether the employers had done enough (Worker members of Germany, Netherlands and Swaziland). In contrast to the Employer members' statement that the problem simply lay in the balance between equality of opportunity on the one hand, and contractual freedom on the other, the Worker member of the Netherlands noted that it was precisely that contractual freedom, at least to a large extent, which led to wage differentials between men and women for work of equal value.
77. The Worker member of Brazil indicated the importance of this fundamental Convention for the promotion of equality in developing countries such as Brazil. According to official data, in Brazil, a wide gap still existed in remuneration between men and women. In May 2001, with the support of the ILO and several trade union organizations from different countries, the Workers' Central Unit organized an important workshop, on the occasion of the 50th anniversary of [Convention No. 100](#). The adopted conclusions highlighted the importance of policies promoting equal remuneration as a means of ending underdevelopment. The Government member of Brazil also referred to the important role of the Convention to the programme "Brazil, Gender and Race", whose objective was to eliminate inequality and discrimination in the labour market.
78. Several speakers emphasized the importance attached to [Convention No. 100](#), which was demonstrated through their country's ratification and application of it (Government members of Canada, China, Cuba, Egypt, Kenya, Lebanon, Portugal, Worker member of Syrian Arab Republic).

Fulfilment of standards-related obligations

79. The Employer members joined the Committee of Experts in calling on member States to fulfil their reporting obligations and endorsed the regrets expressed concerning failure to comply with these obligations. While noting the rise in the percentage of reports provided, they recalled that this percentage had been higher in the 1980s. They therefore considered it premature to start referring to a reversal in the downward trend. An examination of the causes of the current improvement would provide a useful basis for discussions in the Governing Body concerning the reporting procedures.
80. The Employer members were pleased to note that countries which sent in the reports due on ratified Conventions during the period between the end of the session of the Committee of Experts and the beginning of the Conference had been listed in the report. This served to identify countries that adopted this approach on a systematic basis. The report showed that a number of States, including Barbados, Belize, Cyprus, Ghana, Iraq and Tajikistan, had followed this strategy in both 1999 and 2000, which disturbed the operation of the supervisory system. The Employer members also noted that the Committee of Experts had provided a good deal of information on constitutional and other procedures, including the complaints submitted under article 26 of the Constitution and the representations submitted under article 24. They also noted the information on the special procedures concerning freedom of association.
81. With regard to the cases of progress, the Employer members noted the increase in the figures compared to previous years. However, they pointed out that the changes made in national law and practice had not only been adopted following comments by the

Committee of Experts, but also following those of the Conference Committee. They also noted the long list of cases in which the measures taken had been noted with interest.

- 82.** The Worker members noted that once again this year, the Committee of Experts had received a large number of observations communicated by workers' and employers' organizations (311 in 2001, compared to 257 in 2000), of which 80 per cent were from workers' organizations. The Worker members expressed their satisfaction at this increase. Moreover, complaints also had been made to the Committee on Freedom of Association, and representations and complaints had been submitted under articles 24 and 26 of the ILO Constitution. The collaboration of workers' organizations in the supervisory system for international labour standards was vital to improve knowledge of the national situation, so that the effect of certain government initiatives could be evaluated better.
- 83.** The Government member of Switzerland welcomed the cases of progress noted by the Committee of Experts. She informed the Committee that the principles enshrined in [Convention No. 87](#) had been introduced in the federal Constitution of Switzerland and the new law on the federal public service recognized the principles of collective bargaining and of the right to strike in the federal public service. Furthermore, following the ratification of [Convention No. 144](#), the Federal Tripartite Committee responsible for ILO matters had held its first meeting during which it had dealt with the Myanmar case, the position of Switzerland with regard to the ratification of [Convention No. 183](#), as well as the issue of the possible application of [Convention No. 169](#) to "travellers".
- 84.** While some speakers (Government members of Belgium, Kenya and Germany) welcomed the high percentage of reports submitted by governments, others also regretted that a higher number of reports had not been submitted on time (Government members of Italy and Portugal). The Government member of Kenya noted positively the great interest shown by employers' and workers' organizations in the implementation of the ILO's standards. The importance of governments communicating their reports within the required deadline was stressed by the Government members of Italy and Kenya. The Government member of the Libyan Arab Jamahiriya underscored the increasing burden on the staff of member States to fulfil their increasing obligations. The Government member of Bahrain, also speaking on behalf of the member States of the Gulf Cooperation Council, and the Government member of Egypt, requested questionnaires and comments to be sent out in Arabic in order to facilitate their reporting process. The Government member of Italy emphasized the importance of the use of the Internet and electronic mail to submit questionnaires and receive corresponding responses and also indicated that the Office needed to promote this practice. Moreover, he stressed the significance of training the officials who were responsible for drawing up the reports.
- 85.** Several speakers expressed concern over the late submission of reports to the Office in accordance with constitutional obligations (Government members of Brazil and Italy). The Government member of Norway, speaking on behalf of the five Nordic Government members represented on the Committee, noted with regret that the governments of 28 countries had not provided information indicating that the instruments adopted by the International Labour Conference during at least the last seven sessions had in fact been submitted to the competent authorities and urged these countries to comply with their submission obligations in the very near future.

Application of the Forced Labour Convention, 1930 (No. 29)

(a) Trafficking in persons

- 86.** The Employer members, noting the high rate of ratification of [Convention No. 29](#), stated that the need for the prohibition and elimination of forced labour was unquestioned. They expressed full support for the comments of the Committee of Experts concerning the trafficking in persons.
- 87.** The Worker members recalled the recent adoption of the United Nations Convention against Transnational Organized Crime and the draft additional Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, which demonstrated the growing awareness of the phenomenon of the trafficking in persons, even if this awareness was not yet apparent in the reports provided by governments in respect of the application of [Convention No. 29](#). They emphasized the severity of this phenomenon that affected thousands of human beings who were considered as mere commodities and treated as such. According to the International Organization on Migration (IOM), of the 15 to 50 million clandestine migrants in the world today, 4 million were victims of the trafficking of persons, 500,000 of whom were located in western Europe alone. According to the IOM, 700,000 to 2 million women and children were victims of the trafficking in persons every year. UNICEF considered that the trafficking in persons for the purposes of sexual exploitation had affected 30 million women and children over the past 30 years. The Worker members regretted the fact that often, in practice, the victims of trafficking were considered by national authorities to be illegal immigrants, rather than the victims of organized crime. They hoped that the comment made in paragraph 81 of the report of the Committee of Experts would be an effective instrument in the fight against this scourge.
- 88.** The Government member of Cuba emphasized that the situation regarding the trafficking of persons was a matter of great concern and that States should also assume their responsibilities in view of the magnitude of the problem, which increased the risk of the inhumane exploitation of forced labour and violence. The Government member of Kenya stressed the importance of [Convention No. 29](#) and drew particular attention to the trafficking in persons. The Government member of the Syrian Arab Republic welcomed the clarifications given by the Committee of Experts and endorsed their findings. Referring to existing national legislation that forbade trafficking, he noted that it did not occur in the Syrian Arab Republic.
- 89.** The Worker member of Pakistan noted that the report of the Committee of Experts contained many important points in relation to the trafficking in persons. The Committee of Experts had rightly pointed out that the magnitude of the problem lay in the fact that the victims were often perceived as illegal aliens rather than as victims of organized crime. This problem had increased considerably, partly due to an increasing division between developing and developed countries on this issue. Cooperation between the two groups of countries had to develop in order to put a stop to the crimes of the exploiters.
- 90.** The Worker member of Denmark emphasized that the problem of trafficking in persons affected many countries, both rich and poor. Trafficking in persons was a business involving large amounts of money and was in essence a form of organized crime controlled by powerful criminal groups. For victims, trafficking in persons meant great suffering and sometimes even death. Many governments regarded the problem as a question of illegal immigration and not as organized crime or forced labour. It was therefore important that governments recognized trafficking in persons as a crime and ensured that the penalties imposed by law were adequate and strictly enforced.

91. The Worker member of Luxembourg observed that the Committee of Experts had noted a growing awareness of the problem in all countries concerned, whether they were countries of origin or destination. It had also noted that this scourge had become an important activity of transnational organized crime, which effectively shielded itself against interference by the public authorities. Even though the extent of the problem was now recognized, this had not yet been reflected in the reports provided by governments on the application of the Convention. He supported the appeal made by the Committee of Experts regarding the obligation for all member States which had ratified [Convention No. 29](#) to adopt and apply national sanctions.

(b) Privatization of prisons and prison labour

92. The Employer members did not share the views of the Committee of Experts concerning the privatization of prisons and prison labour, which in their view was a marginal aspect of the issue of forced and slave labour. They noted that the small number of responses received had not allowed the Committee of Experts to draw a general picture of the law and practice in member States, rather their report was more in the nature of a theoretical paper. Nevertheless, the Committee of Experts, in paragraph 102, had indicated that “the interest of cohesive international jurisprudence” did not call for a reduction in the protection provided to prisoners under [Convention No. 29](#). They did not agree with the use of the term “jurisprudence”, since the Committee of Experts was referring to its own observations.

93. In the view of the Employer members, [Convention No. 29](#) did not address the issue of privatization of prisons and prison labour, and there had been hardly any private prisons in existence when the Convention had been adopted. In their view, neither the consent of the prisoner nor (almost) normal conditions of work were indispensable prerequisites for allowing the performance of labour by convicted persons for private enterprises. Unfortunately, in the Committee of Experts’ General Report (paragraphs 85, 90, 137, 138), the views and alleged views presented by the Employer members in the Conference Committee were reproduced diversely and with a different purpose. Also, a statement made by the Employer members in the general discussion in 1998 had been shortened in the report of the Conference Committee of that year and thus been reproduced in a wrong and misleading manner, since the Employer members had merely been referring to the opinion of the Committee of Experts that the use of the labour of convicted persons would be compatible with the Convention only if it was subject to the consent of the prisoners concerned and could be assimilated to a normal employment relationship covered by labour law. As a consequence, the views attributed to the Employer members in paragraph 90 of the report were incorrect and misleading. The way in which the right to impose penal sanction and prison work was implemented was within the authority of each State with regard to its structure and organization. Moreover, the State had a legitimate right to limit its activities to its core competences. Contrary to the view held by the Worker members, the Employer members considered that it was inherent in the situation of convicted persons that their rights were curtailed, including their fundamental right of personal freedom. Also, the regulation of the right to impose prison labour at the national level was outside the competence of the ILO. This was also true for the (indirect) effects of prison labour on fair competition, if there were any.

94. Although the point was often made that prisoners worked for lower wages than ordinary workers, the Employer members felt that it should not be overlooked that private employers who hired prisoners faced increased costs and considerable risks, which were normally balanced by the lower wages paid. In practice, it was often difficult to find enterprises willing to employ prisoners. In an open market economy, this was an indication

that there were no great advantages which constituted a distortion of competition. Also, the Convention was to protect the individual, not fair competition.

- 95.** The Employer members also challenged the importance given to voluntariness, for example with regard to prisoners being given a genuine option to either perform or not perform work, with no penalties attached if they refused, and the parallel drawn with prisoners being confined to their cells for unreasonably long periods and suffering from boredom. In effect, this amounted to laying the obligation on States of providing either work or entertainment for prisoners. It was within the power of the State to oblige prisoners to work and the legislation on that matter did not lie within the competence of the ILO. The Employer members considered that the Committee of Experts had indulged in over-interpretation in its statement in paragraph 132 that “however, the most reliable and overt indicator of voluntariness can be gleaned from the circumstances and conditions under which the labour is performed and whether those conditions approximate a free employment relationship”. It almost seemed that that prisoners might need to be protected from their own free will in accepting work. Even work outside prisons in the free market did not come near to this idealized view of voluntary work. The Employer members noted that even workers in the free market suffered severe disadvantages if they chose voluntarily not to work, including loss of income, and the failure to develop their skills and careers. The additional requirement adduced by the Committee of Experts that private enterprises should not make profit out of prison labour had its origin in the period before the universal acceptance of the free market principle. Any prohibition on private enterprises making a profit from the hiring of prison labour ignored the fact that no companies could in the long run operate without profits. These facts could not be disproved merely by referring to the ILO Memorandum published in 1932, which hardly indicated what the Conference had in mind in 1929 and 1930 in adopting Article 2, paragraph 2(c), of the Convention..
- 96.** The Employer members believed that all society was highly interested in prisoners being able to exercise a meaningful activity, which was an almost indispensable prerequisite for their effective rehabilitation and reinsertion. Prisoners should not be given pointless tasks and their work should be meaningful in the sense that the products of their labour could be sold. State institutions had fewer and fewer opportunities for such employment, so that the potential of prison labour could only be realized in close cooperation with the private sector. In that respect, it should always be recalled that it was very difficult to find enterprises willing to hire prison labour, which was not as productive as work performed on the free market, and that the enterprises which hired prison labour ran very high risks. Such work could not therefore be provided under the same conditions and paid at the same rate as in the free market. If an excessively strict interpretation were to be made of [Convention No. 29](#), the supply of work for prisoners would rapidly decline, which would be to the detriment of the prisoners themselves in terms of their rehabilitation and reintegration.
- 97.** The Worker members thanked the Committee of Experts for its remarkable analysis. They deplored the fact that very few governments had responded to the Committee of Experts’ question, making it impossible to form an overall view of the situation of forced labour in prisons within member States. The debate on this subject should be continued in an open, constructive and serious manner by the three parties concerned. In the light of the report of the Committee of Experts, the Worker members indicated: (i) that the privatization of prisons and prison labour was not a new phenomenon, since it had already been mentioned during the discussions of the Conference during the adoption of [Convention No. 29](#) in 1930 (see paragraph 101 of the General Report). Admittedly, the manner of the privatization of prisons had changed over the years, but the principles remained the same; (ii) that the work of the prisoners on behalf of private employers fell within the scope of

application of [Convention No. 29](#); and (iii) according to Article 4 of Convention No. 29, governments could not impose or permit the imposition of forced labour for the benefit of private individuals, companies or associations.

- 98.** The Worker members noted that, in practice, commercial enterprises administered private prisons. In certain cases, prisoners were considered to be cheap or free labour, lacking social protection, and often required to carry out work in worse conditions than those found in the open labour market. There had been cases of the collective firing of workers to hire prisoners for the same work, but at lower pay. The Worker members strongly denounced this practice, which prejudiced not only the working and living conditions of prisoners, but also the right to work of other workers. They indicated their full support for the concluding remarks in the report of the Committee of Experts, paragraphs 144-146, according to which the Convention did not prohibit member States from developing a system of private prison labour, but called for conditions and a supervisory system that guaranteed that labour was not forced or obligatory. They recalled that [Convention No. 29](#) was one of the eight fundamental Conventions of the ILO, and that it was therefore essential that all of its principles were fully and correctly applied in all circumstances.
- 99.** The Government member of Australia indicated that his Government strongly supported [Convention No. 29](#) and the abolition of forced labour. His Government appreciated the effort that had been put into preparing the mini-survey in the report of the Committee of Experts. On the basis of the ILO Memorandum of 1931 which identified different systems of contract labour in prisons, the Committee of Experts had noted in paragraph 100 of its report that prison management by the private sector fitted into one of these categories. The speaker rejected this view since there was a vital difference in that, at least in Australia, the State now paid the contractor for its services, whereas in the system described in the 1931 Memorandum, the contractor paid the State. With reference to paragraph 120 of the report and to the plenary session of the 1930 Conference (pages 270 and 271 of the 1930 ILC Proceedings), the Government member of Australia contended that private contractors who were paid by the government for carrying out public services should be treated on the same footing as governments, and be exempted from allegations of forced labour. While he felt that administering and managing prisons was a “public service”, a case-by-case consideration of particular arrangements could be required. In Australia, there were legislative protections addressing the supervision and control of prisons, whether privately or publicly operated, and of prison labour. The private contractor did not have sufficient autonomy to allow his business interests to jeopardize the reformatory side of the prison system. Private operators were contractually required to provide certain services and programmes – which were the same as those operating in public prisons – for prisoners in order to meet their assessed rehabilitative needs. Moreover, Australia had legislation that provided guarantees of prisoners’ rights, including the right of review in relation to grievances. If it could be demonstrated that appropriate protections, involving a role for the public authorities, were in place for privately managed prisons, then it was of no relevance that the prison was privately managed. Since the Australian Government considered that the work undertaken in its privately managed prisons fell within the exemptions allowed by Convention No. 29, there was no need to demonstrate voluntarism and “conditions approximating a free employment relationship”. The speaker also pointed out that the 1966 International Covenant on Civil and Political Rights did not address the role of private contractors with regard to prison labour. In paragraph 145 of its report, the Committee of Experts had referred to the need to avoid unfair competition with free workers. The speaker suggested that any such concern should not be confined to privately managed prisons. Rather, it concerned all prison labour, even if the labour was for the benefit of the prison itself, such as kitchen duties. The question was whether unfair competition was relevant to Convention No. 29 and the speaker thought that it was not. However, if it was, then the question was whether rehabilitation of prisoners could be addressed through

means other than work. His Government was not suggesting that [Convention No. 29](#) required revision. Rather, the interpretation of the application of those principles needed review on this one issue. Furthermore, the Government was not suggesting that all arrangements concerning privatization of prisons and prison labour be excluded from the scope of [Convention No. 29](#). Rather, it was questioning whether the simple public/private proxy continued to be appropriate when there were arrangements that had evolved which, in effect, were a hybrid of the two models. Further study on the issue was needed.

- 100.** The Government member of the United Kingdom referred to the analysis of the Committee of Experts which found similarities between the use of labour by private sector companies in the 1920s and the circumstances of private prisons today. However, similar to the views expressed by the Government member of Australia, his Government did not believe this analysis and the conclusions drawn from it reflected the changes which had taken place in penal affairs over the past 70 years. His Government strongly supported the objectives of the original drafters of [Convention No. 29](#), namely that prisoners should be safeguarded from having their labour abused for commercial gain. Private prisons were an integral part of the United Kingdom prison system, with about 7 per cent of the total prison population, a figure that was likely to grow. They were subject to the same laws, and followed the same rules and regulations, as the public prisons. Prisoners moved frequently between public and private prisons as they progressed through the system. One of the key tasks of public and private prisons was to give prisoners the skills, experience and the self-discipline that came through employment, so as to reduce their chances of reoffending when they were released. Private sector involvement was needed in order to provide meaningful work for prisoners. His Government accepted the conclusion in paragraph 145 of the General Report that, when designing or implementing systems of privatized prison labour, countries needed to do so on the understanding that such involvement carried with it additional requirements and the need for a thorough analysis. His Government also readily accepted the need to avoid unfair competition with free workers as expressed in paragraph 145 of the report. But these considerations were outside the scope of [Convention No. 29](#). In his view the Committee of Experts' proposition on the voluntary participation of prisoners in private sector prison work was wholly unrealistic. His Government had great difficulties in accepting this proposition which would do great damage to the rehabilitation of prisoners in the United Kingdom. A viable prison workshop could not be run at the whim of prisoners. It was vital that an international Convention of such importance was treated as a living document with a changing interpretation which reflected the realities of a complex changing world and in this regard he noted the Committee of Experts' readiness, expressed in paragraph 146 of the report, to examine new factual situations as they arose. The meeting should therefore recognize that further work was required on this whole matter in conjunction with penal practitioners from countries in which private prisons formed a part of the general prison system. The purpose of this work would be to find an interpretation of Article 2(2)(c) which properly reflected fundamental concerns about the potential for abuse of prison labour, but which did not damage the operation of a humane prison system in which there was private sector involvement.
- 101.** The Government member of the Syrian Arab Republic stated that work by prisoners which was performed in the context of training and rehabilitation could not be regarded as forced labour, and it was important to make a distinction between penal sanctions and forced labour. The Government member of Kenya emphasized that the question of prisoners being "hired to or placed at the disposal of private individuals, companies or associations" was a matter of very serious concern which merited the attention of the Committee.
- 102.** The Government member of New Zealand welcomed the opportunity provided by the Committee of Experts' examination of [Convention No. 29](#) and prison labour to contribute once again to the discussion of the Convention and the interpretation of its application to

prison-related issues. In recent years, many members of the Committee had called for a realistic and up-to-date interpretation of the Convention's provisions regarding prison issues, but in this regard, the Committee of Experts' examination of the issue of the privatization of prisons and prison labour did not meet the expectations of her Government. She stressed that her Government supported [Convention No. 29](#) and the abolition of forced labour. Her Government recognized that there was a need to protect prisoners from exploitation. On the other hand, there was also a need to provide inmates with work experience and skills, in order to rehabilitate them and prevent them from returning to criminal activity. In some countries, involvement by the private sector in providing meaningful opportunities for work and training was a reality of modern prison practice. She referred to paragraph 128 of the report, which stated that a primary concern was whether prisoners could ever be in a situation in which it could be said that their labour was truly voluntary because of their captive circumstances. She considered that the situations referred to in paragraph 113 of the report (where there is no connection with private enterprise) were covered by the exemption in Article 2(2)(c) of the Convention and that there was no requirement that prisoners give their consent or receive payment for their labour under those circumstances. It was the view of her Government that, if member States ensured that suitable safeguards were in place to protect prison inmates from exploitation, and if prisoners willingly and freely volunteered to do any work or training, then it was difficult to accept that work or training carried out with private sector involvement would constitute forced labour as defined by the Convention. [Convention No. 29](#) was a core Convention and it was important to ensure that its application remained relevant in an ever-changing economic and social environment. New Zealand therefore supported the call made by a number of member States for further examination of [Convention No. 29](#) and its application to prison labour, particularly looking at current practices and developments.

- 103.** The Government member of Switzerland noted that [Convention No. 29](#) could apply to private prisons. The reinsertion of prisoners nevertheless required additional measures such as the protection of captive labour in order to avoid unfair competition with free workers, the voluntary consent of prisoners and working conditions similar to those in free employment relationships.
- 104.** The Government member of Germany did not share the views of the Employer members concerning the issue of prison labour. While the limited information by governments was to be regretted, it was nevertheless an issue worth discussing on the basis of the information available. There was also a factual difference between working conditions in prisons and normal labour market conditions.
- 105.** The Government member of Portugal considered that prison labour should be voluntary and should be carried out in conditions close to those of workers in the free labour market. She referred to paragraphs 144 to 146 of the report of the Committee of Experts as a useful analysis that contributed to an improved understanding of the most important aspects of this issue. She emphasized that those persons who had been sentenced to imprisonment should not also be deprived of other fundamental rights. They should not therefore be required to carry out compulsory labour whether the prison was public or private. The State should guarantee the fundamental rights of prisoners in both law and practice. She indicated that there were no private prisons in Portugal and that the work carried out by inmates in Portuguese prisons was always of a voluntary nature. One of the primary concerns of the legislators in drafting legislation in this area was to guarantee prisoners the same working conditions, with regard to wages, hours of work, rest periods, occupational safety and health and social protection, as those enjoyed by workers on the free labour market.

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- 106.** The Government member of Cuba recognized the usefulness of the extensive and in-depth examination of [Convention No. 29](#) and warned that the trend to privatize prisons increased the risk of exploiting and violating the human rights of the prison population. She urged States not to divest themselves of their responsibility to establish protection measures against forced labour by prisoners.
- 107.** The Government member of the United States noted that the Committee's general discussion had demonstrated an obvious need for more information and more clarity on the extremely complicated and controversial issue of privatized prison labour and how it conformed or did not conform to [Convention No. 29](#). The Committee of Experts had lamented the fact that it was unable to develop a general picture of law and practice in this area. Consequently, the speaker urged the Office to collect further information on private sector involvement in prison labour, particularly on the situation in practice, so that the Committee of Experts could gain a full sense of what types of privatized prison labour could result in meaningful rehabilitation of prisoners and what types, on the contrary, were exploitative and therefore unacceptable forced labour. The speaker looked forward to continued dialogue on this issue next year.
- 108.** The Government member of Lebanon raised the question whether there was a need for a new General Survey on [Convention No. 29](#).
- 109.** The Government member of Canada noted that, while the Canadian situation differed from that of countries with extensive private prison systems, and prison work in Canada was voluntary, the comments of the Committee of Experts on this topic were not without interest. Canada shared the views expressed by a number of previous speakers that certain issues, such as contractual relationships with the private sector and early release programmes, merited further consideration by the Committee of Experts. She noted that paragraph 146 of the report of the Committee of Experts recognized that its role in supervising the application of [Convention No. 29](#) was ongoing and that, when new factual situations arose, it would examine them. In this context, she considered that there would be some value in a further review of the manner in which [Convention No. 29](#) was to be applied in order to achieve the ultimate purpose of the Convention with respect to prison labour, which is the protection of prisoners from exploitation.
- 110.** The Worker member of the United Kingdom expressed disagreement with the comments of the Employer members. With regard to the state of prison labour in the United Kingdom, he noted that little had changed but for the fact that Blakenhurst Prison had been taken back under public control. He regretted that his Government had submitted its report in reply to the Committee of Experts without prior consultation. The report of the Committee of Experts had focused on technical aspects of its consistent interpretation of the Convention. Noting that his Government disagreed with the position taken by his organization on the issue of private prison labour, he observed that such disagreements arose on occasion. However, a member State could not simply agree to differ with the ILO supervisory bodies. Such a situation was unacceptable and rendered the obligations arising from the ratification of a Convention meaningless. It undermined the universality of international law. In light of the report of the Committee of Experts, the Employer members had now recognized that, in fact, the drafters of [Convention No. 29](#) had considered the question of prisoners working for private companies in 1930. The Worker members disagreed with the conclusion of the Employer members that if the number of violations in this regard was on the rise, then this signified that the Convention was obsolete. Based on that argument, [Conventions Nos. 87, 98, 138 and 182](#) would also be obsolete. Instead, the fact that the incidence of private prison labour had undergone a resurgence in recent years, driven in part by globalization, indicated the wisdom and foresight of those who had drafted the Convention and the continuing and precise

relevance of the principles of the Convention in the twenty-first century. There was a general consensus that the Convention did not apply to convicted prisoners performing work for the State, under public supervision, and from which private companies derived no benefit. However, if the Employer members were correct and the Convention did not apply to work performed for the benefit of private companies either, then it would not cover prison work at all. He wondered whether anybody really wanted to suggest that and whether the attack would next be levelled at [Convention No. 105](#).

111. The Worker member of the United Kingdom further noted that the Employer members were correct in asserting that the consent of prisoners was not required by the Convention. However, this was only true where the prisoner had been convicted in a court of law, the work was carried out under the effective supervision of the public authorities and where the prisoner was not placed at the disposal of private enterprises or individuals. He disagreed with the statement by the Employer members that any competitive advantage of lower wages in prisons was cancelled out by lower productivity. He had yet to meet a private employer who would provide employment in the expectation of being uncompetitive. The fact was that, with few exceptions, the work provided by private companies was low skilled or unskilled, labour intensive and could not be carried out at a profit in the free labour market, except perhaps by exploited homeworkers. Responding to the assertion that only the private sector could provide meaningful work, he wondered whether his organization's public sector affiliates were to consider that their work was meaningless. In fact, the private sector did not provide prisoners with meaningful work that could contribute to the development of skills required for their effective rehabilitation and reinsertion into the labour market. The issues under discussion were not only about privatized prisons, but about all work performed by prisoners placed at the disposal of private companies, whether in privately run or state-run prisons. It was acceptable that prisoners performed work for private companies, so long as it was decent work performed under the conditions and with the protections required by the Committee of Experts. Indeed, rehabilitation required decent and meaningful work and marketable skills. However, the discussion of such work must begin with the criteria laid down by the Committee of Experts. It was not possible to have that discussion and at the same time to say that the Convention did not apply to prison labour for private companies. In that case, one would have to revert to the simple position that all work for private companies, including, a fortiori, all work performed in private prisons, was banned by the Convention.

112. The speaker further stressed that the challenge to the social partners and governments was simply whether they had the political will to join a debate in which all parties could work together to find a solution in conformity with this fundamental Convention. The Committee of Experts had provided the necessary parameters for a constructive debate. But if some employers and some governments simply wanted *carte blanche* to foster the exploitation of prisoners for private benefit, that could not be agreed to. Nor could the Worker members agree to any conclusions by the Committee which ultimately weakened the coverage of the Convention. When the Governing Body had agreed upon the new reporting cycles and the programme of revision, part of that agreement had been that the fundamental human rights Conventions would not be revised. That remained a keystone of any debate. The Worker members would not therefore enter a discussion which would have the effect of endangering the principles of [Convention No. 29](#). Disagreeing with those members of the Committee who considered private prison labour to be a marginal issue, the speaker gave examples of abuse fostered where public supervision of prison labour was not required, nor the prisoners' consent or the protection of labour laws. As to the statements of the Employer members that the conditions and modalities applying to prison work were the competence of member States alone, the Worker members thanked the Committee of Experts for reasserting the universality of the application of [Convention No. 29](#).

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- 113.** The Worker member of the United States praised the Committee of Experts for its detailed comments on this topic, which documented the wisdom of the drafters of Convention No. 29 over 70 years ago in establishing principles to protect prisoners employed by private employers. These principles remained valid and applicable today. In light of the report of the Committee of Experts, the issue raised this year by the Employer members and some member States was no longer about a Convention whose drafters had not anticipated certain developments in the modern world, since the report showed that they had undoubtedly done so. The challenges made to the Convention, especially to Article 2(2)(c), which set forth the conditions under which prison labour was exempted from the prohibition on forced labour, now focused on the contention that these conditions were obsolete in the modern world. While it was true that the Convention addressed such heinous forms of forced labour as trafficking, bonded labour and forced labour exacted by the military, the exploitation of private prison labour was not marginal. It was a growing practice in many developed countries and was in fact the aspect of the Convention that was most often violated in developed countries. To characterize this practice as marginal or as somehow less important was to contend that the violation of Convention No. 29 by developed countries was of less concern to the Committee than the allegedly more serious violations found in other member States. He could not accept this view and once again asserted the universal application of the ILO Conventions, and particularly its core Conventions, such as Convention No. 29. Any attempt to marginalize the violation of core Conventions in developed countries was tantamount to challenging their universal application. Detailing experience in his own country he considered that prospects of the Convention's ratification by the United States grew steadily dimmer as the exploitation of private prison labour continued to increase in the country. He stressed that virtually all prison industries in the country were profitable and almost all were self-sustaining. This belied the assertion that few profits could be made from such labour. He pointed out that a wide variety of legal regimes regulated prisoners' work, and wages paid to prisoners in the United States were as low as 14 cents an hour. The conditions under which privately run prisons and the provision of prison work by private companies could be exempted from the Convention had been outlined by the Committee of Experts. He therefore considered that it would be more constructive for the Committee to engage in a discussion on how best to regulate these practices, so that member States could comply in innovative and creative ways with the conditions contained in Article 2(2)(c) of the Convention, instead of disparaging this fundamental ILO Convention.
- 114.** The Worker members indicated that their views were reflected in the statements by the Worker members of the United Kingdom and the United States.
- 115.** The Worker members of Greece and Uruguay expressed their agreement with the Committee of Experts and their concern at the statements by the Employer members concerning work in prisons. The Worker member of Uruguay noted that capital was not interested in the rehabilitation of those who had committed a crime nor the subsistence of their families, but simply sought cheaper labour, under totally unfair conditions of competition. The Worker member of Colombia appealed to the international community concerning the urgent need not only to eradicate forced labour but to take measures to solve the serious deterioration in the human rights of prisoners and prison guards. The Worker member of Pakistan agreed with the Committee of Experts that prisoners employed in the private undertakings needed to have given true and genuine consent to the work in question, which needed to be accompanied by adequate safeguards. He did not agree with the Employer members' views on this issue to which particular attention was required in order to ensure that prisoners were not exploited by private entities. Moreover, prisons needed to be run by the State.

116. A Worker member of France observed that the case of [Convention No. 29](#), which was still relevant after 70 years, was a good example of the modernity of the Organization. Another Worker member of France emphasized that a large number of those in prison were still awaiting trial, while others had been imprisoned for political reasons. The conditions under which the judicial system functioned, including the overcrowding of prisons and delays in legal procedures, had contributed to a scandalous increase in detention pending trial. He also deplored the level of education and training given to prisoners, which was generally well below average. In his view true social rehabilitation for persons who had been convicted following a fair trial could only be achieved through the training and education of prisoners, and also possibly through prisoners carrying out socially useful work. The demands of social reintegration did not signify the eradication of all prison labour, but implied working conditions that were very similar to those of free labour. Privatization of prisons and forced labour by prisoners were not directly linked to the issue of social reintegration. This was more of an ideological option involving the implementation of a penal policy that increased the risks for the rights of prisoners, who did enjoy the protection afforded by [Convention No. 29](#). For this reason, the analysis of prison labour carried out by the Committee of Experts, with regard to the provisions of [Convention No. 29](#), was totally pertinent and justified. The Worker member of Côte d'Ivoire associated himself with the statement as it reflected the concerns of the workers of Côte d'Ivoire. The report of the Committee of Experts provided a wealth of information and made him question the nature of the work of a person who was forced to accept a very low salary because he was poor or hungry.

117. The Worker member of New Zealand congratulated the Committee of Experts on its analysis of [Convention No. 29](#). There had been increasing concern about this issue in New Zealand during the past five years with a trend towards the employment of prisoners in the private sector businesses. The report of the Committee of Experts therefore provided very timely advice and guidance for the Government of New Zealand, which had ratified the Convention. The Committee of Experts had confirmed that work of prisoners should comply with the requirements of the Convention. The sole justification for prison labour was the public interest in effective rehabilitation, which was a benefit for both the prisoner and society in general. However, effective rehabilitation could not be based on exploitation and the jurisprudence provided by the Committee of Experts outlined the crucial protections necessary to avoid exploitation. It was to be hoped that governments would focus on full and proper compliance with this jurisprudence, rather than calling for yet further interpretation in the hope that the jurisprudence would somehow change to comply with their preferences.

C. Other issues

118. The Worker member of Greece noted that the legislation of many countries that had ratified the Convention made no mention of sanctions imposed against those who unlawfully exacted forced labour. A Worker member of France emphasized that victims of war crimes and crimes against humanity also had a right to compensation, irrespective of the time that had passed, and that these issues should be examined within the framework of [Convention No. 29](#). The Worker member of the Republic of Korea noted that forced labour came in various forms such as slavery, bonded labour, indentured labour and prison labour. Other forms of forced labour manifested themselves during wartime. Efforts to recognize and acknowledge responsibility for forced labour would give strength to the current struggle to eradicate forced labour. There was hope in the recent decisions by the Government and employers in Germany to accept responsibility for forced labour during the Second World War and pay compensation for it. This was a good example of the effort to break the cycle of impunity over forced labour which was deemed to be a crime against humanity. The ILO had a great opportunity to mobilize its mechanisms to be part of this

effort by encouraging the concerned member States to accept responsibility as mentioned by the Committee of Experts. Finally, the speaker noted with regret that Korea was one of only ten countries which had failed to ratify either of the two Conventions on forced labour.

Application of Conventions on child labour

- 119.** The Employer members welcomed the high rate of ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182), and the development and success of the International Programme on the Elimination of Child Labour (IPEC). While the Committee of Experts had expressed the hope that the reports provided by governments under the IPEC programme would provide detailed information on the progress achieved, the Employer members also believed that it would be useful if they reported on the problems encountered.
- 120.** The Worker members also welcomed the high rate of ratification of both Conventions on child labour. The Worker members highlighted the important role they played in promoting the ratification of these fundamental Conventions through campaigns and other activities.
- 121.** The Worker member of Colombia shared the concerns of the Committee of Experts on child labour and their satisfaction at the high number of ratifications. Nevertheless, it should not be forgotten that the common denominator in countries like Colombia was instability, company closures, large-scale redundancies, and the application of neo-liberal remedies. Consequently, the paradox was that children were required not to work yet their parents were not given work, thus condemning them to social exclusion. The Worker member of Cuba emphasized the need for more energetic promotion and more effective measures to implement [Convention No. 182](#), both by governments and employers' organizations which very often exploited children for the sake of greater profits. The Worker member of Côte d'Ivoire noted that child labour should be considered today as inextricably linked to the AIDS epidemic since it represented one of its consequences. The Worker member of Brazil regretted that his Government had not yet completed the steps to register the ratification of [Convention No. 138](#).
- 122.** The Government member of Lebanon informed the Committee that, under the memorandum of understanding signed between IPEC and the Government of Lebanon, a national committee was set up to formulate a programme for the eradication of child labour. Such programmes needed to include strategies for the eradication of poverty, the provision of employment opportunities for parents, and for free mandatory education for children. The Government member of China welcomed the success of the ILO's efforts for the elimination of child labour and noted that China had ratified the Minimum Age Convention, 1973 (No. 138), and would soon ratify the Worst Forms of Child Labour Convention, 1999 (No. 182). His Government had adopted a strict policy on child labour and had struck hard against violations of child labour laws. It had promoted the rights of the child and had given help to victims of child labour, with successful results. China was willing to share its experiences in this area with the international community. The Government member of Egypt was pleased to confirm that her Government considered child labour to be a critical issue worldwide in both developing and industrialized countries and gave priority to applying national policies on child labour. She pointed out that Egypt had ongoing activities with IPEC; it had joined the Statistical Information and Monitoring Programme on Child Labour (SIMPOC) to develop statistics on child labour, and had adhered to other instruments on child labour.

Application of the Employment Policy Convention, 1964 (No. 122)

- 123.** The Employer members noted that this year's report placed particular emphasis on the relationship between employment promotion and social security systems. In that respect, they recalled that they had been advocating for many years that employment policy could not be isolated if it were to be successful. Coordination was clearly required with policies in other sectors through the adoption of an integrated approach. However, the Employer members did not agree with all of the specific points such as that in paragraph 150, where the Committee of Experts had referred to the role of social protection in minimizing fluctuations in consumer demand, in reducing employment loss during depressions, in reducing poverty and in maintaining employability. Although these statements were partially correct, account needed to be taken of factors such as investment demand by companies, which was a prerequisite for job creation. Yet, increases in social protection raised the costs of enterprises, thereby diminishing their capacity for investment. Indeed, the Employer members felt that a number of problems in the labour market had their origins in one-sided social security schemes. Although some success had admittedly been attained in coordinating employment and social protection policies, it was only possible to redistribute what had already been earned.
- 124.** With respect to the extension of social protection to the self-employed referred to in paragraph 152, the Employer members expressed the belief that self-employed workers were too often seen merely as additional sources of financing for social protection schemes. However, the real need was to reduce or stabilize social expenditure. They welcomed the comments made on the integration of jobless persons, on the use of unemployment benefits to start businesses and on counselling and training. They noted that some countries had outsourced some of these services and that private service providers had successfully been involved in a number of related areas. However, in view of the importance of reducing social contributions, it sent the wrong signal when workers were given generous benefits to retire early. Clearly, innovative approaches were required, although the economic conditions and the consequences of the measures adopted meant that provisions would differ widely from one country to another.
- 125.** The Worker members stressed that the Employment Policy Convention, 1964 (No. 122), was a priority Convention since employment policy was considered to be a cornerstone of all social policies and a healthy economy. Without employment, all other social standards lost their importance: in particular, social security standards. Even though employment and social protection were closely linked, many governments still continued not to reflect this link in practice. However, a good employment policy had a positive effect on employment in general and guaranteed decent incomes, which was why the Worker members urged governments to create and strengthen the links between employment and social protection as indicated in the report of the Committee of Experts. For his part, the Worker member of Pakistan noted that the employment situation in developing countries, including in Pakistan, had been growing serious due to the policies of the IMF and the World Bank through restructuring and deregulating the labour market and the privatization of the public service resulting in downsizing and redundancies of the workers, on the one hand, and a reduction of public expenditure on social services to the public at large with low income.
- 126.** Several Government speakers recalled the importance of the subject of employment policy and of an integrated approach to social protection and employment (China, Kenya, Lebanon and Switzerland). The Government member of Bahrain (speaking on behalf of member States of the Gulf Cooperation Council) stated that even where the Convention was not ratified, this did not mean that its provisions were not implemented. The Government member of Switzerland noted that although her Government had not ratified

[Convention No. 122](#), applying a policy of employment promotion during the last four years had enabled Switzerland to have an unemployment rate which was below 2 per cent as well as a reduction in the number of the long-term unemployed.

- 127.** The Government member of Lebanon questioned how freely chosen and productive employment could be ensured in the face of globalization. To promote the application of [Convention No. 122](#), there was a need to reinforce ILO programmes relating to job creation and small and medium enterprises. Her Government had taken several steps with a view to enhancing job creation and increasing employment opportunities. The Government member of China, noting that social protection played an important role in reducing poverty and promoting employability, indicated that his Government had established a modern labour market and had taken active measures to promote employment opportunities, including the provision of vocational training and guidance.

Application of Conventions on social security

- 128.** According to the Employer members, the continued insistence by the Committee of Experts on the need for state administration and the involvement of the social partners tended to ignore the fact that social security systems worldwide were undergoing far-reaching reform, involving a basic shift of responsibility in this area from the State to the private sector. The report gave the impression that the social security standards were perfect and did not impose rigidity. They felt that it was necessary to accept in the field of social security the principle of subsidiarity. The relative responsibilities of the State and private systems therefore needed to be redefined.
- 129.** The Employer members noted that in paragraph 158 the Committee of Experts referred to the lessons learned during the 1990s and affirmed that “the way out of depression to a sustainable growth and development passes through multiplying investments in the social capital of a nation”. However, the experience of the Employer members was just the opposite. They had found that any investment in social capital automatically increased compulsory contributions. Such increases in wage costs were always an obstacle to recovery from depressions, since they prevented enterprises from employing new workers. In this respect, the Employer members did not share the certainty of the Committee of Experts that future changes in social security systems would be guided by a more coherent, long-term and internationally coordinated policy of social reform.
- 130.** The Worker members expressed their satisfaction at the establishment of a Committee at the present session of the Conference to undertake a general discussion on the future of social security. They recalled that the objective of social security Conventions was to create a minimum threshold of principles and individual rights for workers confronted with a social contingency that required either intervention or compensation. In the view of the Worker members, the Conventions concerned left sufficient flexibility as regards the application of the principles set forth therein. In many countries, social security or certain aspects of social security were currently being restructured or privatized. In this regard, the Worker members emphasized that, while international labour standards did not prohibit the transfer of a part of the responsibility of the State to private insurers, they however defined the principles to be respected to ensure that the right of all workers to social protection was guaranteed. One of the principles to which the Worker members attached a great deal of importance was the management of social security. Irrespective of the form of management, it was essential that the social partners – that is to say insured persons – were able to participate directly in the management of what, in fact, represented part of their income. The right to social security was a right for all workers, and should be extended to workers in the informal sector.

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- 131.** Several Worker members (Colombia, Côte d'Ivoire, Netherlands and Turkey) expressed concern over the recent attempts in countries to change social security systems. The Worker member of Turkey reminded the members of the Committee of the Report of the Director-General on Social Insurance and Social Protection submitted in 1993 to the 80th Session of the International Labour Conference. The protection of workers against various contingencies, through social schemes based on solidarity and state contributions, was emphasized. The speaker referred to recent attempts in many developing countries to change social security schemes, especially at the behest of the International Monetary Fund (IMF) and the World Bank, as part of the structural adjustment and austerity programmes. Many of the insurance schemes proposed by the IMF and the World Bank had proven to be detrimental for the working people. In these circumstances, the preservation of the gains of the workers through the ILO Conventions on social security was of the utmost importance. The Worker member of Colombia indicated that in his country the constant factor was the dismantling of social security, a return to systems of prepaid medicine, privatization and disregard for workers' social rights.
- 132.** The Worker member of the Netherlands recalled that social security systems were very much under attack throughout the world. On that subject, as quite rightly indicated by the Worker member of Colombia, States should be urged to take specific and effective measures to build a social State and guarantee social justice. Stable and decent work was a prerequisite to the establishment of any social security system, as pointed out by the Worker member of Côte d'Ivoire. The Government member of Lebanon noted that social security systems around the world faced the challenges of restructuring, funding and management. Her Government had recently promulgated legislation, based on ILO social security standards, covering new categories of people.
- 133.** The Worker member of Greece referred to the quality of the standards adopted by the Conference, which had been ratified by a good number of countries. The viability and quality of social security systems required that public systems be safeguarded and improved. With regard to retirement pensions systems, he affirmed that the method of financing these systems should be based upon the pay-as-you-go principle, in the absence of which societies would develop that had lost all forms of solidarity between citizens, workers and generations. He concluded by emphasizing that there could be no question of a return to the conditions that had prevailed in the nineteenth and early twentieth centuries. The Worker member of the Syrian Arab Republic indicated that both workers' and employers' organizations placed importance on the Equality of Treatment (Social Security) Convention, 1962 (No. 118), and the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), in relation to the promotion of economic and social development.

Technical assistance relating to standards

- 134.** As in previous years, the Worker members expressed their support for all ILO activities to strengthen the application of international labour standards and urged the Office to provide more technical assistance and promote standards more widely in order to raise global awareness of international labour standards and the ILO supervisory system throughout the world. The Worker member of Pakistan stated that while such assistance was welcome, he felt that the MDTs could do more in providing support services in the form of seminars and meetings in countries to promote and to raise awareness of standards.
- 135.** The Employer members welcomed the information provided on promotional activities, technical cooperation and the role of employers' and workers' organizations.

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- 136.** A number of Governments (Argentina, Brazil, Egypt, Kenya, Kuwait, Lebanon and Portugal) noted their appreciation for the technical assistance relating to standards that had been provided by the Office. The Government member of Argentina highlighted the valuable technical assistance mission from the Standards Department that had cleared up some situations on which the Committee of Experts had formulated observations. The Government member of Cuba highlighted the value of technical assistance activities, and particularly the work of the multidisciplinary advisory teams, as an effective way of taking action for the implementation of the Conventions. The Government member of Belgium drew the Committee's attention to the merits and effectiveness of the MDTs that had undertaken many commendable initiatives with regard to standards policy and technical assistance. The latter needed to be developed in order to assist the many countries that could not fulfil their obligations with regard to the timely submission of reports. The Government member of Bahrain (speaking on behalf of member States of the Gulf Cooperation Council) recalled that the Ministers of Labour and Social Affairs of the Council had signed an agreement with the ILO to promote collaboration in all fields of ILO action. The Government member of Lebanon noted the technical assistance from the ILO Office, including the Regional Office and the MDT, and requested an increase in the budget allocated for such assistance to Arab countries.
- 137.** The Government member of Kuwait highlighted how her country had benefited from the ILO experience in labour legislation by having revised the draft Labour Law taking due account of the comments made by the supervisory bodies of the ILO. She pointed out the benefits resulting from the technical assistance provided by the Regional Office in Beirut in the preparation of national reports through a training programme and in ratifying new Conventions, including [Conventions Nos. 29, 87, 105 and 111](#). She noted that tripartite seminars held on international labour standards were welcome. The speaker requested that an advisory mission be undertaken by the ILO with a view to providing technical assistance in the domain of freedom of association given her country's commitment to Convention No. 87. She reiterated that the technical assistance of the ILO was one of the tools of progress for the improvement of the conditions of workers and she stressed Kuwait's commitment to bringing its national labour legislation into line with the provisions of the ratified Conventions.
- 138.** The Government member of Kenya emphasized his Government's satisfaction at the ILO's organization in 2000 of regional and subregional seminars on standards, contact missions, advisory missions and training workshops on relations between standards and technical cooperation. He expressed appreciation that specialists in standards were in place in 14 of the 16 MDTs to assist member States in the fulfilment of their obligations deriving from the ILO Constitution and ratified Conventions. He emphasized the importance of the work of MDTs in the promotion of social dialogue and in the campaign for the ratification of the ILO's fundamental Conventions, as well as in the promotion and application of other Conventions. The Government member of Portugal placed importance on the ratification campaign. The Government member of China considered that the work done by the ILO, including dissemination of information, provision of technical assistance in drawing up workplans for ratification and assistance in drafting labour legislation, were effective methods of promoting the ratification of ILO Conventions.
- 139.** The Worker members welcomed with great satisfaction the ILO's commitment in the combat against HIV/AIDS. It was essential that, in addition to prevention, emphasis be placed on the rights of workers living with HIV/AIDS. The HIV/AIDS phenomenon was currently and would remain for many years to come a scourge with terrible consequences, which was why the Worker members invited the ILO to continue its efforts in this field.

140. The Government member of Egypt welcomed the ILO's recent activities on HIV/AIDS, and particularly the decision by the Director-General to establish an ILO programme on HIV/AIDS. She expressed the hope that this programme would undertake activities to address the problems relating to HIV/AIDS in countries where the disease was widespread and to help prevent the spread of the disease in other countries. She recalled the importance of the services provided by the MDTs in improving the implementation of international labour standards. She stated that more support was required by MDTs to assist countries in fulfilling their obligations deriving from the ILO Constitution and ratified Conventions.

C. Report of the Seventh Session of the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendation concerning the Status of Teachers (CEART)

141. The report of the Joint Committee was introduced by the ILO Secretary-General of the Seventh Session, Mr. de Vries Reilingh, speaking also on behalf of the UNESCO Secretariat of the Joint Committee. He recalled that the Joint Committee was created in 1967 by parallel decisions of the ILO Governing Body and the UNESCO Executive Board, in order to monitor and promote the application of the ILO/UNESCO Recommendation of 1966. The mandate of the CEART was extended in 1999 by decision of the ILO Governing Body and the UNESCO Executive Board so as to cover also the application of the UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel, adopted by UNESCO in 1997. The CEART held its Seventh Session at the ILO in Geneva from 11 to 15 September 2000. Its report was considered by the Governing Body at its 280th Session in March 2001, which authorized the Director-General to forward the report to this Committee for examination.

142. The report before the Committee contained a short summary which highlighted sources of information, key issues, conclusions on major subject areas, and recommendations to the ILO and UNESCO. In terms of information, for the first time the CEART had held highly appreciated consultations on issues concerning the two Recommendations with international teachers' and employers' organizations, and the United Nations Special Rapporteur on the Right to Education. A central feature of the CEART's Seventh Session was its examination for the first time of the application of the 1997 UNESCO Recommendation. The Joint Committee recommended that priority action needed to focus in the immediate future on research into academic freedom and security of employment, notably tenure, in higher education institutions and systems, as an essential first step towards promoting respect for the provisions of the 1997 Recommendation. The Joint Committee again considered a number of allegations from national or international organizations representing teachers, relating to non-observance of provisions concerning the two Recommendations in certain member States. Its detailed examination, findings and recommendations of nine cases were contained in Annex 2 of its report. In addition to these items of the report, the Joint Committee had made a number of recommendations for changes in policy and practice in member States in substantive areas related to the Recommendations: employment, careers and status in teaching; social dialogue in education; teacher education and training; and implications of lifelong learning and information and communications technologies for the teaching profession.

143. The speaker indicated that the UNESCO Executive Board was expected to take up the Joint Committee's report later this year at its autumn session. At the same time, it would also examine a report from the UNESCO Secretariat on the relationship between the CEART and the UNESCO Executive Board's Committee on Conventions and

Recommendations. In the meantime, planning had already begun in cooperation with the UNESCO Secretariat to implement key recommendations of the Joint Committee, as recommended by the Governing Body in its March decisions. The priority activities were highlighted in the report's summary, among them: completion of a high profile study on social dialogue in education; undertaking studies on academic freedom and employment structures, notably tenure, in higher education; development of international guidelines and policy advice to member States on HIV/AIDS in education and training; and work on policy-oriented qualitative and quantitative teacher indicators. Greater implication of CEART members in thematic working groups and involvement of educational partners in implementing its recommended actions comprised key methodological approaches to future work.

- 144.** The Worker members had noted with interest the report of the Joint ILO/UNESCO Committee of Experts. It provided an overview of the main issues raised by the status of teaching personnel, and the Worker members were gratified by the manner in which the Joint Committee had fulfilled its mandate, including for the first time, monitoring and promotion of the 1997 UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel. The initiative to invite representatives of actors on the ground – international, teachers' and employers' organizations, as well as the United Nations Special Rapporteur on the Right to Education, to an informal briefing meeting was welcomed. The Worker members shared the concern of the members of the Joint Committee, already expressed in 1998, about the excessive intervals between meetings of the Joint Committee, and the risk that this might undermine the monitoring system. The search for an effective solution should continue, including the allocation of more resources to the Joint Committee's work.
- 145.** On the question of employment, careers and status of teachers, the Worker members noted that the Joint Committee once again observed that teachers' morale was very low, a structural problem affecting teachers throughout the world. Bearing in mind the strategic role of teaching in society, it was important to identify objectively the causes of that situation and to take account of differences between regions, priorities identified and budgetary resources which varied from country to country. There was a fundamental contradiction between the importance attached to training to increase peoples' qualifications, and the priority attached to financial structural adjustments. In the majority of countries, government revenues had fallen sharply, leading to an immediate drop in resources allocated to education, and further deterioration in teachers' status because of the use of fixed-term employment. The Joint Committee had noted losses in job security as a result of budgetary constraints in paragraph 67 of its report. While the importance of teaching and lifelong education was universally recognized, the organization and financing of that sector raised more and more problems. Governments and international organizations should not confine themselves to identifying the causes of the problems and difficulties encountered, but should take measures to remedy them.
- 146.** As for social dialogue in the education sector, the Worker members emphasized, as the Joint Committee had done, that social dialogue was the most effective way of tackling the problems encountered. It was a way of initiating discussions between teachers, teachers' organizations and the social partners in general and thus reinforcing consensus and social cohesion. In that respect, the Joint Committee noted a lack of participation by teachers' organizations in all regions of the world, leading, for example, to teachers' work being evaluated without teachers, or their trade union representatives being able to appeal against the resulting decision. Moreover, it was rare for teachers' organizations to be consulted on the directions, planning or implementation of measures envisaged by the authorities in their sector. The necessary restructuring would be easier to implement if those affected felt involved. In addition to consultation, collective bargaining was also a crucial element,

clearly identified in articles 82 and 83 of the 1966 Recommendation. Governments should provide for collective bargaining at appropriate levels to facilitate improved teachers' status. The Worker members endorsed the Joint Committee's recommendation that the ILO should undertake an in-depth study of social dialogue in the education sector.

- 147.** When it came to teacher training, the Joint Committee had noted that the level and quality of training had not improved. The Worker members observed that this phenomenon was all the more serious in societies that were increasingly based on knowledge and mastery of information methods. Students must learn to use the new technologies and that required specialist teacher training.
- 148.** Concerning the impact of HIV/AIDS on teaching, the Workers members noted that the physical and mental effects of the epidemic were considerable, affecting both teachers and students. The epidemic disrupted the work of schools and the education system as a whole. As indicated in paragraph 92 of the report, it was essential that effective measures should be taken at several levels, including urging governments to set up training programmes on the prevention of AIDS so that teachers and students might be informed of the risks and how to avoid infection. The ILO and UNESCO could also play an important role in informing and advising member States.
- 149.** In conclusion, the Worker members supported the priorities of research proposed by the CEART on academic freedom and security of employment in higher education, and considered that it was necessary to take vigorous and effective measures to promote the dissemination of the recommendations and their application in practice.
- 150.** The Employer members noted that the CEART report was normally discussed every three years, although the interval had in the past been greater. Furthermore, the present report concerned the session held in September last year, but it had only been decided in the Governing Body of March this year that it would be discussed in this Committee, and the report had only reached the delegates on 22 May, which did not allow for enough time to prepare adequately for discussion. Although many teachers were public employees, the important social role of teachers and their status also affected employers. Teachers were responsible for the education of young people who would later enter the job market. Moreover, a growing number of teachers worked for private educational institutions. Yet, the present report was not easy to read or understand, and it sometimes left the impression that it was simply trying to justify the existence of the CEART, with recommendations scattered throughout the report. The Employer members considered that, despite the difficulties faced by teachers, they were fortunate to be in a profession subject to two international instruments and a special supervisory system.
- 151.** With regard to the working conditions of teachers, the Employer members had no doubt that this profession played a very important role in society, and the status of teachers, their wages, and their contracts should adequately reflect this importance. Nevertheless, working conditions should be examined in the context of the country in which a teacher worked, though employment conditions and status should be in the upper level in each country. With regard to the decentralization of the teaching profession, its consequences were not always negative. Similarly, the great changes in the nature of work which affected all sectors of the economy should not be viewed as necessarily having a negative effect on teachers. They needed to demonstrate flexibility in their profession as well, and take advantage of opportunities afforded by change and new technologies. Because teachers were learning professionals, lifelong learning should be an integral part of a teacher's career, and should include training in information and communications technologies, which were essential for success in a knowledge society. Teachers should also be prepared to take their own initiatives in this regard.

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- 152.** The Employer members agreed that social dialogue with teachers was necessary, yet such consultations should also include parents and employers. Teachers should participate in the establishment of educational curricula, yet ultimately these matters must be decided by democratically elected lawmakers and should not be part of the collective bargaining process.
- 153.** On other issues, notably HIV/AIDS, teachers needed to be on the front line of disseminating information on the prevention of the disease. They should also fulfil their obligation to provide a moral education. Finally, the Employer members found surprising the indication in the report that the teaching profession was becoming overly feminized, since a common complaint was that women were under-represented in many professions.
- 154.** The Worker member of the United Kingdom, who came from the National Union of Teachers, stated that teachers faced two major problems in her country. Recruitment and retention of teachers was a severe challenge, resulting in a teacher shortage. In some areas schools only functioned nine out of ten working days. Recruiting temporary teachers from abroad did not offer a lasting solution since it did not provide for continuity in teaching personnel and it often resulted in qualified teachers leaving developing countries. The teacher shortage had also led to the growth of temporary agencies which paid lower salaries. The long-term implications of the teacher shortage in the United Kingdom needed to be addressed by the incoming government. A second problem faced by teachers was a lack of collective bargaining rights. [Convention No. 98](#) was not applied fully in the education sector in England and Wales. The ILO/UNESCO Recommendation concerning the Status of Teachers, the UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel, ILO Convention No. 98 and ILO jurisprudence all provided that education personnel should have the right to collective bargaining. She urged governments to fulfil these obligations to education personnel, and stated that her union believed that these rights should be returned to teachers in her country.
- 155.** The Worker member of Senegal expressed his concern over the unacceptable pauperization of teaching personnel at a time when the need for education was on the increase. Both the ILO and UNESCO should really address the issue. It was difficult to understand the budget restraints imposed on the sector, which inflicted restrictions on total wages, thereby hindering prospects for hiring teaching staff and contributing to low literacy rates. Decentralization in Senegal had delegated to local communities some powers without a concomitant transfer of resources, and the lack of resources made for difficult learning conditions in some institutions. In its report, the Joint Committee also referred to the problem of “volunteers” in his country, which was condemned by the teachers’ unions who were of the view that cheap recruitment could not lead to a healthy development of the teaching profession. The absence of social dialogue and the poor involvement of teaching staff in educational reforms constituted another element in the deterioration of their conditions. Lifelong learning was a sine qua non for the good functioning of any educational system. In that respect, structural adjustment measures and the rationalization process had concrete and negative consequences for teachers’ education. Efforts made by the Joint Committee in continuing to focus on allegations submitted by the teachers’ organizations with respect to non-observance by governments of the recommendations were welcomed. He added that higher education witnessed an equally difficult situation especially in relation to the problem of academic freedom and that of university rights, and it was necessary to consider these issues in relation to the provisions of the World Declaration on Higher Education adopted in 1998. In addition, the immense damage caused by AIDS had a negative impact on schools, and there was a need to promote training programmes in order to stem the propagation of the disease. In sum, measures must be found to halt the exodus of competent teachers from education, as they should make a decisive contribution to widening access to both training and communication.

156. The Deputy General-Secretary of Education International (EI) thanked the Committee and the Committee of Experts for having opened up its procedures by meeting with education representatives. Education was a critical factor in national development, yet the importance of education was not reflected in reality. Among other issues, the growth in the use of information and communications technology (ICT) in education had been done without consultation and adequate training. Teachers needed training to take advantage of opportunities offered by ICT, but teacher training should also include education for citizenship, tolerance, human rights, anti-racism and equality. The pauperization of teaching and learning conditions mentioned in the report was accompanied by a pauperization of education personnel. Payment arrears, non-payment, or delays in payment as were seen for example in the Central African Republic were increasingly common. This deterioration in working conditions of teachers, which the Joint Committee had warned about for some time, had led to a serious shortage of teachers worldwide. As a result, industrialized countries were recruiting teachers from developing countries with little concern that these countries were losing many of their most qualified teachers. Many of the causes of the pauperization of teaching and learning conditions could be addressed through collective bargaining and the implementation of [Conventions Nos. 87 and 98](#) in countries that had ratified them. Yet, numerous examples could be cited in both industrialized and developing countries of education personnel being denied their rights. The higher education sector in particular was often excluded from the right to organize and bargain. The increasing casualization of employment and issues of academic freedom which marked the higher education sector could best be addressed through collective bargaining. Her organization agreed with the Joint Committee's report that social dialogue in education existed as the exception rather than the rule. Concerning teacher education, a number of African countries relied on unqualified persons in education, who often worked as "volunteers" with low salaries, no benefits, and no plans for training. Those policies were supported by the World Bank. Disagreeing with the Employer members, she stated that the increasing feminization of the profession was a serious problem; in some areas of the world more than 90 per cent of all teachers were women. The use of part-time contracts, precarious employment, and the lack of tenure which were common in the teaching profession were also questions of equality. EI hoped that the proposed work on indicators would be subject to a gender analysis at all stages. With respect to HIV/AIDS, it was important to ensure the rights of those who were ill, but it was also important to protect teachers who introduced programmes on the prevention of HIV/AIDS from disciplinary action. Finally, she suggested that the CEART look into the implications for teachers resulting from the inclusion of education as a service for trade liberalization under GATS, especially in view of the development of virtual education.

157. The Secretary-General of the World Confederation of Teachers (WCT) indicated that the WCT had contributed information to the Joint Committee and thus to the preparation of its report by submitting written information and participating in the informal consultation held during the meeting. He welcomed the extension of the Joint Committee's mandate to monitor the application of the 1997 UNESCO Recommendation on the Status of Higher-Education Teaching Personnel. The Joint Committee's report noted a deterioration in the status of teachers in recent decades. In developing countries, physical working conditions had not improved, in particular due to the AIDS epidemic and the existence of conflicts. As for the industrialized countries, they were faced with other problems such as violence, insecurity of employment, etc. With respect to conditions of employment, in addition to the recommendations for further action suggested by the Joint Committee's report, the WCT wished to highlight essential measures which required immediate action such as regular payment of decent salaries and the guarantee of a minimum teaching environment. Those were crucial components of quality education for all. As for social dialogue, it was paradoxical, on the one hand, that greater professionalism was demanded from teachers while, on the other, there was a reluctance to involve them in dialogue about education.

This was not sustainable as it was evident that only education systems supported by the teachers had a chance of success. Their professionalism should be recognized by including their expert opinions in the education debate. Moreover, teachers' trade unions were key actors in social dialogue and debate on the functioning and evolution of education systems. It was also difficult to demand greater professionalism when the profession of teacher barely paid enough to survive, thus forcing teachers to take other jobs. In the context of the debate on teachers' professionalism, the question of their training required particular attention. The 1966 Recommendation already contained precise criteria as to the level and content of that training. In many countries, industrialized or developing, the shortage of teachers added to the temptation to resort to soft options which did not take account of those criteria. The lack of appropriate initial training was compounded by the lack of lifelong education. Teachers were not sufficiently supported, in particular, to cope with the changes which influenced pupils' behaviour – multiculturalism, rising violence, drugs, AIDS, etc. – or the new information and communications technologies. Finally, the WCT was convinced that quality education for all was only possible if education systems fully reflected those elements in practical terms. That meant decent conditions of employment, recognition as education experts and access to initial and continuing training that was relevant and appropriate. It was hoped that the Committee would emphasize in its report the Employer members' statement concerning the desirable level of teachers' remuneration.

158. The Committee took note of the Joint Committee's report.

D. Reports requested under article 19 of the Constitution

Night Work^[id2] (Women) Convention, 1919 (No. 4), Night Work (Women) Convention (Revised), 1934 (No. 41), Night Work (Women) Convention (Revised), 1948 (No. 89), and Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948

159. The ^[cc3]Committee devoted part of its general discussion to the examination of the first General Survey made by the Committee of Experts on the application of the Night Work (Women) Convention, 1919 (No. 4), the Night Work (Women) Convention (Revised), 1934 (No. 41), the Night Work (Women) Convention (Revised), 1948 (No. 89), and the Protocol of 1990 to Convention No. 89, all concerning the employment of women during the night in industrial undertakings. In accordance with usual practice, the General Survey took into account information supplied under article 19 of the ILO Constitution by 109 member States as well as information communicated by States having ratified one or more of the Conventions in question through regular reports under articles 22 and 35 of the Constitution. Observations and comments received from 18 employers' and workers' organizations to which the government reports were communicated in accordance with article 23(2) of the Constitution were also reflected in the General Survey.

General observations

160. The Employer members considered the first General Survey of the Committee of Experts on the three Conventions on the night work of women in industry to be principally of historical interest since all these instruments were old, the most recent Convention dating back to 1948 while the Protocol was adopted in 1990. They recalled that, as mentioned in the General Survey, work on the issue of women's protection from night work in industry had commenced even before the ILO was founded in 1919. As stated in paragraph 35 of

the General Survey, the principal motive behind the prohibition of employment of women during the night was not so much social considerations but rather the desire to harmonize the conditions of industrial competition between member States. In the same way, the Preamble to the ILO Constitution made it clear that international labour standards had always been concerned with eliminating unfair competition between countries.

- 161.** The Employer members felt, however, that what had been seen as social progress 100 years ago could now represent a social impediment, and that too much protection might now be a disadvantage. There had been many changes since these Conventions were adopted, including changes in the labour market worldwide, changes in the manner in which work was performed, social changes, and an increased involvement of both sexes in working life. Scientific knowledge that had not previously been available had replaced earlier views and perceptions. It was now known, for instance, that the reasons given for banning the night work of women were based on assumptions, not facts. The ILO needed courage to go down new roads that diverged from its original approach to this issue, but such a shift was necessary in the interest of preserving its credibility. The development of the instruments in question had stretched out over a long period from 1919 to 1990, during which only limited adaptations had been made to ease the general ban on women's night work in industry. These changes had always come too late and were never sufficient. For this reason, in adopting the Protocol in 1990, the Employer members had declared that [Convention No. 89](#) was no longer justified on any grounds and that it should therefore be repealed. In conclusion, it could be said that these Conventions had not been successful and that the ILO should draw the right lessons from its experience as promptly as possible.
- 162.** Turning to the main question raised by the instruments under discussion, the Employer members expressed their firm belief that all Conventions on night work of women were synonymous with sex discrimination and were contrary to the overriding principle of equal opportunity and treatment in the workplace. They pointed out that in many paragraphs of the General Survey, including paragraph 164, the Committee of Experts recognized that a ban on women's night work in industry constituted an obstacle to the attainment of the ultimate objective of the elimination of all forms of discrimination against women and that it would eventually have to be dispensed with. They noted the apparent contradiction contained in paragraph 169 of the survey, where the Committee of Experts supported the ban on night work while calling for equal opportunities for men and women on the labour market, and thought that such position was untenable. The Committee of Experts had to choose between endorsing a strict ban on night work and advocating equality of opportunity and treatment for men and women.
- 163.** Referring to the Night Work Convention, 1990 ([No. 171](#)), the Employer members noted that it had so far received only six ratifications. This demonstrated the problem of excluding more recent instruments from the process of reviewing ILO standards which was mentioned at the end of the general discussion. While recognizing that Convention No. 171 was not addressed in the General Survey, the Employer members nevertheless noted that the problems with [Conventions Nos. 4, 41 and 89](#) could not be solved by the adoption of Convention No. 171.
- 164.** In the view of the Employer members, the ratification prospects for all three Conventions and the Protocol were dim. They observed that many member States which were still formally bound by one or more of the Conventions no longer applied their provisions in practice and considered that this reality weakened the ILO's supervisory system and undermined its credibility and authority. The Employer members concluded that the Conventions under review were so questionable that maintaining a strict ban on night work for women would jeopardize the practical application of the fundamental principle of

equality of opportunity and treatment. They felt that the time had finally come to take the decision to consign the strict ban on night work of women to the ILO's history.

- 165.** The Worker members thanked the Committee of Experts and the Office for the very detailed General Survey on night work of women in industry which tackled most, if not all, of the aspects and issues concerning the application of [Conventions Nos. 4, 41 and 89](#) and of the Protocol of 1990. The survey was based mainly on the reports submitted under article 19 of the ILO Constitution by 109 member States, which in itself was a good turnout. At the same time, the Worker members noted that the government reports were not always of good quality and were frequently incomplete. They further noted that few workers' or employers' organizations had formulated observations, and they urged their trade union colleagues to increase their efforts to facilitate the important work of the Committee of Experts. Commenting generally, the Worker members stated that they concurred with the Committee of Experts in their acknowledgement of the controversy surrounding the subject addressed by the General Survey. The debate on night work of women covered, in fact, several sensitive and thorny issues, such as the very nature and purpose of night work; the harmful effect of night work on all human beings, irrespective of gender; the struggle for equality between men and women; the need to provide greater protection for women in specific situations; and above all, with regard to maternity.
- 166.** With reference to the Survey's first chapter concerning female labour, night work and global industrialization, the Worker members stated that women's participation in the labour market had been increasing steadily. At the same time, work traditionally carried out by women such as caring for children, other family members and the household in general, had not diminished. Certainly, housework in many regions of the world had been facilitated by the use of electrical appliances and the development of the "care" sector, but such developments remained restricted to certain parts of the globe. Moreover, men carried out little housework, if any, so that a growing number of working women had found themselves in a "double work day" which had the additional effect of accentuating the disturbances of night work for those women employed on the night shift. In this connection, the Worker members considered it important to refer to the need for broader measures which would enable male and female workers to balance work and family life better, such as parental leave, reduced working hours, career breaks, early retirement and childcare services. These measures were particularly important for night workers. The Worker members called for a change in attitude and work patterns, even if this could not be achieved immediately, to enhance the participation of men in the burdens of housework and care-giving responsibilities.
- 167.** Moreover, the Worker members wished to draw attention to the definition of the term "night". The Conventions under review defined this term as the period from 10 p.m. to 5 or 7 a.m. depending on the instrument. The definition also comprised the obligation of providing a rest period of eleven consecutive hours. The Worker members noted that several countries applied reduced working hours to certain types of work. In the case of particular risks, or physical and psychological stress linked to night work, it was important to broaden the protection afforded to night workers and provide for shorter work schedules than those applied to "normal" day workers.

The realities of night work

- 168.** The Employer members noted that, generally speaking, night work was a necessity. Although this had not been explicitly stated by the Committee of Experts, this assumption had never been challenged. They observed that, presently, night work was found less and less in the industrial sector and was more prevalent in the services sector, not only in essential services such as hospitals and security services, but increasingly in the

entertainment and leisure sectors. They recalled that the initial reason for banning women from performing night work was based on the belief that they were physically weaker than men whereas it was now established that night work could be detrimental to men and women workers alike. The Committee of Experts did not mention the economic aspects of night work, nor did it mention the major opportunities for workers and employers created by night work, along with increased productivity, and the positive effects of night work on economic development. At the present time, there were rotating shift systems which also reduced the burden of night work.

169. Referring to paragraphs 25 et seq. of the General Survey, the Worker members noted that night work was no longer an exceptional type of work and that it tended to increase in line with industrialization and urbanization. In fact, night work was primarily resorted to in capital-intensive industries in order to compress production costs by maximizing the utilization of expensive equipment. Globalization, increased competition and concerns about export growth, had also increased the demand for night work.

170. The Worker members then recalled paragraphs 28 et seq. of the General Survey in which the Committee of Experts highlighted the various effects of night work: abnormal fatigue, multiple health risks, reduced alertness, increased risk of accidents, digestive problems and nervous disorders. It was necessary to limit night work to that which is strictly required. In the case of pregnant night workers, there were added risks such as miscarriage, premature birth and low birth weight. Generally, the risks associated with night work were the same for men and women, with the exception of the specific risks associated with pregnancy. However, night work still affected women in a distinct way. This was explained by the fact that they were faced with an extra load or “double burden”, that is paid work together with family responsibilities. This double burden was progressively seen as an affirmation of family roles and not as a real difference in the workplace. The policy of equal opportunity led to identical requirements for men and women in respect of night work. This policy had been reflected, among others, in the Night Work Convention, 1990 (No. 171). Equality in matters of night work was to a large extent put forward in a European context. Following the 1991 Stoeckel decision of the Court of Justice of the European Communities, the European Commission had called upon six EU member States to denounce the ILO Night Work (Women) Convention (Revised), 1948 (No. 89). The Court’s decision had led to important legislative changes and occasioned challenging debates in a number of these countries. The Worker members observed that the member States that had denounced [Convention No. 89](#) for reasons of equality were not limited to European countries and that only a few of those countries had so far ratified Convention No. 171.

Scope and impact of national laws and practice

171. The Worker members considered the questions raised in chapter 3 of the Survey concerning the application of the Conventions on night work of women in national law and practice. They agreed with the Committee of Experts that the application of the Conventions by member States varied considerably. Certain countries, such as Austria, still had a blanket prohibition on night work of women in industrial enterprises without distinction of age. However, the Austrian Government had recently announced its intention to lift this prohibition. Other countries had adopted specific provisions governing the night work of women, but were experiencing problems in the application of these provisions. France, for instance, had recently lifted its previous ban on night work for women. In certain countries, including Belgium, there was a general ban on night work for all workers, male and female, though exceptions were possible subject to strict conditions. In countries where the prohibition against women’s night work had been abolished on the grounds of gender equality, protective measures for certain categories of women remained in force. These measures concerning pregnant women or nursing mothers were in force not

only for night work, but also for other types of work considered dangerous or harmful to the health of the woman or her child. Reference was made, in this regard, to the Maternity Protection Convention, 2000 (No. 183), which provided for better protection for women at this critical stage of life. Similar restrictions on night employment were envisaged for young women workers, who were also considered to belong to a vulnerable group. The Worker members supported special protective measures for young workers, both male and female.

172. Many members of the Committee described the situation regarding the night work of women in their countries. The Government member of Lebanon referred to her country's Labour Code which prohibited night work in the mechanical and manual industries, and to Act No. 91 of 1999 which prohibited the employment of young persons, both men and women, below the age of 18, from 7 p.m. to 7 a.m. The Worker member of France noted that in her country night work was becoming commonplace more or less for everyone while protective regulations were becoming the exception and owed their existence to the possible adoption of collective agreements. The Government member of Greece recalled that her country had been the first member State to ratify [Convention No. 4](#) and that it had subsequently ratified [Conventions Nos. 41](#) and [89](#) before denouncing them in order to bring its legislation in conformity with the European Community Directive 76/207/EEC. Her country's labour legislation now provided protection for women's health during pregnancy and for a year after childbirth as well as for nursing mothers, while it also protected women against unfair dismissal during the same period. Above all, Greek labour laws aimed at ensuring safety and health standards and necessary social services for all night workers regardless of gender. The Government member of Switzerland referred to the revision of the Swiss labour law which entered into force in August 2000 by which the former prohibition on women's night work was removed. Eliminating that prohibition had not necessarily meant a complete deregulation of this kind of work since protective measures had been put into place. The protection of pregnant women or nursing mothers had actually been strengthened when compared to the previous law, not only with regard to night work, but also for all activities considered to be dangerous.

173. The Worker member of India stated that his country had introduced the prohibition on the night work of women by a number of laws, including the Factories Act and the legislation on child labour. He added that the Government was now prepared to amend these laws and lift partially the prohibition, and cited a recent decision of the High Court in Madras by which the law banning the employment of women during the night was declared discriminatory. The Government member of Slovakia indicated that sections 151 and 152 of the Labour Code which previously prevented women from performing work at night had been deleted with a view to eliminating all legislative sources of discrimination between men and women in employment. The Worker member of Italy noted that night work in her country was no longer restricted to the industrial sector but was common in the agro-industry, telecommunications and the services sectors. In the latter, due to advanced information technology capabilities, some jobs, such as call centres, could be subcontracted to other countries, often with less stringent labour legislation and weaker recognition of workers' rights. The Government member of Sweden pointed out that the question of special protection concerning night work for women had for a long time been of no relevance to the Swedish labour market. The former special provisions forbidding women to engage in night work in crafts or industry had been repealed in 1962 by an amendment to the Workers' Protection Act. Issues of working time in Sweden came under the Working Hours Act which applied to all fields of employment except home work, domestic work and service on board ship. Night work was in principle prohibited and the Act provided that all employees were entitled to nightly rest including the hours between midnight and 5 a.m. Night work could be performed if the employer had been able to

conclude a collective agreement with the relevant trade union organization, or if required by the nature of the work itself, the needs of general public or other special circumstances.

174. The Government member of Zimbabwe noted that his country's Labour Act provided that no person should be discriminated against on the basis of sex, and therefore there were no legislative or regulatory measures protecting women workers merely because of their gender, with the exception of maternity protection. The Government member of Canada explained that the protective objectives of the Conventions on night work were fulfilled in her country through protective legislation which applied to workers generally and covered, for example, hours of work and rest periods, overtime, annual leave, and maternity, parental and other leave. Canadian labour legislation providing for minimum standards and for occupational safety and health did not distinguish between night work and day work. The Government member of China stated that equality for women was guaranteed in the Labour Act of 1994 which nonetheless prohibited work in mines and hazardous work for women during pregnancy, while the 1992 Law on safeguarding women's rights and interests banned night work for pregnant women. The Government member of Japan stated that, while the general ban on night work of women had been abolished since 1997, regulations prohibiting night work of pregnant women were maintained, and new regulations limiting late night shifts for both male and female workers with family responsibilities had recently been introduced. The Government member of Italy underlined that the labour legislation in force (Act No. 25 of 5 February 1999), while eliminating the general prohibition of night work for women, confirmed the prohibition of night work for pregnant women or nursing mothers. The Government member of Egypt indicated that in her country the Labour Code prohibited women from working before 7 a.m. or after 8 p.m. except in a number of designated occupations, while by Ministerial decree of 1982 the employment of women was also prohibited in 23 industries qualified as hazardous.

The special case of export processing zones (EPZs)

175. Some members of the Committee made reference to the specific situation in export processing zones (EPZs), and expressed concern for the socially problematic employment conditions often experienced by millions of zone workers. The Worker members stated that EPZs were a typical example of the move towards an export economy. According to information provided by national workers' organizations, living and working conditions in these zones were often appalling. Without seeking to launch a new discussion on the very existence of the EPZs, the Worker members wished to emphasize that night work was all too common in EPZs, a factor which pointed even more clearly to the deplorable conditions imposed on zone workers. The Worker member of India expressed his opposition to the proposed introduction of night shifts for women employed in his country's EPZs. He recalled that in EPZs, where labour law was not generally observed, it was already difficult to ensure adequate protection for women by day, and that the situation would clearly be much more critical at night.

176. The Worker member of Italy drew attention to the fact that vulnerable groups, such as women and migrant workers, often had no choice but to accept the reality of unsocial working hours as a result of the emerging practice of outsourcing and subcontracting production to sweatshops, where conditions and a total lack of social protection were endemic. In this regard, she referred to the situation in EPZs which were constantly increasing in number and employing millions of workers. She suggested that in future the Conference Committee should specifically examine the question of the application of ILO standards in EPZs. The Worker member of Pakistan referred to the situation of EPZ workers in many countries, noting that they were often subjected to exploitative practices, long hours, poor safety and health conditions, and deprivation of freedom of association

rights. He suggested that the Office should carry out a study to determine how the conditions of zone workers, both men and women, could be improved.

The compatibility of the instruments on women's night work with the principle of equality of opportunity and treatment between men and women in employment and their continued relevance

177. Practically all the 30 members of the Committee who took part in the discussion addressed in their comments the central question as to whether or not special protective measures for women, with the exception of standards and benefits related to maternity protection, were contrary to the objectives of equal opportunities and equal treatment between men and women. As was amply demonstrated in the General Survey, the issue of restricting access to night employment for women has always stirred controversy when seen through the lens of gender equality. The discussion on the General Survey confirmed the existence of two main lines of argument and gave a fresh opportunity for an interesting exchange of views.
178. The Employer members considered that women-specific prohibitions on night work were an anachronism infringing the principles of gender equality and equal employment opportunities for men and women. They stressed that it was not sufficient to include a general provision on special measures, such as that found in Article 5(1) of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), to cancel out the discriminating effects of such special protective measures. The assertion that these measures did not constitute discrimination could not change reality. It was clear that persons who could not be employed to perform work during certain hours of the day would be at a disadvantaged position, although this treatment might not be termed discrimination. Unlike the special protective measures adopted by most member States for the benefit of women, such as maternity protection legislation, and young persons, which were supported, a general ban on night work of women was simply not compatible with the universally accepted principle of gender equality. Referring to the comments of the Committee of Experts on European Union legislation in paragraph 74 of the General Survey, the Employer members noted the statement that working conditions were better in EU countries, and that the ILO had a much different mandate to develop minimum labour standards adaptable to all its member States. In their view, the Committee of Experts had missed the point in this regard, since the conflict between the principle of equality of opportunity and the prohibition of night work for a specific group of workers was not a question of working conditions.
179. In that context, the Employer members recalled that a number of international instruments addressed this issue, such as the 1967 UN General Assembly Declaration on the Elimination of Discrimination against Women and the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women. That Convention had called for the principle of equal opportunity and treatment to be set out in regional instruments, such as those elaborated within the framework of the European Union, as well as in national laws and regulations. The Employer members noted that, for instance, the German Federal Constitutional Court had recently rejected the argument that women needed a special protection because of their double burden due to family responsibilities in addition to their work. In the view of the Court, family responsibilities did not constitute a gender-specific characteristic. The Court had further indicated that night work could also affect men bringing up a child alone or sharing family responsibilities with their partner. It was clear, however, that the double burden did not concern all women and was not imposed by law. In the event that the responsibility to look after the family was imposed on women by law, it would constitute a violation of the essential principle of equality. The Employer members pointed out that those who advocated a strict ban on night work for women

would also have to accept discrimination against women in employment, since one leads to the other.

- 180.** The Worker members argued that the protective function of the Conventions on women's night work should not be weakened as women continued to be exploited as cheap labour. They stressed that they deplored the use of equality arguments to lower standards on working conditions, particularly with regard to night work. As night work was known to have detrimental effects on workers, they considered that it was inappropriate to extend such undesirable working conditions to women. However, the principle of equality was one that the Worker members held dear and, therefore, trade union organizations would continue to fight for better working conditions for all workers regardless of gender. Associating themselves with the analysis of the Committee of Experts contained in chapter 4 of the Survey which examined the uneasy relationship between the prohibition of the employment of women during the night and the principle of non-discrimination in employment and occupation as a fundamental human right, the Worker members considered it essential that the harmful nature of night work for all workers, regardless of their gender, their occupation, or the country in which they work, be recognized. Consequently, national and international legislation should lay down strict provisions governing night work, and it was important that national practice be in conformity with these instruments. At the same time, the Worker members felt that one should not lose sight of the fact that women were still in a disadvantaged employment situation and continued to experience inequality in work and family life. Moreover, they fully endorsed the statement made by the Committee of Experts in paragraph 200 of its Survey to the effect that "in guiding its standard-setting action in matters of women's employment – often depicted as a dilemma of protection *or* equality – the ILO has always opted for protection *and* equality".
- 181.** The Government member of Sweden stated that the same rules should apply to men and women in working life and that special provisions for women at work should be avoided as far as possible. She took the view that standards referring solely to one sex ran counter to efforts at achieving effective equality and were at variance with national legislation and European Community law. The Government member of South Africa pointed out that any women-specific prohibition on night work was contrary to the principle of equality of opportunity and treatment, and indicated that according to national legislation discrimination on grounds of sex and/or gender was qualified as unfair discrimination.
- 182.** The Government member of Zimbabwe recalled that the argument for special protection of women was based on assumptions related to physical strength, susceptibility to exploitation and family duties, but considered that such assumptions did not justify in any manner taking away the right of women to engage in occupations of their own choice. He added that, as the General Survey correctly pointed out, the problems associated with arduous jobs had been reduced in the modern workplace while consideration should also be given to the needs of certain categories of women, such as single mothers, since a blanket prohibition against night work would clearly deny those women the right to provide for the livelihood of their families. The Government member of Denmark recalled that his country had never ratified any of the three Conventions under discussion, the reason always being that in the view of the Danish Government these instruments were objectionable and unjustifiably discriminatory against women. Unlike the protection of pregnant women and children which was thought to be fair and reasonable, protecting an entire class of factory workers simply because of their gender was considered to be inappropriate.
- 183.** The Government member of Portugal pointed out that, while it could not be disputed that night work in general was harmful to the health, family and social life of men and women,

it was equally undeniable that in terms of international principles and standards on non-discrimination, the prohibition of night work of women limited their access to employment and to certain professions. It would be reasonable, therefore, to consider that Convention No. 89 was an instrument which no longer had any value. The Government member of Canada took the view that the instruments under examination, including the Protocol of 1990, were outdated and incompatible with the principle of equal opportunity, yet she refrained from assessing the validity of those instruments globally. She felt that, in view of the great diversity of national conditions and needs, each member State would have to find its own balance between special protective imperatives and considerations of equality. The Government member of Japan stated that legislative restrictions on night work of women had been removed through the 1997 revision of the Labour Standards Law, as priority had shifted towards expanding employment opportunities for female workers and promoting gender equality. He emphasized that the tendency to shift the focus of protection from women workers as such to maternity, and also the development of policies enabling workers of both sexes with family responsibilities to pursue their professional lives, were important elements to retain in the process of setting international labour standards.

- 184.** The Employer member of the United States stated that prohibiting women from working at night simply because they were women constituted blatant discrimination, and added that the Conventions under review violated one of the four basic tenets laid down in the ILO Declaration on Fundamental Principles and Rights at Work, namely the right to be free from discrimination in employment. She expressed the belief that the Conference's efforts throughout the years to render those instruments more flexible by expanding the exemption possibilities for women workers proved that the basic premise on which those standards were elaborated was inherently flawed. Moreover, she pointed out that alleged protections based upon gender stereotypes and archaic cultural norms as to the women's role in society were not protections at all. They constituted discrimination on the basis of gender, inhibited the ability of women to compete freely and equally with men in the labour market, and stifled a women's sense of independence and self-worth by perpetuating the myth that they were somehow inferior. In the same vein, the Employer member of the United Kingdom declared that the singling out of women for special protection under these Conventions deprived women of employment opportunities in industry without any objective justification since the medical and other problems associated with night work affected both sexes and applied generally, not just in industry. She added that the night work of women Conventions were in conflict with the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and that their maintenance undermined ILO's efforts to create a coherent group of standards.
- 185.** The Worker member of Colombia expressed his concern over the fact that gender equality could be invoked for the purpose of discarding protective standards on women's night work. He pointed out that there is a real risk of complete deregulation and stressed the need to prevent the deterioration of standards. The situation might be different in the industrialized world, but in developing countries there was still great need for women workers' protection. The Worker member of France stated that Convention No. 89 would be ill-served if the fundamental principle of equality of women at work was set against it as it was hard to believe that the mere abrogation of that Convention would *ipso facto* bring about equality of treatment. He felt that the current tendency was to erode protection in the name of equality and render precarious the employment for all night workers.
- 186.** The Worker member of India, referring to paragraph 75 of the General Survey, where the Committee of Experts estimated that regulatory provisions on night work of women might still serve a meaningful purpose in situations where women were subject to severe exploitation and discrimination, the Worker member of India pointed out that there was rampant discrimination against women workers throughout the world, especially in respect

of wages and career prospects. However, it was curious that so many people championed the cause of equality only where it related to lifting the ban on women's night work. He stressed that female shift working should not be deregulated and that the trade unions in his country were opposed to the proposal to allow women's night work in EPZs as this might serve as a precedent for its extension to other sectors. The Worker member of Pakistan noted that the developing countries in his region valued the role women played in the workplace and the family. He considered that it was the responsibility of the State to ensure that women had equal access to vocational training and employment as well as adequate protection from sexual abuse. However, ways should also be found to provide women with more time to care for their children and provide for their future. The Worker member of Senegal recognized that it was not always easy to reconcile the need for protection of women workers with the principle of equality between men and women in employment, but considered that there was actually no incompatibility between protection and equality. He suggested that the Committee's position should be unequivocal that women had to be able to choose their employment freely but that this right should not be used as a pretext to subject them to additional constraints. Referring to the position taken by the Employer members, another Worker member of Senegal cautioned that equality should not be confounded with levelling down.

187. A number of members of the Committee sought to strike a balance between the interest of preventing discrimination in employment and preventing deterioration of working conditions and ensuring the safety and health of all workers. The Government member of Spain considered that what was most important was equality between male and female workers, whereas protective standards on night work could only be justified where they could be applied in concrete situations and on a temporary basis. The Government member of Croatia emphasized that, whenever protective measures were discussed, the discrimination argument was used, yet not in order to extend protection to men but rather in order to remove protection from women. The concept of equality of opportunity should not be taken too literally. Often, this concept required the provision of positive measures in favour of one sex or the other. This was surely understood by the Committee of Experts who did not fall into this trap. Finally, the Government member of China estimated that, while an easing of restrictions on night work was necessary, the prohibition on women's night work in certain situations was still worthy of consideration. He indicated that equality for women was guaranteed in Chinese labour laws, even though restrictions on night work in specific situations were extensively applied.

188. With reference to the specific question of the continued relevance of the instruments on women's night work, the Government member of China stated that the Conventions concerning the night work of women in industry contained reasonable principles which continued to serve a purpose in the regulation of working conditions. While it was true that developments in high-tech industries and the improvement of labour conditions for women in general had changed the situation with regard to night work, his country still supported the relevance of international labour standards banning night work for women in certain situations.

189. The Worker member of Senegal stated out that the rationale behind the adoption of [Conventions Nos. 4, 41 and 89](#) remained relevant today. Recalling that ILO standards emanated from specific socio-economic and political situations, he thought that the situation with regard to night work persisted in an even crueller form thanks to unbridled neo-liberalism and gender equality which is aiming at an asexual society in total disregard for biological realities. The Government member of Egypt emphasized the importance of maintaining restrictions on night work of women as women clearly had family duties and therefore were still in need of protection. Based on national experience, she considered that the standards set forth in Convention No. 89 still held good. The Worker member of

Colombia indicated that the issue of women workers' protection and night work was more relevant than ever in view of the situation prevailing in many developing countries.

- 190.** The Government member of Lebanon stated that, contrary to [Conventions Nos. 4 and 41](#) which were evidently obsolete, [Convention No. 89](#) and its Protocol provided a suitable framework for those States wishing to retain the prohibition on women's night work or to ease that prohibition without abolishing it altogether. She welcomed the Protocol which prohibited night work of women before and after childbirth, and which offered possibilities to lift the prohibition by virtue of a decision by the competent authority under specific conditions. She added that Convention No. 89 did not contain provisions related to pregnant women or nursing mothers. She made a number of comments on Convention No. 89 and its Protocol, including the fact that both instruments regulated night work of women in industrial settings and excluded other settings. Neither instrument specified a minimum age for night work of women. Moreover, she underlined that the question of night work of women was primarily a national issue which should be addressed in the light of the economic and social conditions as well as the development needs of each country. The Worker member of Argentina indicated that his country's denunciation of Convention No. 41, far from improving the situation of women, had aggravated their working conditions and therefore considered that Convention No. 89 and its Protocol retained all their relevance as long as the phenomena of exploitation, discrimination, inferior work, long work hours and low salaries for women workers persisted.
- 191.** The Government member of Croatia expressed the view that the standards in question gave a lesson in gender mainstreaming. Critics of those Conventions needed to answer the question of how the non-application of the prohibition of night work would affect the situation and opportunities of women in practice. Since, to her knowledge, no impact assessment had been carried out on this matter, she doubted that allowing women to work at night would improve in any significant way their job opportunities, economic situation and protection in areas such as health and safety or social protection, and even if it gave them access to work, it would be to the low-paid, precarious types of work described in the Beijing Platform. She agreed, therefore, with the Committee of Experts' conclusion that there was still need for protection of women workers against the risks and hazards of night work.
- 192.** The Government member of Italy expressed full agreement with the conclusion of the Committee of Experts to the effect that [Convention No. 4](#) should be eventually included among the Conventions which would be considered for abrogation. The Government member of Switzerland shared the opinion that Convention No. 4 had only historical relevance and needed to be shelved. She considered the same to be true of Convention [No. 41](#), while she agreed with the view of the Committee of Experts according to which [Convention No. 89](#) and the Protocol of 1990 remained relevant for those countries that wished to provide women with the possibility of working at night, while maintaining institutionalized safeguards in order to avoid exploitation and a sudden worsening of social conditions for female workers.
- 193.** The Employer member of the United Kingdom stated that the Conventions on the night work of women, including the Protocol of 1990, were no longer relevant and should be shelved, principally because they were blatantly discriminatory. The Government member of Zimbabwe noted that standards which sought to protect women's maternal and reproductive functions, such as those regarding maternity leave, medical benefits and protection from exposure to particular substances, were necessary and should be maintained. In contrast, standards which aimed at protecting women generally merely because of their gender, such as the Conventions on night work in factories and underground work, were questionable and destined to fall into disuse. In this connection,

the Government of his country was now considering the possibility of denouncing the Underground Work (Women) Convention, 1935 (No. 45), as being incompatible with national law and practice.

Difficulties of application and prospects of ratification

194. The Government member of Egypt stated that the Protocol of 1990 to [Convention No. 89](#) allowed for adequate flexibility in the practical application of the general prohibition on women's night work, and, therefore, Egypt was considering the possibility of ratifying the Protocol. She thought that denunciations of [Convention No. 89](#) were primarily driven by economic interests hidden under the guise of gender equality and that such denunciations would risk removing an essential form of labour protection for women workers. The Government member of Lebanon indicated that the Ministry of Labour in her country would be examining the Protocol of 1990 as well as [Convention No. 171](#) with a view to determining the appropriate position in their regard.
195. In contrast, the Government member of Slovakia indicated that his country's Labour Code had been amended so that the former prohibition on women's night work had now been abolished. Consequently, Slovakia would denounce [Convention No. 89](#) in the course of the year and would ratify [Convention No. 171](#). Similarly, the Government member of South Africa stated that national law and practice was no longer in line with the principles set out in [Convention No. 89](#), and confirmed that her country intended to proceed to the denunciation of that instrument during 2001.
196. Referring to paragraph 16 of the General Survey, the Government member of Italy explained that his country had in fact omitted to denounce [Convention No. 4](#) when it denounced [Convention No. 89](#), and further specified that the Italian Government had now taken steps to proceed to the denunciation of [Convention No. 4](#).

Views and trends regarding the Night Work Convention, 1990 (No. 171)

197. Several members of the Committee commented on the Night Work Convention, 1990 (No. 171), which had fallen outside the purview of the General Survey. While realizing that the General Survey was limited to examining the ILO Conventions on night work of women in industry, the Worker members expressed the view that it would have been preferable if [Convention No. 171](#) had also been considered. In fact, that Convention responded largely, if not fully, to the problems raised during the examination of the Conventions on women's night work. Consequently, the Worker members considered it important to promote the ratification of [Convention No. 171](#) by as many States as possible to ensure that the principles governing night work and which offer special protection to pregnant women or nursing mothers, or women requiring special treatment, be guaranteed in the framework of a global approach to this problem. Where member States were unable to ratify [Convention No. 171](#), the Office should promote the ratification of [Convention No. 89](#) and its Protocol, which also afforded women workers a substantial amount of protection. The Worker members shared the concerns expressed by the Committee of Experts in paragraph 202 of the General Survey, namely that the denunciation of [Conventions Nos. 4, 41 or 89](#) without the ratification of [Convention No. 171](#) might leave behind a legal vacuum which could prove dangerous for the working conditions of night workers in general and women in particular.
198. The Worker member of France thought it was unfortunate that the General Survey did not cover [Convention No. 171](#) which would have allowed the discussion to be extended to the

issue of night work in general, which was an all too common form of atypical work. He also regretted that only few of the countries of the European Union which hastened to denounce [Convention No. 89](#) in the early 1990s had ratified [Convention No. 171](#). Night work was related to major health risks and social problems and it was for the governments and employers to take appropriate action. The EU member States should ratify [Convention No. 171](#) and introduce into their labour legislation all the measures required for improving the working life of night and shiftworkers. The Government member of Italy and the Worker member of Argentina associated themselves with the statement made by the Committee of Experts in paragraph 202 of its Survey that ratification of [Convention No. 171](#) should be encouraged.

- 199.** The Government member of Denmark considered that [Convention No. 171](#) was a much better instrument for addressing the problems of night work and suggested that the Organization should put a stop to all new ratifications of the three Conventions under review and invite those member States which had ratified one or more of those instruments to ratify [Convention No. 171](#). The Government member of Portugal stated that [Convention No. 171](#) reflected current thinking with regard to the problems of night and shift work organization and urged the ILO to launch a promotion campaign for its ratification. Moreover, she felt that ILO's future activities should also seek to assist countries in bringing their legislation in conformity with the requirements of the Workers with Family Responsibilities Convention, 1981 ([No. 156](#)), and Recommendation ([No. 165](#)).
- 200.** Another Worker member of France endorsed the conclusion of the Committee of Experts that protective measures for women which had been abolished in the name of equality should be replaced by legislation offering adequate protection to all night workers and considered, in this regard, that [Convention No. 171](#) was pointing at the right direction. She expressed the view that ratification of that instrument should be encouraged if night work was not to become totally deregulated. The Worker member of Italy concurred with the statement in paragraph 202 of the General Survey concerning the risk of complete deregulation through the removal of protective measures for women, without the introduction of night work regulations for all workers, and emphasized the urgency for governments to ratify [Conventions Nos. 171 and 156](#) and to implement them in full consultation with the social partners.
- 201.** While recognizing that in general [Convention No. 171](#) was a step forward, the Government member of Canada noted that it still differed from the legislative approach taken in her country, where the protection envisaged in [Convention No. 171](#) was reflected in employment legislation which was applicable to workers generally and did not distinguish between night work and day work. The Government member of Switzerland indicated that her country was presently not in a position to ratify [Convention No. 171](#), even though it had drawn from it when revising its labour laws.
- 202.** The Government member of Sweden took the view that standards should be of such nature as to provide adequate protection for all night workers, both male and female, but explained that this did not mean that her country would ratify [Convention No. 171](#) as Sweden had always adopted a very different approach on these matters prohibiting, in principle, night work altogether. The Government member of South Africa stated that, while her country's legislation complied with most of the standards laid down in [Convention No. 171](#), ratification was not envisaged at this stage principally because [Convention No. 171](#) excluded from its scope persons employed in agriculture, stock-raising, fishing, maritime transport and inland navigation, which amounted to discrimination against workers who were often vulnerable and needed protection. Finally, the Employer member of the United Kingdom expressed the view that the ILO should look into the obstacles which prevented member States from ratifying [Convention No. 171](#), and

that it should also encourage the sharing of family responsibilities through the promotion of [Convention No. 156](#) and [Recommendation No. 165](#).

Concluding remarks

- 203.** In their final comments, the Worker members underlined four points: firstly, it was clear that night work was harmful for all workers regardless of gender, which made necessary the adoption of an appropriate regulatory framework. Secondly, in general women continued to bear the additional load of family responsibilities and were consequently more affected by the harmful consequences of night work. Thirdly, the real dilemma was not what to choose between equality and protection but how to best guarantee both. Finally, in the opinion of the Worker members, it was essential to promote the ratification of the Night Work Convention, 1990 ([No. 171](#)), which offered the most satisfactory answers to all the important issues related to night work regulation.
- 204.** The Employer members stated that the discussion on the General Survey had made it clear that it was not possible to abide by the principle of equal opportunity while maintaining at the same time the prohibition on women's night work. The only possible manner to remove this source of discrimination was to follow the example of numerous member States which had already denounced these instruments. The only viable solution for the ILO was to decide in favour of the important principle of equal opportunity and treatment and to push for the denunciation of these obsolete instruments. The attempt to reconcile special protection for women and equality by such verbal contortions as that contained in paragraph 200 of the General Survey was not leading anywhere. Moreover, the principle of equal opportunity and treatment also had a great practical impact on the employment opportunities of women. The Employer members restated their view that denying women access to night employment disregarded their freedom of choice, while shift work, which was a most common arrangement of working time, only partially consisted of night work.
- 205.** In conclusion, the Employer members stressed that the issue of gender-oriented restrictions on night work was a test for the Organization's credibility and authority. The maintenance of instruments which were not applied in practice, even by countries which had ratified them, could not be beneficial to either the ILO or to workers. The Organization had to decide whether to remain behind modern developments or to move forward in a sense of realism. The Conventions concerning the employment of women during the night were no longer justified and should be denounced. The Employer member of the United States emphasized that it was simply absurd to think that women as a group were incompetent or incapable of making their own decisions concerning their work habits. Women therefore had to be permitted to choose and pursue their employment without government intervention. It was the obligation of the Conference Committee as a supervisory body to seek out and abolish all discriminatory practices such as those promulgated by the ILO Conference 82 years ago.
- 206.** The Worker member of France touched on the lack of collaboration between the European Union and the ILO and expressed amazement at the inability of the two organizations to harmonize and consolidate legal rules for the protection of workers, night workers in particular. She pointed out that the difficulties in delimiting the respective powers and competence of the ILO and the European Union had been a source of utmost confusion in the minds of workers. Apart from the purely legal aspect, one sensed a difference in approach between the two organizations: for the ILO social protection and progress were paramount while the European Union appeared to base its action on a narrow concept of equality.

207. The Worker member of Italy suggested the adoption of a combination of legal, political and organizational measures in order, on the one hand, to overcome the prohibition on women's night work, and, on the other, to promote the ILO approach of equality and protection. She proposed that the ILO could collect, diffuse and promote the best solutions agreed upon between trade unions and employers at the enterprise or at the national level for the improvement of working conditions of shiftworkers, for example, through child care services, and transportation arrangements, or, as tried out on an experimental basis in certain Italian towns, by adapting work schedules to the working families' needs. She emphasized that the ILO should encourage agreements between employers' and workers' organizations and, where necessary, local authorities in an effort to restrict night working as much as practicable.

E. Compliance with specific obligations

208. The Committee decided that, in examining individual cases relating to compliance by States with their obligations under or relating to international labour standards, it would apply the same working methods and criteria as last year, as amended or clarified in 1980 and 1987.

209. In applying those methods, the Committee decided, on the proposal of the Worker members, supported by the Employer members, to invite all governments concerned by the comments in paragraphs 187 (failure to supply reports for two or more years on the application of ratified Conventions), 194 (failure to supply first reports on the application of ratified Conventions), 198 (failure to supply information in reply to comments made by the Committee of Experts), 226 (failure to submit instruments to the competent authority), and 230 (failure to supply reports for the past five years on unratified Conventions and on Recommendations) of the Committee of Experts' report to supply information to the Committee in a half-day sitting devoted to those cases. The Committee considered that this method should be repeated next year.

Submission of Conventions and Recommendations to the competent authorities

210. In accordance with its terms of reference, the Committee considered the manner in which effect is given to article 19, paragraphs 5 to 7, of the ILO Constitution. These provisions require member States within 12, or exceptionally 18, months of the closing of each session of the Conference to submit the instruments adopted at that session to the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action, and to inform the Director-General of the ILO of the measures taken to that end, with particulars of the authority or authorities regarded as competent.

211. The Committee noted from the report of the Committee of Experts (paragraph 113) that considerable efforts to fulfil the submission obligation had been made in certain States, namely: Benin, Ecuador, Guatemala, Morocco, Papua New Guinea, Swaziland and Yemen.

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

Failure to submit

213. The Committee noted with regret that no indication was available that steps had been taken in accordance with article 19 of the Constitution to submit the instruments adopted between 1993 and 1998 by the 80th to 86th Sessions of the Conference to the competent authorities, in the cases of Afghanistan, Angola, Armenia, Belize, Bolivia, Bosnia and Herzegovina, Cambodia, Cameroon, Central African Republic, Comoros, Congo, Dominica, Guinea-Bissau, Haiti, Kazakhstan, Kyrgyzstan, Madagascar, Saint Lucia, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Syrian Arab Republic, Uzbekistan.

Supply of reports on ratified Conventions

214. In Part B of its report (General questions relating to international labour standards), the Committee has considered the fulfilment by States of their obligation to report on the application of ratified Conventions. By the date of the 2000 meeting of the Committee of Experts, the percentage of reports received was 70.5 per cent, compared with 61.4 per cent for the 1999 meeting. Since then, further reports have been received, bringing the figure to 76.6 per cent (as compared with 71.7 per cent in June 1999, and 71.4 per cent in June 1998). In 2000, the Committee of Experts noted that 56.5 per cent of the reports on Conventions for which information on practical application was requested contained such information, compared with 60.3 per cent in 1999, and 66.4 per cent in 1998. The Committee emphasizes the importance of sending practical information, without which it is impossible to know if a Convention is actually being applied. The Committee joins the Committee of Experts in its repeated appeals to governments to make every effort to include the necessary information in future reports.

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

215. The Committee noted with regret that no reports on ratified Conventions had been supplied for two years or more by the following States: Afghanistan, Armenia, Bosnia and Herzegovina, Democratic Republic of the Congo, Denmark (Faeroe Islands), Equatorial Guinea, Kyrgyzstan, Lao People's Democratic Republic, Sao Tome and Principe, Sierra Leone, Solomon Islands, United Republic of Tanzania (Zanzibar), The former Yugoslav Republic of Macedonia, Turkmenistan, Uzbekistan.

216. The Committee also noted with regret that no first reports due on ratified Conventions had been supplied by the following countries: since 1992 – Liberia ([Convention No. 133](#)); since 1995 – Armenia ([Convention No. 111](#)), Kyrgyzstan ([Convention No. 133](#)); since 1996 – Armenia ([Conventions Nos. 100, 122, 135, 151](#)), Grenada ([Convention No. 100](#)), Uzbekistan ([Conventions Nos. 47, 52, 103, 122](#)); since 1998 – Armenia ([Convention No. 174](#)), Equatorial Guinea ([Conventions Nos. 68, 92](#)), Mongolia ([Convention No. 135](#)), Uzbekistan ([Conventions Nos. 29, 100](#)); and since 1999 – Burkina Faso ([Conventions Nos. 141, 161, 170](#)), Cyprus ([Convention No. 175](#)), Turkmenistan ([Conventions Nos. 29, 87, 98, 100, 105, 111](#)), Uzbekistan ([Conventions Nos. 98, 105, 111, 135, 154](#)). It stressed the special importance of first reports on which the Committee of Experts bases its first evaluation of compliance with ratified Conventions.

217. In this year's report, the Committee of Experts noted that 52 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 389 cases (compared with 411 cases in December 1999). The Committee was informed

that, since the meeting of the Committee of Experts, ten of the governments concerned had sent replies, which would be examined by the Committee of Experts at its next session.

- 218.** 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 2000 from the following countries: Afghanistan, Albania, Algeria, Antigua and Barbuda, Belize, Bosnia and Herzegovina, Cameroon, Côte d'Ivoire, Democratic Republic of the Congo, Denmark (Faeroe Islands, Greenland), Dominica, Equatorial Guinea, Fiji, France (Réunion), Gabon, Guatemala, Haiti, Jamaica, Kyrgyzstan, Lao People's Democratic Republic, Liberia, Libyan Arab Jamahiriya, Mongolia, Myanmar, Netherlands (Aruba), Nigeria, Papua New Guinea, Saint Lucia, Sao Tome and Principe, Sierra Leone, Slovakia, Solomon Islands, Tajikistan, United Republic of Tanzania, The former Yugoslav Republic of Macedonia, United Kingdom (Anguilla, Jersey), Viet Nam.
- 219.** The Committee noted the explanations provided by the governments of the following countries concerning difficulties encountered in discharging their obligations: Algeria, Angola, Belize, Bolivia, Bosnia and Herzegovina, Botswana, Burkina Faso, Cambodia, Cameroon, Congo, Côte d'Ivoire, Cyprus, Denmark (Faeroe Islands, Greenland), Fiji, France (Réunion), Guatemala, Jamaica, Liberia, Libyan Arab Jamahiriya, Madagascar, Mongolia, Netherlands (Aruba), Nigeria, Papua New Guinea, Senegal, Sierra Leone, Slovakia, Syrian Arab Republic, United Republic of Tanzania, United Kingdom (Anguilla, Jersey), Viet Nam.
- 220.** The Committee stressed that the obligation to transmit reports is the basis of the supervisory system. It requests the Director-General to adopt all possible measures to improve the situation and solve the problems referred to above as quickly as possible. It expressed the hope that the multidisciplinary teams would give all due attention in their work in the field to standards-related issues and in particular to the fulfilment of standards-related obligations. The Committee also bore in mind the new reporting arrangements approved by the Governing Body in November 1993, which came into operation from 1995.

Supply of reports on unratified Conventions and on Recommendations

- 221.** The Committee noted that 325 of the 526 article 19 reports requested on the Night Work (Women) Convention, 1919 (No. 4), the Night Work (Women) Convention (Revised), 1934 (No. 41), the Night Work (Women) Convention (Revised), 1948 (No. 89), and the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948, had been received at the time of the Committee of Experts' meeting, and a further two since, making 62.2 per cent in all.
- 222.** The Committee noted with regret that over the past five years none of the reports on unratified Conventions and on Recommendations requested under article 19 of the Constitution had been supplied by: Afghanistan, Bosnia and Herzegovina, Equatorial Guinea, Fiji, Georgia, Grenada, Guinea, Lao People's Democratic Republic, Liberia, Nigeria, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Solomon Islands, The former Yugoslav Republic of Macedonia, Turkmenistan, Uzbekistan.

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

223. 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

224. 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 210 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 46 such cases, relating to 36 countries; 2,276 cases where the Committee has been led to express its satisfaction with progress achieved since the Committee of Experts began listing them in 1964. These results are tangible proof of the effectiveness of the supervisory system.

225. This year, the Committee of Experts listed in paragraph 212 measures ensuring better application of Conventions in which it has noted with interest in 159 instances in 85 countries.

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

227. The Committee thought it appropriate to draw the attention of the Conference to various important cases which it had to consider.

Cases of progress

228. The Committee noted with satisfaction that in a number of cases – including many involving basic human rights – governments have introduced changes in their law and practice in order to eliminate divergences previously discussed by the Committee. It considers highlighting these cases a positive approach towards influencing governments to respond to comments of the supervisory bodies. In this respect, it refers to the report of the Committee of Experts and the discussion of individual cases which appears in Part Two of this report.

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

229. 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 this report.

Special cases

- 230.** The Committee considered it appropriate to draw the attention of the Conference to its discussions of the cases mentioned in the following paragraphs, a full record of which appears in Part Two of this report.
- 231.** As regards the application by Belarus of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee took note of the written and oral information provided by the Government representative and the discussion which took place thereafter. It noted that the comments of the Committee of Experts referred to a number of discrepancies between recently adopted legislation, various decrees and instructions and the provisions of the Convention, in particular as concerns the right of workers and employers to establish organizations of their own choosing and the interference by the public authorities in trade union activities and the election of trade union representatives. The Committee expressed its grave concern at the issuance of instructions by the head of the presidential administration which called upon the ministers and chairs of government committees to interfere in the elections of branch trade unions and noted with regret the statements made before it that government interference in the internal affairs of trade unions continued. In this respect, the Committee urged the Government to take all necessary measures to put an end to such interference so as to ensure that the provisions of the Convention are fully applied both in law and in practice. Noting the Government's statement that measures were being considered to amend Presidential Decree No. 2 on some measures on the regulation of the activity of, among others, trade unions, the Committee expressed the firm hope that the necessary steps would be taken in the very near future so as to ensure fully the right of workers and employers to establish organizations of their own choosing without previous authorization. The Committee also requested the Government to ensure fully the right of these organizations to function without interference by the public authorities, including the right to receive foreign financial assistance for their activities. The Committee urged the Government to supply detailed information in the report requested by the Committee of Experts for its coming session and expressed the firm hope that it would be able to note next year that concrete progress had been made in this case.
- 232.** As regards the application by Colombia of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee took note of the oral information provided by the Government representative and the subsequent debate. In its previous conclusions the Committee had observed with great concern the significant and persistent discrepancies between the legislation and practice, and the provisions of the Convention had given rise to several complaints to the Committee on Freedom of Association, and a complaint submitted by a number of Worker members to the International Labour Conference in June 1998, under article 26 of the Constitution of the ILO relating to non-observance of Convention No. 87. The Committee noted that the Committee of Experts had expressed its deep concern at the climate of violence which existed in the country and the scale of murders, kidnappings, death threats and other violent acts against trade union members which was unprecedented in history. The Committee strongly condemned the murders and acts of violence against trade union officials and kidnappings of employers, despite the Government's efforts to protect them. The Committee took note of the information on the development of the peace plan and hoped that there would be progress as a result, in particular with regard to compliance with international humanitarian law and the pursuit of negotiated political solutions to the internal conflict. The Committee, which had discussed that case on many occasions in the past, observed that the Committee of Experts had noted significant progress in the application of the Convention with respect to the majority of the legislative provisions that had been referred to the Committee of Experts. The Committee further observed that the

Government was committed to promoting measures relating to the other provisions on which the Committee of Experts had commented. The Committee considered that strengthened social dialogue between the social partners would be the best way of conducting that activity. The Committee noted with concern that many complaints concerning violent acts and discrimination against trade unionists continued to be submitted to the ILO. The Committee recalled that full respect for civil liberties was essential for the application of the Convention. The Committee emphasized that the climate of impunity in the country represented a serious threat to the exercise of trade union freedom. The Committee urged the Government to take further steps to bring legislation and practice into full conformity with the Convention in the near future. It expressed the firm hope that the Government would provide a detailed report to the next meeting of the Committee of Experts with news of greater progress in legislation and practice to ensure the application of that Convention and recalled that it could call on the technical assistance of the Office in the context of that process. The Commission expressed the firm hope that at its next meeting it would be in a position to take note of real progress in the country's trade union situation. In that respect, the Committee noted that the complaint submitted under article 26 of the Constitution of the ILO was pending before the Governing Body. The Committee expressed the hope that the Governing Body at its next meeting would take appropriate, effective and necessary measures to deal with that complaint.

- 233.** As regards the application by Ethiopia of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee noted the statement made by the Government representative and the discussions which took place thereafter. The Committee shared the serious concern of the Committee of Experts with regard to the trade union situation. The Committee was deeply concerned by the fact that no progress had been made in respect of the serious complaint pending before the Committee on Freedom of Association concerning government interference, in particular, with the functioning of the Ethiopian Teachers' Association and that its president had now been convicted, after three years of preventive detention, on charges of conspiracy against the State and sentenced to 15 years' imprisonment. It recalled that the Committee of Experts had requested the Government to indicate that the precise provisions permitting teachers' associations to promote the occupational interests of their members and to provide information on the progress made in adopting legislation to ensure the right to organize for employees of the state administration. It also recalled the concern raised by the Committee of Experts about the cancellation of the registration of a trade union confederation, as well as broad restrictions placed on the right of workers' organizations to organize their activities in full freedom. The Committee regretted to note that apparently no progress had been made in this respect since the last time this case was before it. The Committee strongly urged the Government to take all the necessary steps as a matter of urgency to ensure that the right of association was recognized for teachers to defend their occupational interests, that workers' organizations were able to elect their representatives and organize their administration and activities free from interference by the public authorities and that workers' organizations were not subject to administrative dissolution, in accordance with the requirements of the Convention. It urged the Government to respect fully the civil liberties essential for the implementation of the Convention. The Committee expressed the hope that the ILO Office in Addis Ababa could visit the detained trade unionists. While noting the statement of the Government representative concerning legislative changes under way, the Committee was obliged to note with concern that no progress had been made. The Committee made an urgent appeal to the Government to put an end to all violations of the Convention both in law and in practice. The Committee also requested the Government to provide any relevant draft legislation, as well as the court judgement concerning the appeal made by the president of the Ethiopian Teachers' Association. The Committee urged the Government to supply detailed and precise information on all the

points raised in its report due this year on the concrete measures taken to ensure full conformity with the Convention, both in law and in practice. The Committee expressed the firm hope that it would be able to note concrete progress in this case next year.

- 234.** As regards the application by Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee noted the statement made by the Government representative and the detailed discussion which took place thereafter. It recalled that this case had been discussed by the Committee on many occasions during the last decade. The Committee shared the concern expressed by the Committee of Experts that the Government failed to send a report and found itself obliged once again to deeply deplore the total absence of cooperation on the part of the Government in this regard. In these circumstances, the Committee could not but once again continue to deplore the fact that no progress had been made towards the application of this fundamental Convention, despite the fact that very serious violations had already been noted over 40 years ago. The Committee was also once again obliged to express its profound regret for the persistence of serious discrepancies between the national legislation and practice and the provisions of the Convention. These discrepancies concerned the basic principles of the Convention. Extremely concerned over the total absence of progress in the application of this Convention, the Committee once again strongly insisted that the Government adopt, as a matter of urgency, the measures and mechanisms necessary to guarantee, in legislation and in practice, to all workers and employers, the right to join organizations of their own choosing, without previous authorization, and the right of these organizations to affiliate with federations, confederations and international organizations, without interference from the public authorities. It also urged the Government to supply to the Committee of Experts for examination this year any relevant draft legislation, as well as a detailed report on the concrete measures taken to ensure fuller conformity with the Convention.
- 235.** As regards the application by Sudan of the Forced Labour Convention, 1930 (No. 29), the Committee noted the Committee took note of the information provided by the Government representative on the causes of abduction of women and children, the measures taken to eliminate forced labour of which they were the victims and the subsequent discussion. The Committee highlighted the extreme gravity of the case which affected fundamental human rights for which reason it had been included in a special paragraph in 1997, 1998 and 2000. The Committee noted that the Committee of Experts had observed that there was a broad consensus among the relevant instances of the United Nations agencies and workers' representative organizations concerning the persistence and extent of the practice of abduction and imposition of forced labour, and concluded that such situations were very serious violations of Convention No. 29. The Committee noted the information supplied by the Government representative on the practical difficulties faced by the Committee for the Eradication of the Abduction of Women and Children in carrying out its task of identifying and ensuring their return to their homes and found that the measure was inadequate. The Committee expressed its profound concern at the serious situation in Sudan and urged the Government to initiate systematic actions concomitant with the magnitude and gravity of the problem and to reply to the questions raised by the Committee of Experts, in particular with respect to the relevant preventive measures, identification of those responsible for exacting forced labour and the imposition of appropriate penal sanctions. The Committee noted that the Government representative rejected the proposal that a direct contacts mission should visit the country to work with the Government in finding solutions to eradicate the practice of forced labour, but had announced that it would consider that possibility.
- 236.** As regards the application by Venezuela of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee took note of the oral and written information communicated by the Government member and the subsequent

discussion. The Committee recalled with great concern that it had examined the case on several occasions without achieving positive results. With respect to the serious discrepancies between national legislation and the requirements of the Convention, the present Committee, like the Committee of Experts, urged the Government urgently to amend its legislation to ensure that workers and employers could form organizations and freely elect their representatives without interference by the public authorities. He stressed the need to eliminate the excessively long and detailed list of duties and aims to be achieved by workers' and employers' organizations. The Committee further observed that new complaints had recently been submitted relating to interference by the authorities in the internal affairs of trade unions, in particular trade union elections. It also regretted to note that the new Constitution of the Republic contained provisions that were not in conformity with the Convention. The Committee observed that the situation had deteriorated very seriously and deplored the fact that it was again necessary to examine the case. The Committee also requested the Government to take steps to withdraw the draft texts criticized by the Committee of Experts. In addition, the Committee expressed its profound concern at the convocation of a national trade union referendum in December 2000 with a view to the unification of the trade union movement and the suspension or removal of its leaders. The Committee considered those to be very serious violations of the Convention which struck at the basic principles of trade union freedom, and it requested the Government to refrain from any action designed to impose trade union unity. The Committee noted that the Government had accepted a direct contacts mission to gather information on the application of the Convention and to prepare amendments that would guarantee its full implementation. The Committee urged the Government to take the measures necessary to bring its national legislation and practice fully into conformity with the provisions and requirements of the Convention. The Committee urged that, in the very near future, real progress should be made in the application of the Convention and expressed the firm hope that the next report of the Government would contain information to indicate concrete and significant progress in the application of the Convention both in legislation and in practice.

- 237.** The Committee trusts that the governments concerned will take all measures necessary to correct the deficiencies noted and invites them to consider appropriate forms of ILO assistance, including direct contacts, to ensure that real progress is achieved by next year in the observance of their obligations under the ILO Constitution and the Conventions in question.

Continued failure to implement

- 238.** The Committee recalls that its working methods provide for the listing of cases of continued failure over several years to eliminate serious deficiencies, previously discussed, in the application of ratified Conventions. This year the Committee noted with great concern that there had been continued failure over several years to eliminate serious discrepancies in the application by Myanmar of the Freedom of Association and the Right to Organise Convention, 1948 (No. 87), and by Sudan of the Forced Labour Convention, 1930 (No. 29).
- 239.** The governments of the countries to which reference is made in paragraphs 231 to 236 are invited to supply the relevant reports and information to enable the Committee to follow up the abovementioned matters at the next session of the Conference.

Participation in the work of the Committee

240. The Committee wished to express its gratitude to the 54 governments which collaborated by providing information on the situation in their countries and participating in the discussions of their individual cases.
241. The Committee regretted that, despite the invitations, the Governments of the following States failed to take part in the discussions concerning their countries' fulfilment of their constitutional obligations to report: Afghanistan, Albania, Democratic Republic of the Congo, Gabon, Guinea, Haiti, Kazakhstan, Myanmar, Tajikistan and The former Yugoslav Republic of Macedonia. It decided to mention the cases of these States in the appropriate paragraphs of its report and to inform them in accordance with the usual practice.
242. The Committee noted with regret that the Governments of the States which were not represented at the Conference, namely Antigua and Barbuda, Armenia, Comoros, Dominica, Equatorial Guinea, Grenada, Guinea-Bissau, Kyrgyzstan, Lao People's Democratic Republic, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Solomon Islands, Turkmenistan and Uzbekistan, were unable to participate in the Committee's examination of the cases relating to them. It decided to mention these countries in the appropriate paragraphs of this report and to inform the governments, in accordance with the usual practice.

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243. On the occasion of the anniversaries of the creation of the established supervisory bodies of the International Labour Organization, the Committee is conscious that the ILO's standards system is one of the longest lived and most extraordinary features of any international organization. It welcomes the attention being given to the standards policy with the aim of strengthening the role and impact of international labour standards. The Committee is convinced of the importance of the unique role it has to play through the open and frank tripartite dialogue that takes place in the Committee, which has been and continues to be aimed at assisting countries to implement their international obligations. This year the Committee examined important questions of principle and a number of complex and serious cases, and this occurred in a spirit of constructive dialogue and good faith from which it is hoped real solutions will be found. These discussions focused on issues including the fundamental human rights of freedom of association, non-discrimination, forced labour, and child labour, as well as the promotion of employment, labour inspection, social security and the payment of wages. The debates of the Committee have demonstrated its continued efforts and ability to help governments translate their commitments into improved social and working conditions for men and women worldwide.

Geneva, 19 June 2001.

(Signed) Jorge Sappia,
Chairperson.

Kerstin Wiklund,
Reporter.