



THIRD ITEM ON THE AGENDA

**Agenda of the 90th Session (2002)  
of the Conference**

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## I. Introduction

1. At its 277th Session in March 2000, the Governing Body began its discussion on the date, place and agenda of the 90th Session (2002) of the International Labour Conference on the basis of two documents prepared by the Office on this question.<sup>1</sup> Following a consideration of this issue the Governing Body decided on the date and the place of that session of the Conference, and decided to place the question of the withdrawal of 20 Recommendations on its agenda but to defer consideration of the remaining item(s) to its present session. This document is submitted to the Governing Body as a basis for its re-examination of the agenda of the 90th Session (2002) of the Conference.

### 1. Items resubmitted for consideration

2. The items submitted for consideration include six items the Governing Body had selected for closer scrutiny at its 276th Session (November 1999) and which had already been proposed to it at its 277th Session (March 2000). These proposals have remained unchanged since March 2000, but for the sake of convenience they are annexed hereto *in extenso* in the form of an excerpt from the March document.<sup>2</sup>

### 2. Further developed item

3. It will be recalled that in March the Governing Body discussed the follow-up to be given to the 1998 Conference resolution on the question of the protection of workers in situations identified by the Conference Committee on Contract Labour at the 86th Session (1998) of the International Labour Conference,<sup>3</sup> and particularly in the light of the outcome of the Meeting of Experts on Workers in Situations Needing Protection, which was to be held from 15 to 19 May 2000.<sup>4</sup> As detailed in the report of that meeting, as well as in the proposal presented below in Part II, the further considerations given to this issue have resulted in a developed view of how to resolve the problems at issue. This view is presented in a proposal to the Governing Body to consider an item for standard setting at the 90th Session of the Conference under the title of “The employment relationship (scope)”, which is given below in Part II. In view of the deferral of the decision to determine the agenda of the 90th Session (2002) of the Conference to the present session, the Governing Body may wish to consider the possible implications that this deferral may have for the procedure to be followed, in particular in the preparation of the items submitted for standard setting.

<sup>1</sup> GB.277/2/1 and GB.277/2/2: Proposals for the withdrawal of Recommendations Nos. 1, 5, 11, 15, 37, 38, 39, 42, 45, 50, 51, 54, 56, 59, 63, 64, 65, 66, 72 and 73.

<sup>2</sup> GB.277/2/1.

<sup>3</sup> *Record of Proceedings*, International Labour Conference, 86th Session (1998), Vol. II, pp. 33-34.

<sup>4</sup> GB.279/2, *Report of the Meeting of Experts on Workers in Situations Needing Protection*, Geneva, May 2000.

### 3. Deadlines for the submission of reports

4. In the course of discussion in March 2000,<sup>5</sup> questions were raised concerning the possible procedural implications of the decision to defer the decision to fix the agenda until November 2000, i.e. 19 months before the opening of the Conference. The Standing Orders of the Conference fix certain deadlines for the completion by the Office and by governments of the reports in the preparation of both standard-setting items and items for general discussion. In the former case, there are two different procedures to follow: the single or the double discussion procedure. In either case the deadlines that would apply in the preparation of an item for standard setting for the 90th Session (2002) of the Conference are as follows:

■ *Single discussion procedure:*

- December 2000: summary report and questionnaire to reach governments;
- July 2001: government replies to reach the Office;
- February 2002: final report to reach governments.<sup>6</sup>

Furthermore, if the question has been included in the agenda less than 26 months before the opening of the session of the Conference at which it is to be discussed, a programme of reduced intervals shall be approved by the Governing Body.<sup>7</sup>

■ *Double discussion procedure:*

- December 2000: summary report and questionnaire to reach governments;
- July 2001: government replies to reach the Office;
- February 2002: report to reach governments;
- June 2002: first discussion at the 90th Session of the Conference;
- August 2002: draft text of Convention or Recommendation to reach governments;
- November 2002: replies with amendments or suggestions to reach the Office;
- March 2003: final report to reach governments;
- June 2003: second discussion at the 91st Session of the Conference.<sup>8</sup>

<sup>5</sup> Request by the Government of Germany.

<sup>6</sup> Standing Orders of the Conference, Art. 38.

<sup>7</sup> *ibid.*, Art. 38.3.

<sup>8</sup> *ibid.*, Art. 39.

These arrangements shall apply only in cases in which the question has been included in the agenda of the Conference not less than 18 months before the opening of the session of the Conference at which the first discussion is to take place.<sup>9</sup>

5. In the case of an item for *general discussion*, the deadline for the Office to communicate a report to governments is April 2002. The report should reach them not less than two months before the opening of the session of the Conference at which the question is to be discussed.<sup>10</sup>
6. It follows that if the Governing Body wishes to place an item on the agenda of the Conference in 2002 for standard setting, and irrespective of whether the preparations would follow the single or the double discussion procedure, the Office would have to finalize the required summary report and questionnaire and to ensure its translation in order for it to reach governments by December 2000. Given the difficulties for the Office in meeting such a short deadline, the Governing Body may, in either case, wish to provide for a two-month extension of the deadline for the submission of the summary report and questionnaire, as well as a proportionate reduction of other related deadlines.<sup>11</sup>

#### 4. Selection of agenda items

7. The Office recalls the views expressed and proposals made at the previous session of the Governing Body concerning the more general aspects of the question of the timing of the decision to fix the agenda of the Conference. These questions merit closer examination. Subject to a decision to undertake a more comprehensive review of possible improvements in the standards-related activities of the ILO in connection with the fourth item on the agenda of the Governing Body at its present session,<sup>12</sup> the Office proposes to refer this question for more detailed examination in that context.<sup>13</sup>
8. At its 90th Session (2002), the Conference will have before it the following items:
  - Reports of the Chairperson of the Governing Body and the Director-General.
  - Programme and budget and other financial questions.
  - Information and reports on the application of Conventions and Recommendations.

<sup>9</sup> *ibid.* Art. 39.5.

<sup>10</sup> *ibid.*, Art. 11*ter*, para. 1

<sup>11</sup> In the case of a single discussion procedure the deadlines would thus be as follows: February 2001: summary report and questionnaire to reach governments; August 2001: government replies to reach the Office; February 2002: final report to reach governments. In the case of a double discussion procedure the deadlines after the first discussion would remain unchanged, while the deadlines up until the first discussion in June 2002 would be reduced as follows: February 2001: summary report and questionnaire to reach governments; August 2001: government replies to reach the Office; February 2002: report to reach governments; June 2002: first discussion at 90th ILC.

<sup>12</sup> GB.279/4.

<sup>13</sup> A proposal to this effect was made by the Government of Japan in the course of the previous discussion on this question in March 2000.

9. In addition, in accordance with its decision of March 2000, the question of the withdrawal of 20 Recommendations was placed on the agenda of the 90th Session of the Conference.
10. The agenda of the 89th Session (2001) of the Conference, as determined by the Governing Body at its 274th Session (March 1999), includes the following three items:
  1. Safety and health in agriculture (*second discussion*).
  2. Promotion of cooperatives (*first discussion*).
  3. Social security – Issues, challenges and prospects (*general discussion*).

Consequently, the agenda of the Conference in 2002 would also presumably include a standard-setting item on the *promotion of cooperatives* for a second discussion.

11. The Conference normally only deals with two standard-setting items at the same session. Following this practice the Governing Body would thus have to select one item for standard setting and one item for general discussion in order to complete the agenda of the 90th Session (2002) of the Conference.
12. Subject to the above considerations, it is recalled that, at its 276th Session (November 1999), the Governing Body examined the portfolio of proposals in its initial discussion on the Conference agenda for the year 2002.<sup>14</sup> It selected a short list of items (both for standard setting and general discussion) for more in-depth discussion, and decided to request law and practice reports, or more detailed proposals, on six subjects for March. In addition, and as detailed above (paragraph 3), a seventh item is also submitted to the Governing Body in Part II below:
  1. New measures concerning discrimination in employment and occupation (*standard setting*).
  2. Employment of women (*general discussion*).
  3. The informal sector (*general discussion*).
  4. Investment and employment (*general discussion*).
  5. Migrant workers (*general discussion*).
  6. (a) Recording and notification of occupational accidents and diseases (*standard setting*);  
(b) Possible revision of the list of occupational diseases, Schedule I to the Employment Injury Benefits Convention, 1964 (No. 121) (*standard setting*).
  7. The employment relationship (scope) (*standard setting*).

13. It is recalled that items 1, 2, 4 and 6(a) and (b) have been the subject of previous proposals made to the Governing Body, most recently at its 274th Session (March 1999).<sup>15</sup> Since then and until presented to the Governing Body in March 2000, items 1 and 2 remained

<sup>14</sup> GB.276/2.

<sup>15</sup> GB.274/3.

virtually unchanged, while item 4 had been modified in the light of the Governing Body's discussions in November 1999, and item 6 had been modified in accordance with the November 1999 portfolio proposal on the same subject. Items 3 and 5 were presented to the Governing Body in detail for the first time in March 2000. Since their submission in March 2000 all these proposals remain unchanged. Item 7 is proposed in accordance with the Conference resolution of 1998 (see below, Part II).

14. The type of action that could be taken on the items in the preceding list should take into account the observations in paragraphs 4-6 above. As indicated above, items 1, 6(a) and (b) and 7 are submitted with a view to standard setting, while items 2, 3, 4 and 5 are submitted for general discussion. As regards proposal No. 5 (migrant workers), one of the points that could be clarified through a general discussion is the possibility of future standard-setting action.
15. *The Governing Body is accordingly invited to complete the agenda of the 90th Session (2002) of the International Labour Conference in the light of the following proposals:*<sup>16</sup>
1. *New measures concerning discrimination in employment and occupation (standard setting).*
  2. *Employment of women (general discussion).*
  3. *The informal sector (general discussion).*
  4. *Investment and employment (general discussion).*
  5. *Migrant workers (general discussion).*
  6. (a) *Recording and notification of occupational accidents and diseases (standard setting);*  
(b) *Possible revision of the list of occupational diseases, Schedule I to the Employment Injury Benefits Convention, 1964 (No. 121) (standard setting).*
  7. *The employment relationship (scope).*

## II. The employment relationship (scope)

### Summary

The situation of dependent workers who are not covered by legislation on the employment relationship, on account of their disguised or ambiguous employment status, is a major problem which is not only prejudicial to the workers concerned but also likely to prove damaging to enterprises, to jeopardize social peace and place the health and safety of the population at risk. It is proposed to promote the adoption by member States of national policies, on the basis of international labour standards, to redefine the scope of application of legislation regarding the employment relationship, with the participation of the interested parties.

<sup>16</sup> Proposals 1-6 are reproduced in the appendix, while proposal No. 7 is described below in Part II. A decision to include items 1, 6 or 7 on the agenda of the 90th Session (2002) of the Conference is subject to the readjustment of the deadlines for submissions referred to in para. 6 above.

## 1. Introduction

16. The origins of this proposal are to be found in the resolution adopted by the 86th Session of the International Labour Conference (1998), following the discussion of an agenda item regarding contract labour.<sup>17</sup> It will be recalled that the Conference had debated this issue at its 85th and 86th Sessions with a view to the adoption of international labour standards, and that, at the 86th Session, a draft Convention with accompanying resolution had been presented. Nevertheless, the terminological and conceptual difficulties encountered by delegates prevented the relevant technical committee from completing its work. The Conference<sup>18</sup> discussion was, however, an opportunity to identify employment relationships of which the common denominator is the non-recognition of the status of salaried employee for certain groups of workers, whereas they work for another party in a relationship of dependency. In the absence of any better definition, the Conference agreed to term these workers as *workers in situations needing protection*.
17. In the aforementioned resolution, the Conference invited the Governing Body to instruct the Director-General to hold meetings of experts to pursue the study of this question. It also invited the Governing Body of the International Labour Office to place these issues on the agenda of a future session of the International Labour Conference with a view to the possible adoption of standards; this action should be completed within a period of four years as of 1998.
18. Subsequently, the Office commissioned national studies regarding workers requiring protection, as defined by the Conference in 1998. In all, studies were conducted in 29 countries.<sup>19</sup> These studies were concluded by the holding of five informal regional meetings.<sup>20</sup> Finally, upon the invitation of the Governing Body, a Tripartite Meeting of Experts on Workers in Situations Needing Protection was held from 15 to 19 May 2000 in Geneva. A basic technical document,<sup>21</sup> largely drawing upon the studies and regional meetings, had been prepared for this meeting; the tripartite meeting, in its turn, adopted a report of the discussion<sup>22</sup> which is before the Governing Body at this session and contains,

<sup>17</sup> *Resolution concerning the possible adoption of international instruments for the protection of workers in the situations identified by the Committee on Contract Labour, Record of Proceedings, ILC, 86th Session, Geneva, 1998, Vol. II, pp. 33-34.*

<sup>18</sup> Cf. *Provisional Record* No. 18 and *Provisional Record* of the 20th Sitting (18 June), ILC, 85th Session, Geneva 1997, pp. 282-297, respectively; and *Provisional Records* Nos. 16 and 21, ILC, 86th Session, Geneva, 1998.

<sup>19</sup> The selected countries were: *Argentina, Australia, Brazil, Cameroon, Chile, Czech Republic, France, Germany, Hungary, India, Islamic Republic of Iran, Italy, Japan, Republic of Korea, Morocco, Mexico, Nigeria, Pakistan, Peru, Philippines, Poland, Russian Federation, Slovenia, South Africa, Trinidad and Tobago, United Kingdom, United States, Uruguay and Venezuela.*

<sup>20</sup> In Santiago (Chile) for the Latin American countries, Manila for the Asian and Pacific countries, Budapest for the countries of Central and Eastern Europe, Yaoundé (Cameroon) for the African countries and New York (United States) for the English-speaking countries not included in the other groups. Moreover, a preliminary meeting for the countries of Central and Eastern Europe was held in Geneva.

<sup>21</sup> Basic technical document, MEWNP/2000, op. cit.

<sup>22</sup> Cf. document GB.279/2, Meeting of Experts on Workers in Situations Needing Protection, *Report of the discussion*, ILO, Geneva, 19 May 2000 (MEWNP/2000/4(Rev.)).

inter alia, a common statement.<sup>23</sup> Experts from a total of 41 countries have been consulted in this process and have expressed their opinions in the light of their countries' law and practice.

## 2. From contract labour to employment relationship issues

19. The issue of workers lacking protection on account of labour legislation not being applied to them has been being raised within the ILO for a number of years. Over recent decades it has, however, taken on considerable proportions and been marked by the present-day conditions that have arisen through a variety of changes in employment relationships. This problem may be encountered in all kinds of enterprises and in all regions. It is at the very heart of labour law, given that the effectiveness of national and international labour legislation depends upon it.
20. In the course of its discussions in 1997 and 1998, the International Labour Conference examined what it had been agreed to term as *contract labour*. Whereas, as already explained, it did not complete its work, it nevertheless succeeded in identifying the workers who should be granted protection by an international standard. They were defined as *persons who perform work for a physical or moral person (hereinafter: "the user enterprise") personally under actual conditions of dependency on or subordination to the user enterprise and these conditions are similar to those that characterize an employment relationship under national law and practice but where the person who performs this work does not have a recognized employment relationship with the user enterprise*.<sup>24</sup> The term *contract labour* was thus abandoned and replaced by *workers in situations needing protection*, it being understood that the latter term would subsequently be reviewed in the light of the work that the Office had been called upon to conduct in accordance with the Conference resolution.
21. The process engaged in 1998, which drew upon the progress realized during the Conference debate as well as the contribution of its preparatory work, made it possible to address the problem from a new angle. What emerges above all from the observation of the world of work is the existence of a growing sector of workers who perform services for other parties in conditions of dependency and to whom labour legislation is not applied, either because they are not recognized as dependent workers or because they are not able to identify their true employer. Naturally, there is no doubt that in numerous cases the kind of relationship between these workers and the enterprise for which these services are performed is of a civil or commercial order, all of which justifies the relationship between the concerned parties not falling within the scope of application of labour legislation. However, it is equally true that in other cases the relationship established between the various parties is in all respects similar to an employment relationship, with the exception that it tends to be presented in a legal form different from the typical contract of employment. One such example is the false self-employed worker recruited on the basis of a civil or commercial contract or other basis but which, in any event, is distinct from a contract of employment; or workers whose terms of employment may not easily fit into the categories established by legislation which is insufficiently explicit, is incomplete or outdated in respect of developments in employment relationships; or the worker who has

<sup>23</sup> *Report*, op. cit., para. 107.

<sup>24</sup> Cf. *Record of Proceedings*, ILC, 86th Session, 1998, Report of the Committee on Contract Labour, para. 167.

employment relationships with several parties who may be his/her employer, without his/her precise knowledge of who is the true employer and who is responsible for securing his/her rights.

22. What ultimately emerges is the existence of employment relationships in disguise or of a truly ambiguous and complex nature, as was pointed out during the discussion and preparatory work on contract labour. Hence, genuine employment relationships have, as it were, been excluded from the scope of application of labour law, either by the express action of the concerned parties or on account of the complexity of such relationships.
23. The national studies commissioned by the Office tend to indicate that this phenomenon has now taken on global proportions; this was confirmed by the experts attending the meeting of experts (with, however, some reservation on the part of certain experts as to its extent). The experts also stated that the situation varies from country to country and from sector to sector within the same country. The basic technical document presented by the Office to the meeting of experts contains a wealth of examples of the forms that this phenomenon can take in different countries.<sup>25</sup>
24. With regard to the repercussions of this development, it cannot be denied that they may prove most prejudicial for workers. Not only are they deprived of their rights as established by labour law but, furthermore, the labour inspectorate has difficulty in dealing with their situation, just as their access to industrial tribunals is complicated, a further source of discrimination in comparison with other workers. In several countries they are also without social security or only enjoy the least favourable conditions granted to workers recognized as salaried employees. Women workers are in an even less secure position when they enjoy no such protection and the proportion of women in this kind of predicament is sometimes high.
25. The negative effects of workers being without protection can also hit employers themselves, given that this situation is a disincentive to productivity and distorts competition between employers both within countries or sectors and internationally, and is often to the detriment of employers who are respectful of the law. The lack of legal security, which can even be exacerbated by legislation, is likely to give rise to judicial decisions with considerable unexpected economic consequences for enterprises.<sup>26</sup> Equally, the lack of satisfaction engendered by the injustice undergone by workers also constitutes a threat to social peace. Finally, the work performed outside the law or in ambiguous legal situations and beyond the control of the labour inspectorate is a hazard for the health of workers but also for the health and safety of the population at large.<sup>27</sup>

### 3. Refocusing labour legislation

26. In response to this phenomenon, several countries have already adjusted the scope of application of the employment relationship in order to give protection, through labour

<sup>25</sup> Ch. III, paras. 128 ff.

<sup>26</sup> In this regard, see, e.g., the decisions regarding a large computer company and a major brewery, *Basic technical document*, p. 28, No. 14 and p. 40, No. 39.

<sup>27</sup> Mention is made, e.g., of a collision between a heavy commercial vehicle and two cars, in which six persons were killed. The accident occurred on account of the extreme fatigue of a non-salaried truck-driver who had been driving long hours under the effects of stimulants. Cf. *Basic technical document*, op. cit., para. 121.

legislation, to persons working in the conditions of subordination inherent in an employment relationship, irrespective of the legal framework in which the interested parties wish to place that relationship. In this respect, both the above basic technical document and the discussion held at the meeting of experts reported legislative measures adopted in various countries as well as judicial decisions in others. Generally, these solutions are designed to establish a distinction between legitimate commercial or other activities that have not been addressed by labour legislation, on the one hand, and, on the other, genuine employment relationships of dependency, which are defined as a function of the actual relationships between the concerned parties and not in accordance with the legal form that such parties wished to give to their relationship. In this way, it becomes possible to clarify and *refocus* labour legislation in respect of the individuals to whom it applies, as a function of the true nature of the relationships between the persons performing work or a service and the party for whom it is performed.

27. With account being taken of this development, the common statement adopted by the meeting of experts indicates that “The Meeting agreed that countries should adopt or continue a national policy in terms of which they would, at appropriate intervals review and, if appropriate, clarify or adapt the scope of the regulation of the employment relationship in the country’s legislation in line with current employment realities. The review should be conducted in a transparent manner with participation by the social partners”.<sup>28</sup> In their opinion, such national policies should include the following measures:

- providing workers and employers with clear guidance concerning employment relationships, in particular the distinction between dependent workers and self-employed persons;
- providing effective appropriate protection for workers;
- combating disguised employment which has the effect of depriving dependent workers of proper legal protection;
- not interfering with genuine commercial or genuine independent contracting;
- providing access to appropriate resolution mechanisms to determine the status of workers.

#### 4. International standard setting as an option

28. The Conference resolution spoke of placing this item on the Conference agenda with a view to the possible adoption of standards. Within those terms of reference, the conditions for international standard setting have accordingly been considered throughout the research and discussions conducted since 1998, in the light of the problem’s importance, its international dimensions and the ILO’s position enabling it to propose instruments designed to foster appropriate, balanced national solutions. If promoted by the ILO, action in this field would prove to be a fundamental challenge in the early stages of this new century; it could be tackled more realistically as part of an approach to achieving the objectives of decent work for the workers concerned.

29. All of the preparatory work, however, tends to indicate that, even if the phenomenon has global dimensions, it appears with differing characteristics both from country to country

<sup>28</sup> *Report of the Meeting*, op. cit., *Common statement*, para. 107.5.

and from one sector to another within the same country. This diversity is such that the legal framework likely to encompass the different forms of employment subordination without protection has to be sufficiently flexible to accommodate these varying situations. Too rigid and binding a framework could, at best, reflect the realities and respond to the needs of only a handful of countries but certainly not a majority.

30. In the light of the above, the Office suggested, in the basic technical document presented to the meeting of experts, that consideration be given to the possible elaboration of a promotional standard designed to guide member States' action towards the formulation and progressive implementation of national policies based on the observation of developments in employment relationships. Such a standard would contain an obligation regarding the means to be employed, i.e. the formulation and implementation of a national policy designed to review, at appropriate intervals, and, where necessary, to refocus and adapt the scope of application of employment relationships, with consideration being given to employment realities as well as the obligations ensuing from articles 19 and 22 of the ILO Constitution. The solution proposed might include the following components: a principle, measures for implementation, a mechanism designed to facilitate the principle's application and practical indications:

- A principle: as formulated by the experts, member States should elaborate and apply a policy designed to review, at appropriate intervals, and, where necessary, to refocus and adapt the scope of application of employment relationships in countries' legislation, with consideration being given to employment realities.
- Measures for implementation: in order to put the policy, as formulated, into practice, specific measures should be adopted to foster the policy in question and eliminate potential obstacles.
- A mechanism designed to facilitate the principle's application in conditions of transparency: a national body for the purposes of social dialogue involving employers and workers should be established or adapted with a view to following and analysing the development of employment relationships. It should also be in a position to propose balanced, effective measures designed to modify the scope of legislation or enhance its implementation. On an international level, the supervisory machinery for the application of international labour standards, with the exchange of information that it involves, could also be used to foster an exchange of data regarding national experience. This exchange would be useful for member States in developing their efforts and would make it possible to envisage Office assistance where appropriate. It would also prove most useful to employers and workers as well as their respective organizations.
- Practical indications: in order to assist member States, in consultation with the concerned sectors, to adopt measures to foster the formulation and application of the abovementioned policy, practical indications could be written into the proposed standards. Such indications could, for instance, address a redefined scope for the employment relationship; the relevant criteria which determine its existence; the parties to an employment relationship with their respective responsibilities; simple and rapid procedures to be set up or developed with a view to more effective action by the labour authorities; to guarantee access to due legal process for the workers concerned; to encourage initiatives by enterprise or social partners to employ workers lawfully and in accordance with the principle of the enterprise's social responsibility.

## 5. The format of possible instruments

31. The work conducted since 1998 was guided, in conformity with the mandate resulting from the Conference resolution, towards the preparation of two complementary instruments with a view to securing the required flexibility in dealing with the issue: a draft Convention comprising the principle (formulation and implementation of a national policy), the measures for the policy's implementation and the mechanism designed to facilitate such application; and also a draft Recommendation which, essentially, could provide practical guidelines for action by constituents.
32. With regard to the procedure to be adopted, a single discussion could then be justified by the fact that the Conference has already addressed the issue, that there have been broad consultations and that a meeting of experts has examined the components of possible instruments. Nevertheless, the worker experts proposed that the double discussion procedure apply, given that the subject would be presented on this occasion on a new basis; their proposal met with no objection. The Office would be prepared for both eventualities. The new factors in the subject's presentation, as they have emerged since 1998, and the need to engage in a balanced and thorough examination are, however, valid reasons for envisaging the further work in a double discussion, in conformity with article 10, paragraph 4, of the Governing Body Standing Orders, this being, in any event, the most usual procedure.
33. It is important to emphasize that, by common agreement, the experts considered that the ILO "... should play a major role in assisting countries to develop policies to ensure that laws regulating the employment relationship cover workers needing protection". In their opinion, ILO action could include:
- the adoption of instruments by the Conference including the adoption of a Convention and/or supplementary Recommendation;
  - providing technical cooperation and assistance and guidance to member countries concerning the development of appropriate national policies;
  - facilitating the collation and exchange of information concerning changes in employment relationships.<sup>29</sup>
34. However, with specific regard to possible ILO standard setting, there were differences between the positions of groups of experts prior to, and following, their statement: the government and worker experts supported the adoption of ILO instruments, but this view was not supported by the employer experts.<sup>30</sup>

## 6. Conclusions

35. In the light of the work completed at the request of the Governing Body, in accordance with the Conference resolution, it is appropriate to indicate the progress achieved in addressing the issues initially raised in the Committee on Contract Labour regarding:

<sup>29</sup> *Report, op. cit., Common statement, para. 107.7.*

<sup>30</sup> *Report, op. cit., paras. 109-113.*

- the identification of the legal factors which result in persons working for other parties without being covered by labour legislation and, consequently, without its protection;
- the formulation of criteria for ILO standard setting, with various components, without the hindrance of major linguistic or conceptual obstacles.

Geneva, 29 September 2000.

*Point for decision:* Paragraph 15.

## Appendix

### Excerpts from document GB.277/2/1, paragraphs 21-197

#### 1. New measures concerning discrimination in employment and occupation – Extension of the grounds on which discrimination is prohibited in Article 1 of Convention No. 111

##### Summary

In its Special Survey of 1996 on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Committee of Experts found that a number of grounds on which discrimination is prohibited in other ILO standards, in other international standards, and above all in national legislation, are not covered by this Convention. Convention No. 111 is, however, the ILO's principal instrument against discrimination. It therefore is recommended that the Governing Body consider the adoption of a Protocol, which would not revise the Convention as such, but which would allow countries ratifying it to accept formally additional grounds on which discrimination would be prohibited. This would consolidate the ILO's protection against discrimination, and bring the ILO into closer harmony with more recent international human rights instruments adopted by other organizations and with developing national practice. A proposal to adopt a Protocol to allow countries to undertake to reverse the burden of proof, under some circumstances, in cases of alleged discrimination has not been favourably received in discussions in the Governing Body and it is not taken up at this time.

#### Introduction

- 21.** In its 1996 Special Survey on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Committee of Experts on the Application of Conventions and Recommendations recommended that consideration be given to adopting a Protocol to the Convention that would provide additional grounds on which discrimination would be prohibited under the Convention, taking account of changes which have taken place in this field and are reflected in national law, as well as incorporating prohibited grounds of discrimination already covered in other ILO Conventions.<sup>13</sup>
- 22.** The Committee of Experts did not propose revising the Convention, but rather suggested adding a Protocol that could be ratified in addition to the Convention, either by countries that had already ratified it, or at the time of ratification of the Convention. Convention No. 111, one of the ILO's fundamental Conventions, would remain unmodified. There appears to be general agreement that the approach to consolidate and extend the grounds on which discrimination should be prohibited in employment and occupation would be the preferred one should the subject be dealt with.

#### *The situation in national law and practice*

- 23.** Convention No. 111 requires ratifying States to take action against discrimination in employment and occupation on the basis of race, colour, sex, religion, political opinion, national extraction and social origin. The Committee found, however, that there was sufficient indication in national laws on discrimination, or in other ILO Conventions, to merit the adoption of a Protocol that would allow

<sup>13</sup> The Committee of Experts suggested that a Protocol might also be adopted to allow countries to undertake to reverse the burden of proof, under some circumstances, in cases of alleged discrimination. As this proposal has not been favourably received in discussions in the Governing Body, it is not taken up at this time.

States to undertake additional obligations in respect of some or all of the following criteria (listed in alphabetical order): age, disability, family responsibilities, language, matrimonial status, nationality, property, sexual orientation and state of health. Indications are given below of how these criteria are addressed in national law and practice.

## Age

24. New legislation frequently makes specific reference to *age* among the grounds of discrimination. In *New Zealand*, for example, it is mentioned in section 21 of the Human Rights Act of 1 February 1994; in *Croatia*, it appears in section 2 of the 1995 Labour Law; article 23(3) of the new Constitution of *Ecuador*, adopted on 5 June 1998, provides for equality of rights and opportunities, and the freedoms that are recognized for all individuals, without discrimination *inter alia* on the basis of age; age is also mentioned as a criterion in section 5 of the June 1996 Labour Code of *Niger*, section 26 of the 1997 Labour Law of *Venezuela*, section 4 of the Labour Code of *Côte d'Ivoire* and section 246 of the Labour Code of *Chad*. In *France* section L.122-14-11 of the Labour Code stipulates that any provision providing for automatic termination of a contract when an employee reaches a certain age or is entitled to draw an old-age pension is null and void. A similar situation exists in the *United States* by virtue of court decisions, later codified into law. According to the Government's reports on the application of Convention No. 111, *Australia* is considering the possibility of excluding any discrimination based on age.

## State of health

25. A worker's state of health should not be an acceptable motive for refusing to employ or for dismissing him or her, unless there is a very strict relationship between the worker's present state of health and the normal occupational requirements of a given job. A variety of measures have been adopted in this regard in different countries:
- (a) As concerns the state of health generally, section L.121-6 of France's Labour Code stipulates the information which may be requested of job applicants and workers and imposes two conditions: first, the sole purpose of such information must be to evaluate the person's ability to perform the job and to assess his or her occupational skills; second, this information must have a direct and necessary bearing on the job offered or the assessment of occupational skills. Section L.122-45 of the Labour Code extends the scope of the protection afforded by this provision to all persons who may be excluded from recruitment, in particular by reason of their state of health, except where they have been declared unfit to perform the job by a works' physician in accordance with law. In Finland discrimination against a jobseeker or a worker, *inter alia*, on the basis of his or her state of health is a punishable offence under the Penal Code. Article 23(3) of the new Constitution of Ecuador adopted on 5 June 1998 provides for equality of rights and opportunities, and the freedoms recognized for all individuals, without discrimination *inter alia* on the basis of a person's state of health.
  - (b) One of the current problems linked to state of health is discrimination against workers who are HIV-positive or who have contracted AIDS. Those countries with legislation and regulations on this subject consider that a definition of unlawful discrimination based on the HIV status of a worker should be as broad and universal as possible. Such a definition should include discrimination against both symptomatic and asymptomatic carriers of the virus, as well as that based on the mere suspicion that an individual could be a carrier because he or she belongs to a so-called high-risk group, or because of his or her relationship with a carrier. In *Canada* HIV/AIDS infection falls within the scope of the prohibition of all discrimination based on disability. In *Costa Rica* section 4 of a general law on HIV/AIDS promulgated in May 1998 stipulates that any HIV/AIDS carrier is entitled to non-interference in his or her activities as regards work, occupation and education, and section 10 prohibits any discrimination in matters of work against any HIV/AIDS carrier. In *France* the protection afforded by the Labour Code to all workers from discrimination in employment includes HIV-positive workers. Where a worker's HIV status is not known and he or she does not wish to be tested, laws in some States provide that the employer cannot force the worker to undergo tests. Recommendation No. R(89)14 on the ethical implications of HIV infection in health and social matters, adopted by the Committee of Ministers of the Council of Europe, calls on

Member States to take steps to protect workers against discrimination on these grounds. In *Canada* a policy of non-discrimination is applicable to all employees of the public service.

## Disablement

26. More and more countries have adopted measures to protect the disabled and promote equality of opportunities between disabled and other workers. Chapter 5 of the Labour Code of *Gabon*, which entered into force in 1995, contains a series of provisions for protecting disabled workers, for example. Other countries have also adopted legislation specifically protecting the rights of disabled workers. In *New Zealand*, legislation of 1960 and 1975 contains measures aimed at protecting the employment of disabled persons. *Poland* similarly has an Act of 1991 concerning employment and vocational rehabilitation of the disabled. Several countries, including *Ecuador*, *Kuwait*, *Niger*, *Spain* and *Sweden*, have legislation prohibiting discrimination in employment and occupation based on disablement.

## Sexual orientation

27. Member States are increasingly adopting legislative measures specifically protecting workers who are vulnerable to discrimination on the basis of their sexual orientation. Some constitutions expressly prohibit discrimination based on sexual orientation, for example the Interim Constitution of *South Africa*, and both the Brandenburg Constitution and the Thuringia Constitution in *Germany*. Section 23(3) of the new Constitution of *Ecuador*, adopted on 5 June 1998, provides for equality of rights and opportunities, and the freedoms recognized for all individuals, without discrimination inter alia on the basis of sexual orientation. *Denmark*, *France* and *New Zealand* also have legislation explicitly prohibiting discrimination based on sexual orientation. In the *Netherlands* the legislation has strengthened penal sanctions, inter alia, against public acts of hatred or discrimination on grounds of sexual orientation. In *Australia* the Industrial Relations Act of 1988 expressly mentions the need to prevent and eliminate discrimination on the basis of sexual preference.

## Coverage in other standards

28. The Committee of Experts also devoted considerable attention in the Special Survey to the additional grounds of discrimination that are covered in other ILO standards. Even though Convention No. 111 is the ILO's principal instrument on the prevention of discrimination, it does not cover many of the areas on which ILO standards offer the strongest – and often the only – protection in international law. This includes age,<sup>14</sup> nationality,<sup>15</sup> trade union membership,<sup>16</sup> disability<sup>17</sup> and family responsibilities.<sup>18</sup> The adoption of a suitable Protocol

<sup>14</sup> The Maternity Protection Convention, 1919 (No. 3), Art. 2; Night Work (Women) Convention, 1919 (No. 4), Art. 3; Night Work (Women) Convention (Revised), 1934 (No. 41), Art. 3; Night Work (Women) Convention (Revised), 1948 [and Protocol, 1990] (No. 89), Art. 3; Migration for Employment Convention (Revised), 1949 (No. 97), Art. 6, para. 1(a)(i); Plantations Convention, 1958 [and Protocol, 1982] (No. 110), Art. 46; Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), Art. 6; Private Employment Agencies Convention, 1997 (No. 181), Art. 5(1); Employment (Women with Family Responsibilities) Recommendation, 1965 (No. 123), Para. 9(2); Human Resources Development Recommendation, 1975 (No. 150), Para. 50(b)(v); Older Workers Recommendation, 1980 (No. 162), Para. 3; Termination of Employment Recommendation, 1982 (No. 166), Para. 5(a); Private Employment Agencies Recommendation, 1997 (No. 188), Para. 9.

<sup>15</sup> The Maternity Protection Convention, 1919 (No. 3), Art. 2; Maternity Protection Convention (Revised), 1952 (No. 103), Art. 2; Plantations Convention, 1958 [and Protocol, 1982] (No. 110), Arts. 2 and 46; Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), Art. 6; Seamen's Welfare in Ports Recommendation, 1936 (No. 48), Para. 3; Vocational Training (Agriculture) Recommendation, 1956 (No. 101), Para. 3(1); Indigenous and Tribal Populations Recommendation, 1957 (No. 104), Para. 35(b); Plantations Recommendation, 1958

would allow the consolidation of protection, and added coherence in the ILO's advisory and supervisory efforts on the subject. This may be a particularly important point in the context of the ILO's work in revising its body of standards and rendering them more coherent.

29. For example, Convention No. 158 on termination of employment, 1982, adopted after Convention No. 111, prohibits termination on grounds, inter alia, of race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction, social origin or absence from work during maternity leave. Convention No. 156 on workers with family responsibilities calls for persons to be protected against discrimination, as defined in Convention No. 111 on the basis of their family responsibilities.
30. Finally, human rights standards adopted by other international organizations since the 1958 ILO Convention, have further expanded the protection offered in international law against discrimination, without all these grounds being covered in the ILO's most important Convention on this subject.<sup>19</sup> The Committee of Experts stated that, "with a view to the coherence of international human rights law, it would be desirable to take these into account in considering the present

(No. 110), Para. 2. It should be noted that the ground of nationality is fundamental to the standards in relating to migrants and that provisions intended to ensure them equality of opportunity and treatment and/or protection against discrimination are therefore included in the corresponding instruments, namely: the Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48), Arts. 2 and 10; Migration for Employment Convention, 1939 (No. 66); Migration for Employment Convention (Revised), 1949 (No. 97), Art. 2; Equality of Treatment (Social Security) Convention, 1962 (No. 118), Art. 3; Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); Maintenance of Social Security Rights Convention, 1982 (No. 157); Migration Statistics Recommendation, 1922 (No. 19); and the Migration for Employment Recommendation, 1939 (No. 61); Migration for Employment Recommendation (Revised), 1949 (No. 86); Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955 (No. 100), Para. 45.

<sup>16</sup> The Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82), Art. 18(1) and (2); Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Art. 1; Plantations Convention, 1958 [and Protocol, 1982] (No. 110), Art. 2; Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), Art. 14(1) and (2); Social Policy in Dependent Territories Recommendation, 1944 (No. 70), Para. 41(3); Plantations Recommendation, 1958 (No. 110), Para. 2; Workers' Housing Recommendation, 1961 (No. 115), Para. 25. Trade union membership of migrant workers is referred to in Recommendation No. 100, Para. 38, and in the Migrant Workers Recommendation, 1975 (No. 151), Para. 8(3); Private Employment Agencies Recommendation, 1997 (No. 188), Para. 9.

<sup>17</sup> The Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), Art. 6; Private Employment Agencies Convention, 1997 (No. 181), Art. 5(1); Employment (Transition from War to Peace) Recommendation, 1944 (No. 71), Para. 43(3); Vocational Rehabilitation (Disabled) Recommendation, 1955 (No. 99), Paras. 25 and 41; Private Employment Agencies Recommendation, 1997 (No. 188), Para. 9.

<sup>18</sup> The Workers with Family Responsibilities Convention, 1981 (No. 156); Workers with Family Responsibilities Recommendation, 1981 (No. 165); Private Employment Agencies Recommendation, 1997 (No. 188), Para. 9.

<sup>19</sup> Selected list of international instruments: *disability* has been interpreted as included in "other status" in ICESCR, art. 2(2) – CESCR General Comment No. 5 (E/1995/22-e/c.12/1994/20, p. 99), para. 2; *language* as ground for discrimination is clearly established in international law: see UN Charter, arts. 1, 13, 55, 76; UDHR, art. 2; ICCPR/ICESCR, art. 2; ICCPR, art. 4; *nationality* has been interpreted as included in the category "other status" in ICCPR – Human Rights Committee, Communication No. 196/1985 (*Gueye et al. v. France*), paras. 9.4, 9.5 and 10 – ICCPR, arts. 2, 26. *But see* ICESCR, art. 2(3) providing that developing countries may determine to what extent to guarantee economic rights to non-nationals: *see also* relevant CESCR Committee interpretations; and *sexual orientation*: see, inter alia, Optional Protocol cases, Human Rights Committee, under the ICCPR.

Convention". Of these other instruments, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, both adopted in 1966 and now widely ratified, both contain the following passage:

The States parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

On the regional level, the Committee of Experts noted also the European Convention on Human Rights, adopted in 1950, which in its Article 14 prohibits discrimination on the basis of "sex, race, colour, language, religion, political or other opinion, association with a national minority, property, birth or other status".<sup>20</sup>

## Conclusions

31. The Governing Body is therefore invited to give further consideration to the proposal by the Committee of Experts to examine a Protocol to Convention No. 111 on possible additional grounds of discrimination. The Committee recommended that the Governing Body and the Conference consider two alternative solutions in this respect. The first would be to allow States to ratify the Protocol and to choose which of the additional grounds listed in it they would wish to accept as additional obligations under the Convention (see the indicative list above). The second possibility would be to adopt a list of "core" grounds that would have to be accepted when ratifying the Protocol, and allowing States to decide to accept others from the list as well, and this solution has been favoured by most of those who have referred to it in previous consultations. The Committee considered that this should be done with no modification to the existing instrument, but simply by the adoption of a Protocol that could be ratified on a voluntary basis.
32. The Committee of Experts also pointed out that a provision already exists in Convention No. 111 allowing governments to undertake obligations in regard to grounds other than those detailed in the Convention. Article 1(1)(b) states that the definition of discrimination can be modified to include any other distinction, exclusion or preference which may be determined by the government of the ratifying country after consultation with representative employers' and workers' organizations. While some stated in previous consultations that this route should be pursued, the Committee of Experts suggested the Protocol as a better way of allowing States to extend the grounds covered by the Convention. It may also be noted that suggestions by the Committee of Experts to governments that they have recourse to Article 1(1)(b) have not yet met with a positive response.
33. It may be expected that this Protocol would have several important differences from Article 1(1)(b). It should be noted that the text of the Convention provides no very clear indication of how such a determination should be made or communicated to the Committee of Experts, unlike a Protocol, which is clearly open to explicit ratification. Upon adoption, a Protocol would have to be submitted to the competent authorities of all member States in the same manner as Conventions and Recommendations, and would therefore have to be considered formally by governments. There is no obligation on governments which have ratified the Convention to undertake any formal consultation on the grounds of discrimination under Convention No. 111, and they do not appear in fact to carry out consultations in this regard.
34. Ratification of the Protocol would constitute an international obligation as well as a public commitment to the grounds specified by the government ratifying it, providing a rallying point for action concerning the prevention of discrimination in employment and occupation. Depending on national legal systems, it would embed the grounds selected in national law as well as in

<sup>20</sup> Many analogous provisions exist, e.g. in the Inter-American human rights provisions (OAS Charter and Protocol of Buenos Aires, Convention on Human Rights and Protocol of San Salvador); European Convention on Human Rights and various Protocols, European Social Charter and the African Charter on Human and Peoples' Rights.

international commitments, in a way that a voluntary declaration under Article 1 of the Convention would not. Finally, there is no contradiction between the approach of ratifying an additional Protocol and that of making additional declarations under Article 1 of the Convention – they would be compatible and could be complementary if governments were to begin using the procedure allowed for in the Convention.

## 2. Employment of women

### Summary

Women have made significant gains in the labour market; in many countries they now account for close to half the labour force. But male and female labour markets remain strongly segregated. About half of the world's workers are in sex-stereotyped occupations. An extremely high number of women are confined to "female jobs" – with low status, often insecure, unsafe and poorly paid – which men still will not do. Even for similar kinds of work, women are typically paid 20-30 per cent less than men. More women have reached middle management, but they are not about to storm the world's boardrooms or parliaments. At and near the top, their numbers are still vanishingly small. If they want a family as well, the odds against success lengthen. Attempting to balance work, family demands and community responsibilities requires exceptional stamina and determination. Falling birth rates in some industrialized countries can be traced to women opting for work over family because they cannot manage the stress of handling both. Everywhere, women's march into the labour market has had profound effects on men. The traditional model of male breadwinner and head of household is being challenged worldwide. Both men and women are being confronted with the new reality of working women and mothers, implying an urgent need for a more equitable sharing of childcare, domestic and community responsibilities. The elimination of gender discrimination with respect to employment and occupation, therefore, is not only a fundamental right but will also shape future societies and economies and the quality of life for women and men. The ILO can play a role in influencing the course of these changes.

### ***Women's increasing share of the labour force***

35. One of the most striking phenomena of the twentieth century has been the extent to which women have increased their share of paid employment. With globalization, revolutionary advances in information and communications technology and the growth of modern service economies, women's labour force participation has not only increased but come to dominate labour force growth in many countries. Since 1980, women's labour force growth has been substantially higher than labour force growth for men for every region of the world except Africa.
36. It is critical to understand, however, the dynamics behind women's increased participation in the labour force – both because gender differences have affected the ways in which countries cope with rapid changes in the world economy and because gender relations have themselves been transformed by the economic forces unleashed by globalization. The implications of these changes for the quantity and quality of women's and men's employment can be considered.
37. First, to cope with intensified external competition and product market volatility, enterprises around the world have been attempting, on the one hand, to lower costs, especially those associated with labour, and, on the other, to enhance their capacity to adapt to rapid changes in market conditions and consumer demand. This has meant investing in new technology, outsourcing labour-intensive production processes to the informal sector or relocating them to low labour cost countries, and reorganizing production at the firm level. The new production techniques have changed skill and job structures. In certain sectors, some countries have noted a decline in the proportion of jobs requiring craft, apprenticeship or prolonged on-the-job learning, which have traditionally been male-dominated. Another key characteristic noted has been a trend to skill polarization, with a small core of workers possessing specialist competencies and a majority requiring minor training through modules of employable skills in which manual dexterity, docility, application and rote learning tend to feature more prominently – and which are normally associated with "feminine" characteristics. Such skill polarization places more reliance on external rather than internal labour markets especially because there is less benefit to enterprises from workers' on-the-job continuity. One

traditionally cited reason for discriminating against women – that they have higher labour turnover – has thus lost ground. In fact, employers resorting to casual or temporary labour and job rotation may prefer women.

- 38.** Second, the reorganization of production has been accompanied by the weakening of protective regulations and labour market institutions that were seen to impede free functioning of the labour market. One result of such deregulation has been to weaken the strength of labour market “insiders”, namely unionized (male) workers in stable full-time jobs. Since it is now easier to dismiss workers and to “downsize”, enterprises have been able to resort to external labour markets to substitute lower cost labour for core workers. Much of the new employment involves non-standard, often precarious, forms of work. Informal economic activities, subcontracting, part-time work, home-based work, self-employment have all proliferated, and the rate of unionization has declined. All these labour market developments have pushed up the female share of the labour force.
- 39.** Third, the casualization of the labour market has created a demand for female migrant workers in certain sectors, even when unemployment is rising in a receiving country. In several developed countries, the very low-paying, dirty, difficult and sometimes dangerous jobs – such as piecework and shift work in small and medium-sized factories and, sometimes, in sweatshops, cleaning jobs, domestic service and work in restaurants – tend to be filled by female migrant workers. Local workers may either shun these jobs or female migrant workers may be hired in preference to locals because they are more docile and work for lower rates, demand fewer fringe benefits, and insist less on other worker rights. A striking recent phenomenon has been the feminization of Asian temporary labour migration, with women moving more and more in their own right as autonomous economic migrants rather than as dependants of male migrants. As opportunities have burgeoned in female-dominated jobs, it is Asian women rather than men who have been leaving family and home to become income-earners. The availability of migrant domestic maids has freed local women from their domestic responsibilities to make it possible for them to seek paid employment outside the home.
- 40.** Fourth, in industrialized countries and transition countries, although for different reasons, the real wage decline for large proportions of the labour force has led to income loss which is compensated by additional labour supply. Moreover, the reduction or increased selectivity of state benefits in many countries has reduced the number of people who receive entitlements: this has boosted the “additional worker” effects, pushing more women into the labour market and keeping them there because of the growth of income insecurity. Doing away with minimum wage-fixing legislation/machinery or the weakened enforcement of existing provisions has also promoted the growth of very low-wage employment, and the payment of individual rather than family wages has encouraged the hiring of women.
- 41.** Fifth, in developing countries, the globalization of trade, production and capital flows has had important effects. One is the now well-acknowledged fact that industrialization in these countries has been as much female-led as export-led. Firms have relied heavily on low-cost women workers as part of their cost-cutting competitiveness strategy. What is now also becoming evident is that the share of women in export manufacturing, especially in export processing industries, peaks and then declines over time. The decline is associated with diversification of the export product mix towards higher value added, more technologically demanding export categories and with the increasing capital intensity of production technologies. It appears that, as jobs and wages improve in quality, women tend to be excluded from those areas. Another important impact has been the high proportion of women workers in the international financial services sector, more in the low-skill applications such as data entry but also increasingly in the customized, higher-skill business services such as software design, computer programming and banking and insurance services.
- 42.** Finally, it must be recognized that changes in family structures have had an impact on female employment. A number of developments, including the breakdown of extended family structures, the increased mobility of populations, the erosion of the traditional nuclear family, the growth of one-parent households, female-headed households and one-parent families have resulted, to some extent, in higher levels of female employment. In a few countries, the wider availability of childcare facilities has also encouraged women to remain in, or seek, paid employment. In respect of many of these factors, it is of course difficult to determine whether changes in family relation have created a

greater demand for employment or whether women's entry into employment has occasioned some of the changes.

### ***Have more jobs meant better jobs for women?***

43. If women in some countries now make up close to half the labour force, we might expect them to be doing a broad range of jobs, similar to those done by men. Occupational segregation by sex has fallen in some parts of the world, but overall women still have very limited labour market choices. Occupations remain highly segregated by sex and women tend to work in a small set of occupations, which represent relatively poor jobs in terms of pay, status, decision-making powers and career opportunity. These occupations also tend to have characteristics highly consistent with typical female stereotypes in society at large. Male-dominated occupations are over seven times as numerous as female-dominated ones, and tend to be much higher valued.
44. Over time, women have increased their share in administrative and managerial work, but they are normally in lower- or middle-level management, concentrated in sectors such as medical and health care, personnel and labour relations and education, which reflect extensions of their traditional domestic role. Whether in business, the professions, academia or politics, the top layer everywhere is still almost exclusively male. The term "glass ceiling" was coined in the 1970s to describe the invisible barriers that block women from top executive jobs and to illustrate the point that when there is no objective reason for women not to rise to the very top as men do, there must be something inherently wrong in the organizational structures of companies and institutions as well as in society. Women may look through the glass ceiling to see what they know they are capable of achieving but are not able to break through.
45. Rather than banging their heads against the glass ceiling, women have increasingly created their own enterprises. In the United States, a third of small and medium-sized companies are now run by women. In Brazil it is believed that women run over 50 per cent of micro-enterprises and small businesses. Women entrepreneurs have become significant actors in the growth of small and medium-sized firms throughout the world. But setting up a business is not necessarily a lucrative activity for women. Even in the United States, it was found that full-time self-employed women earn only half as much per hour, on average, as full-time female employees. Still, compared with the rigidity of corporate life, the flexibility of self-employment offers many working women a solution to their biggest problem: reconciling career and family.
46. Women, compared to men, face more barriers entering or expanding businesses. In Western countries, a major difficulty for women entrepreneurs is to be taken seriously and to get men to work for them. In developing and transition economies, they face discrimination by creditors, suppliers and customers. Lack of collateral and the size and nature of their businesses limit their access to credit. Limited access to credit means that women's enterprises tend to start small, expand slowly and are more vulnerable to failure than businesses founded by men. Another obstacle for female entrepreneurs is the lack of networks which could provide support and information on opportunities, developments and business conditions. Male-dominated business associations are well established and not always friendly to women.
47. The majority of women, especially in developing countries, have found work because they have been prepared to go into "women's jobs" – with atypical statuses, often insecure and poorly paid – which modern service economies appear to create in ever-growing quantities and which men are still not prepared to do. Increasingly they are "contingent" workers (whose jobs are not expected to last) in a narrow range of industries doing temporary or casual work involving irregular or unusual hours or done on a contract or piece-rate basis. They are paid less than their non-contingent counterparts and normally are not covered by labour and social security regulations nor by the provisions of collective bargaining. The number of part-time women workers has also been increasing sharply, and part-timers are still generally regarded as less committed and less valuable than full-timers and treated accordingly. Of course, some women choose part-time jobs so as to be able to combine work and family, but more often than not they have no other choices. The fact remains that such flexible forms of work generally meet employers' cost-containment needs more than they meet the needs of women workers for quality employment.

48. In occupations where many women but few men work, pay levels tend to be low. With so many women concentrated in low-paying jobs, it is no surprise that despite the increasing adoption of equal pay legislation, a large gap exists between male and female earnings. Even for similar jobs, women tend to earn 20-30 per cent less than men. The gap has been closing to some extent, especially among young childless, professional full-time workers. But once women start having children their relative income drops, and the more children they have the more their pay falls behind: because of the loss of income from the time they take off to have children, because they miss out on promotion opportunities and because they often have to accept a less skilled job to return to the labour market.
49. There is no denying that women have come a long way in the labour market, but any review of their situation and working conditions must conclude that there is still a long way to go. Progress towards the achievement of equality of opportunity and treatment for women and men has been far from continuous or sustained. In times of economic growth and prosperity, equality is paid more than just lip-service and resources are devoted to the elimination of discrimination. However, in periods of transition, recession or downturn, such efforts are minimized and the measures to enable women better to balance work and family responsibilities are among the first to be abandoned. Moreover, women are less inclined to seek redress for discrimination in troubled economic times for fear of retaliation that could result in loss of employment. Notwithstanding, women are still among the first to lose their jobs. Cyclical adherence to the most fundamental human right of equality of opportunity and treatment has thus resulted in slow and uneven progress towards gender equality. Sometimes there is even a distinct reversal of earlier gains. There are new and growing highly vulnerable groups: the poorest groups of women, including female heads of households, migrants and indigenous women who do not appear to be able to escape in any meaningful and sustainable way from being victims of discrimination and marginalization.

### ***Education and training: The key to better employment for women***

50. The *World Employment Report, 1998-99* cites a number of reasons why education and training are a key to better employment for women:
- route into non-traditional jobs and out of low-paid female occupations;
  - means of competing on the basis of objective criteria for recruitment and promotion;
  - means of commanding higher earnings;
  - means of maintaining continuity of employment while meeting family responsibilities; and
  - form of protection against the occupational downgrading of women returning to the labour market.
51. School and post-secondary enrolment rates for girls and women have risen in almost all countries in recent decades, although important disparities persist. Girls are out-performing boys at school, but a major problem is that their general education tends to lack career orientation. Another worrying problem is that factors such as financial constraints and the resurgence of fundamentalist religious attitudes in poor countries still mean that parents invest less in girls' education than in boys' education and female drop-out rates are higher.
52. It is in skills training, however, that the more serious discriminatory impacts are felt. The *World Employment* report notes that compared to men, women have inferior access to: (i) vocational training; (ii) workplace-based training; (iii) lifelong learning; (iv) training programmes for the unemployed; (v) new technology training; and (vi) entrepreneurship training. Policies to support lifelong learning and new pathways to skill development for workers in non-standard forms of work and those in occupations with low training opportunities can have a large impact on women's labour market success. Since increasingly it is not just the levels but rather the types of education and training that women and men receive that matter, it is important to encourage and support women and girls to take up studies in non-traditional fields especially those in areas of future job growth.

53. But the report also emphasizes that training policies on their own are insufficient to bring about labour market change: “a range of policies, with training as a key but not lone component, is needed to widen women’s choices in the labour market”. It is of course imperative that measures also be taken to ensure equality of opportunity and treatment in respect of access to employment in general, as well as to particular occupations.

### ***Ending gender discrimination and improving employment for women (and men)***

54. As the employment of women has immeasurable benefits for society at large through, for instance, the better utilization of human resources, its contribution to national economic growth and the elimination of poverty and to the financing of social security schemes, it is incumbent upon governments to take rigorous measures to end discrimination. The Conventions relating to women workers – Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Equal Remuneration Convention, 1951 (No. 100) – are among the most widely ratified. National implementation, is, however, often weak for a number of reasons. First, the legislative framework is frequently inadequate. The ILO receives many requests from governments and the social partners for advice on how to frame national law that is in conformity with international standards while being appropriate to internal conditions, and on how to promote a conducive environment for effective application of the law. For instance, many countries are not able to implement Convention No. 100 because they lack local expertise to establish job evaluation systems and labour market statistics by sex are inadequate. Second, national machinery for enforcement is weak, especially in those countries where industrial relations systems are poorly developed, and women are under-represented in senior decision-making positions. Political will and commitment tends to wax and wane in line with economic and social conditions. Third, women workers themselves are often not aware of their legal rights and obligations or are too intimidated, or lack the means and power to enforce their rights.
55. A conducive environment for the employment of women also requires governments to make changes to their tax and social security systems. The sort of incentives or disincentives they offer can make a big difference to the way people organize their lives. To enable women to make a free choice about taking jobs, tax and social security systems need to be tailored to individuals rather than family units. Ways in which governments can make it easier for women to combine work and having children (and look after the elderly) need also to be considered: such measures have assumed greater urgency in many countries with plunging birth rates on the one hand and rising proportions of the elderly on the other hand.
56. Companies need to be convinced that it is good for business to employ and promote women and to provide training and family-friendly policies so that they can contribute their full potential. It is therefore important to gather and evaluate the evidence. With women increasingly as well, or better, educated than men, a company would be narrowing its choices to only half of the brightest and best people were it recruiting only men; if a company is already employing women, and has invested in their skills, it makes economic sense to retain them by offering, for example, maternity leave or flexible hours rather than risk losing them and having to recruit and train replacements; the approach and attitudes of women bring benefits to the company; giving women employees a fair deal is good public relations for a company, especially since women are major consumers of their products and services.
57. A growing number of companies are now implementing family-friendly policies. The challenge, however, is to convince employers, especially in smaller enterprises, that such policies are cost-effective. It is also important to ensure that such policies are not aimed exclusively at women; they could backfire by inviting discrimination since men too have families. It is necessary to encourage not only women but also men workers to make use of them without fearing that it will be construed as lack of commitment to their work or justification for lack of promotion opportunities.
58. For the large groups of women workers outside formal sector employment, the ILO has been providing policy advice and technical cooperation assistance for comprehensive and integrated measures to promote more new and better jobs. For instance, programmes to assist vulnerable groups of informal sector women workers have included components for training not only in

income-generating skills but also in entrepreneurship development, gender awareness raising and legal literacy, group mobilization and organization, access to credit, markets and other support facilities, etc. The programmes have also tried to ensure that productive and remunerative employment for women translates directly into improved welfare for the family, more equal gender relations, schooling for children and the reduction of child labour. It is time to take stock of these multidisciplinary experiences of the ILO's various technical departments and the International Programme on More and Better Jobs for Women and to identify and more widely disseminate the good practices.

59. Finally, policies to promote true equality need also to address men – as the other half of the labour force and of the social unit. The large-scale entry of women into the labour force has outpaced changes in social attitudes, norms and institutions. In many countries, the model reflected in legislation (e.g. social security and taxation) and in popular perception is still based on the notion of male breadwinner and female housewife or secondary earner, but the reality is very different. Men (and women too) need to become accustomed to women bosses, female co-workers, working mothers, dual-earner couples, and men need to be prepared to take on an increased share of domestic tasks. Young boys (and girls) need new role models to equip them for these changed realities.

### ***Suggested issues for a general discussion at the Conference***

60. Employment of women as an agenda item for general discussion at the Conference would be important on at least two grounds: (1) in the light of the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work; and (2) as integral to the ILO's central concern for employment promotion.
61. Should the Governing Body decide to include such an item, the following are some suggestions for issues that the Conference may wish to address:
- How and why are women and men being differentially affected by the processes of job creation and job destruction associated with globalization; and why is it that women, despite their generally disadvantaged pre-labour market position, have been more flexible and adaptable than men – in terms both of the job requirements and conditions of work – in entering the new areas of employment?
  - How is the employment of women good for governments, employers, individual women and men, and children?
  - Why has occupational segregation persisted and what can be done to break it down, not just to get women into “men's jobs” but also men into “women's jobs”?
  - How to ensure that quantitative increases in female employment are matched by qualitative improvements in working conditions and family life, including ensuring that “non-standard” forms of work for women (and men) are not “sub-standard” in terms of benefits and security?
  - Why is it that, although many countries have now adopted legislative and administrative measures and programmes, progress in the elimination of gender discrimination is far from continuous or sustained? What are the main impediments to equal opportunity and treatment? What kinds of assistance do the tripartite constituents need to ensure more effective and sustained implementation of international standards relating to women workers?
  - Why is education and training a key to more new and better jobs for women, and what incentives and supports are needed to encourage companies to invest in female human resource development and management?
  - How can a major push be made by the tripartite constituents to promote family-friendly policies and to assist both women and men to cope with the changing sexual division of labour?

- What are the lessons learnt and the good practices, based on evaluation of the ILO's multidisciplinary experiences, that promote more new and better jobs for women and what is the potential for replication/adaptation/expansion, especially in developing countries?
- Which are the particularly vulnerable groups of women workers and what are their special needs?

### 3. The informal sector

#### Summary

The informal sector has grown with unanticipated rapidity in recent years in the developing world, in countries in transition, and even in developed countries. In developing countries its growth has been fuelled by structural adjustment programmes and processes related to economic reform, while in the developed countries informalization is being pushed by the search for cost-efficient methods to increase productivity and competitiveness such as outsourcing and subcontracting. Globalization has diminished the relevance of national boundaries in the search for flexible and cheap labour, creating new challenges for the ILO, governments and the social partners to contain the adverse impact of this process and ensure decent work for all workers.

Evidence of flagrant abuse of basic rights in the informal sector may be addressed through the application of the core labour standards addressed in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up to the informal sector. This may require, in some cases, reform of existing legislation to ensure its application to all workers, and in some cases new laws and regulations. Consideration may also be given to the development of a new international instrument laying down these principles and guiding governments on how to apply them to the informal sector.

One of the keys to promoting better working conditions in the informal sector is support for the organization and representation of informal sector workers. The potential role of governments and of workers' and employers' organizations in organizing and representing informal sector workers and/or forming alliances with independent representative bodies needs further elucidation.

The extension of social protection to, and the promotion of safe work practices and conditions in, the informal sector are crucial to the concept of decent work. Aside from issues of equity and human rights, social protection is linked closely to productivity. Major efforts are required to scale down existing public and private schemes to provide coverage to workers in the informal sector, while also identifying alternative schemes for minimal protection based on mutual solidarity that can be scaled up. In all of the above areas of concern, the challenge is to achieve outreach on a scale sufficient to have a significant impact on what is such a large and heterogeneous segment of most economies.

### ***Macroeconomic and sectoral policy issues***

- 62.** The last decades of the twentieth century witnessed the explosive growth of the informal sector, most noticeably in the developing countries, but also in countries in transition as from the late 1980s, and, though more subtly, even in the developed countries, particularly during the 1990s. In 1972, when the ILO defined the term in an employment strategy mission to Kenya, it was estimated that less than 10 per cent of the labour force was in the informal sector; by 1997, it was estimated at over 63.4 per cent. In India, the official figure is 91.7 per cent of the workforce. In Africa, at least 90 per cent of all new jobs created in the 1990s were in the informal sector. In some countries in Latin America, because of jobless economic growth in the formal sector, it is said to account for 100 per cent of new jobs. Everywhere a high proportion of informal sector workers are women; young people are also disproportionately represented in this sector. Once thought to be a transitory phenomenon mainly of relevance to developing countries, it was assumed that the informal sector could be gradually integrated into the formal sector. It is now clear, however, that we are witnessing the opposite trend – the informalization of the formal sector in many countries, without regard to level of development.
- 63.** The forces behind these new developments are several and convergent, thus leading to the rapid growth of the informal sector across the globe. The implementation of structural adjustment programmes in developing countries in the 1980s and 1990s led to large-scale retrenchment in the

public and formal sector, privatization and liberalization, all of which resulted in the growth of the informal sector and major changes and realignments in the balance and composition of urban and rural economies. The collapse of centrally planned economies in the transition countries also brought the sudden emergence of a dominant informal sector, though many of the forces and consequences differ. The economic crisis in East Asia in the mid-1990s reversed the trend toward formalization witnessed during the 1980s and early 1990s which had seemed to provide evidence of the eventual demise or formalization of the informal sector. The informal sector became a “sponge” absorbing thousands thrown out of work due to the crisis. The magnitude and diversity of the informal sector in most countries present a challenge to the State to achieve a balance between microeconomic and macroeconomic approaches, between economic growth and social protection, and between the promotion and containment of informal sector activities.

- 64.** Over and above these changes observed at the national level was the speed with which the process of globalization proceeded, cutting across national boundaries and levels of technology at a pace never before witnessed. Outsourcing and subcontracting became accepted methods of increasing efficiency while reducing costs. These practices enabled transnational corporations as well as established national industries and services to farm out production, assembly, packaging and even marketing, often to developing countries. This coincided with efforts by developing countries to attract trade and foreign direct investment by developing free trade zones and export processing zones, usually offering special tax incentives and exemption from existing labour legislation. In the developed countries, downsizing, outsourcing and subcontracting contributed to the rapid growth of home work, especially with regard to information technology. Informalization often leads to a reduction in coverage by social protection schemes and increasing insecurity of employment due to the absence of clear-cut contracts of employment. The rapid spread of information technology across the globe has led to the subcontracting of work, especially of a repetitive nature, to developing countries, sometimes even down to the village level.
- 65.** Pressures from the ongoing globalization of the world economy, the liberalization of trade and rapid technological progress – which are forcing many countries to change their employment patterns and organization of work in order to stay competitive – may also result in inadequate safety and health standards and environmental degradation, particularly in the case of the informal sector. For many informal sector operators, their home and workplace are one and the same. The majority of urban informal sector workers live in poor areas, lack basic health and welfare services and social protection, and work in an unhealthy and unsafe working environment. Vulnerability to disease and poor health result from a combination of undesirable living and working conditions. Health and development are intimately interconnected and therefore, as a prerequisite for sustainable development it is necessary to protect the most vulnerable groups, such as the very poor, and meet their basic health needs.
- 66.** One should not lose sight, however, of the tremendous potential for job creation in the informal sector, or its capacity to contribute to economic growth. In India, a recent ILO study estimates that around 500,000 jobs have been created in the informal sector in the software and related services industry in recent years, by and large meeting the criteria of decent work in terms of wages and income, though not in terms of social protection. With expansion of this industry in the next few years, it is expected that more than a million new jobs will be created. In the United States alone an estimated 19.6 million adult workers now telecommute regularly from their homes to their jobs, and millions more work at home occasionally. Many if not most of these workers may enjoy contracts of employment and social protection comparable to those enjoyed by others working in offices, so the growth of home work does not necessarily correspond to the growth of the informal sector. In addition, they avoid lengthy commuting time and enjoy flexibility in their working time allowing them to fulfil family responsibilities, as well as other advantages not available to their counterparts in offices. Informalization, particularly in the developed world, may thus also include the creation of quality jobs for own-account workers, who may be better off than they were in their previous jobs. The challenge to the ILO and its constituents in the years to come with regard to macroeconomic issues in the informal sector will be to work towards the creation of an enabling environment in which every worker enjoys the right to decent work.
- 67.** The heterogeneous and amorphous nature of the informal sector has always created conceptual and definitional problems which are compounded by the different objectives of those who have attempted to define it. Which terminology is the most adequate depends on the aspect of the

phenomenon with which one is concerned. For example, in statistics there is a need to specify the measurement objectives and accordingly determine the most appropriate observation units or terminology to be used. If the observation units are production units, the term “informal sector” or “employment in the informal sector” is used; this is in line with the System of National Accounts, which conceptualizes the informal sector as a subsector of the institutional sector termed “households”. “Informal employment” or “employment in informal employment relationships” is used if the observation units are persons or jobs. On the other hand, trade unions have recently adopted a definition for their own purposes which distinguishes between three main segments in the informal sector workforce: owners or employers of micro-enterprises, including farmers, who may employ a few workers and/or apprentices; own-account workers comprising the nominally self-employed, street vendors and small farmers; and employees engaged in full-time or casual employment, including wage labourers working on a regular, casual or contract basis, unpaid workers, homeworkers and domestic workers. The trade unions consider that the latter two groups should be the focus of their attempts to recruit and to provide services for workers in the informal sector. Employers tend to be more concerned with owners or employers of micro-enterprises. Due to the changes in the nature and composition of rural and urban economies, there is a trend among scholars and development experts towards rejecting the concept of a formal/informal sector dichotomy, and rather to see them as part and parcel of overall economic development dynamics, hence preferring the terms “informal economy” and “informal employment”, which occur along a continuum of formality and informality rather than separate and distinct sectors.

### ***International labour standards***

- 68.** The evidence is overwhelming that basic rights, as reflected in the core international labour standards, are often flagrantly abused in the informal sector. At the ILO’s International Symposium on Trade Unions and the Informal Sector (Geneva, 18-22 October 1999),<sup>21</sup> participants criticized governments and international financial organizations for not focusing sufficient attention or resources on the transformation of informal sector activities into more highly productive, organized and socially responsible enterprises. The 1998 ILO Declaration on Fundamental Principles and Rights at Work (freedom of association, collective bargaining, forced labour, discrimination and child labour) makes no distinction between formal and informal economies, and can provide a basis for taking initiatives in this area. When we speak of what is fundamental – or universal – we mean that it applies to all human beings. Even though it may be harder to assert these principles and rights in the informal sector – for example ensuring equal pay or the unacceptability of child prostitution – they must not be ignored or regarded as unattainable. Fundamental principles and rights at work cut across the whole sector. The campaign to promote the Declaration must therefore provide guidance for governments to extend its provisions to the informal sector in all of its manifestations, including the deterioration of rights in developed countries due to processes such as informalization and flexibilization, as well as the issue of raising standards in developing countries where the vast majority may be working in the informal sector. The Report of the Director-General to the International Labour Conference in 1999, *Decent work*, recognized that all workers have rights, regardless of whether they are in the formal or informal sector. The ILO can assist in the standard setting and implementation process at the national level to advance the cause of decent work in the informal sector. This may in some cases involve the reform of national labour legislation to ensure that existing laws and regulations apply in an effective manner to all “workers” rather than just “employees” with a contract of employment.
- 69.** In addition to efforts to extend the principles of core labour standards to the informal sector, there are a number of other ILO instruments that have particular relevance for the promotion of decent work in this sector. For example, closely related to the principle of freedom of association in the Declaration are the Rural Workers’ Organisations Convention, 1975 (No. 141) and its supplementary Recommendation (No. 149). In addition, the Minimum Wage Fixing Convention, 1970 (No. 131), the Protection of Wages Convention, 1949 (No. 95), the Home Work Convention, 1996 (No. 177) and its supplementary Recommendation (No. 184), the Labour Inspection Convention, 1947 [and Protocol, 1995] (No. 81) and the Labour Administration Convention, 1978 (No. 150) may be seen to be interrelated and relevant to specific aspects of work in this sector.

<sup>21</sup> GB.277/STM/5.

Promotional instruments, however, may be most useful in the first instance, such as the Employment Policy Convention, 1964 (No. 122) and its Recommendation (No. 169), which promote full, productive and freely chosen employment, and the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189). This group of promotional instruments describe macro-level policies that could contribute towards decent work in the informal sector, particularly enterprise development, and illustrate what governments can do to address the problems raised in the informal sector.

70. Consideration may also be given to the possible development of a new instrument laying down these principles and guiding governments on how to apply them to the informal sector, either with regard to specific segments such as street vendors or to the informal sector as a whole. The instrument could be in the form of a Recommendation, a set of conclusions emerging from the discussion, or a meeting of experts to frame a code of conduct to provide guidance to countries with a substantial informal sector workforce. The primary objective would be to eliminate the gross violation of fundamental principles and rights at work experienced by informal sector workers and to promote in their favour the concept of decent work.

### **Organization and representation**

71. If one of the highest principles and fundamental rights at work is freedom of association and the right to collective bargaining, the problem remains of how to go about organizing and ensuring the representation of workers in the informal sector. Many, if not most, do not have a clear-cut employee-employer relationship or contract of employment. Convention No. 141 and Recommendation No. 149 concerning rural workers' organizations provide a basis for the organization of workers falling outside the formal sector in rural areas, "whether they are wage earners or self-employed". But this does not cover the millions of workers in the urban informal sector. The International Symposium on Trade Unions and the Informal Sector acknowledged that "The substantial shift of the workforce into the informal sector raises significant questions for trade unions and represents for them one of the most crucial challenges of the present era". The organization of informal sector workers, however, is essential for providing representative structures to enable them to voice their basic needs and concerns and to defend their interests collectively. The Symposium recognized that unions have to do more to accommodate the needs of informal sector workers through specially tailored activities and by demonstrating their ability to deliver tangible benefits and increased protection to workers in informal activities. A list of 20 specific recommendations were recorded as a means of guiding them in this task. Ensuring gender equality and representation of young people figured high on their agenda given the disproportionate participation of women and young people in the informal sector.
72. The potential role of employers is less well elucidated. Many employers' organizations have offered services to informal sector operators, particularly to those engaged in micro- and small enterprises, such as Start and Improve Your Business (SIYB), training and legal advisory services. While on the one hand the flexibilization and informalization of the workforce are to the advantage of many employers, employers also voice concern regarding unfair competition from unregulated enterprises, quality control over informal sector products and the uneven application of labour legislation that is meant to promote decent employment. So far, their main interest appears to be in the identification of "dynamic subsectors" that have employment creation potential and stand to gain from strengthening their relationship to formal sector enterprises.
73. There are clearly numerous challenges as well as advantages for conventional workers' and employers' organizations in organizing and representing informal sector workers. The organization of informal sector workers by the social partners can strengthen the latter's representativeness and thereby enhance their claim to speak for all workers. Advantages to informal sector workers include visibility, legitimacy and security. However, in many circumstances independent representative bodies might prove more effective. Employers' and workers' organizations can help informal sector operators to organize into "community of interest" groups. The ILO and its InFocus Programme on Social Dialogue can assist in defining which informal sector operators can be so organized and how they can be assisted in a particular manner. The issue then is to identify the type of linkages and alliances that could be established between informal sector organizations and employers' and workers' organizations to their mutual advantage.

74. The role of the government is also crucial to ensuring an enabling environment for the organization and representation of informal sector workers. It has been observed that, since a large proportion of informal sector workers do not have an employer-employee relationship, their main concerns and needs often entail negotiation with local government authorities, for example for legitimization through registration, issuing identity cards and ensuring security of space for production activities, trade and services. A second major issue concerns increasing access by informal sector workers to basic services such as social security, health and safety services, skill and technology upgrading, microcredit and savings schemes, and business services. Suitable institutional and organizational structures for the delivery of such services may include workers' and employers' organizations, as well as independent representative bodies, which can be area- or sector-specific.
75. There is also an increasingly global dimension to the issue of organization and representation. National alliances of street vendors and home workers are beginning to form international alliances (StreetNet and HomeNet respectively) to further their agendas. The International Symposium on Trade Unions and the Informal Sector, referring to the ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977), called on governments to facilitate access to information on "production chains" and the "contracting-out" process, including situations where the work is subcontracted in the home country as well as where work is ultimately performed in other countries. It also called on trade unions to expand cross-border cooperation between union centres, and international trade union cooperation to concentrate its efforts to implement better conditions in the informal sector in four areas: the promotion of a link between labour standards and trade matters; the negotiation and implementation of codes of conduct; the development and implementation of framework agreements between international trade union organizations and multinational companies; and social labelling schemes.

### **Social protection**

76. More than half of the world's population today is excluded from any kind of formal social security protection, and most of those excluded are in the informal sector. Aside from issues of equity and human rights, social protection is closely linked to productivity. Workdays lost due to poor health, accident or injury combined with their related medical costs are a major contributor to poverty, particularly in countries where government subsidies have been reduced or eliminated due to structural adjustment programmes and privatization, and also in the industrialized countries where medical costs are high. The International Symposium on Trade Unions and the Informal Sector recommended the promotion of equitable and universal social protection systems or, in their absence, local-level mutual insurance schemes at a cost that can be borne by the workers themselves, their employers (if any) and the State in order to diminish income inequalities and provide protection for everyone in the society. At an international workshop on social protection held by the ILO in December 1999 in collaboration with WIEGO<sup>22</sup> and the World Bank, several other alternative models were highlighted, including for-profit insurance schemes, public-private schemes, portable health benefit schemes, and schemes linked to microfinance institutions. At both meetings there was a strong message that the ultimate or long-term objective should be the extension and adaptation of existing formal sector schemes to the informal sector. These could include statutory pension systems, contributory pension schemes and private insurance schemes.
77. The extension and modification of public and private social security schemes designed for formal sector workers who have security of employment, and in which employers make a substantial contribution to cover informal sector workers, is obviously problematic. In many cases informal sector workers are unable or unwilling to contribute themselves, particularly to long-term programmes such as pension schemes. It has been found that most informal sector households already spend a considerable part of their budget on health and education, and many seek protection in the case of death and disability. Indigenous solidarity schemes are usually found to reflect these priorities. Women in the informal sector also place high priority on maternity and childcare benefits. Group-based solidarity schemes, though usually small in scale and coverage, are attractive to

<sup>22</sup> Women in Informal Employment: Globalizing and Organizing (WIEGO) – a global consortium of academics, NGOs and organizations concerned with women workers in the informal sector.

informal sector workers for a number of reasons: through regular contributions they can avoid indebtedness when they face large medical bills; as a group, they can negotiate on price and quality with private health providers; and within a group, they may be willing to spend on preventive and health promotion activities so as to keep down the cost of curative services. However, self-financed schemes in the informal sector require the existence of an association based on trust and an administration that is capable of collecting contributions and paying benefits. Some such schemes could be directly governed by associations or organizations of the informal sector workers themselves (e.g. producer and employer organizations, cooperatives and credit associations), or they could use intermediate carriers such as trade unions, non-governmental organizations and private insurance companies. The ILO's programme on Strategies and Tools against Social Exclusion and Poverty (STEP) is currently documenting and disseminating information on a number of existing schemes, but more technical cooperation and assistance is clearly needed in this area.<sup>23</sup> Whether public, private or self-financed, social security schemes must deal with issues of administration, cost, contribution and subsidization.

- 78.** Occupational health and safety is also an important issue in the informal sector. High productivity and quality employment can be reached only when the requirements for the prevention of accidents and diseases and the protection of workers' health and welfare are integrated into the organization of work and the production process. This is particularly evident when the total costs resulting from injury, illness and disability are taken into account in calculating the true cost of production. In informal sector micro-enterprises, poor working practices and poor working conditions are also interrelated. Hazardous work not only harms informal sector workers' health, but decreases enterprise productivity and thus income due to poor health and the inability to work effectively. Awareness of the adverse long-term effects of poor and hazardous working conditions, how to prevent accidents and diseases, and improve workers' protection and business practices in order to increase productivity, are very low among the micro-entrepreneurs.
- 79.** The occupational health status of workers in the informal sector varies according to their working conditions, their general health status and the degree of environmental degradation. Handling of hazardous substances, exposure to extreme temperatures and to transmissible diseases, lack of adequate equipment and tools, poor lighting and ventilation, etc., are all common to the informal sector, but constitute problems that can often be dealt with through low-cost workplace improvements, training, health promotion and public education. Practical, simple and sustainable approaches to improving working conditions are now being developed for micro-enterprises in the informal sector and for small-scale farmers. These new approaches are based on the lessons learned from the application in many regions and countries of the ILO's Work Improvement in Small Enterprises (WISE) methodology, promoting low-cost workplace improvements linked to productivity and other enterprise objectives, and its adaptation to micro-enterprises in the informal sector. In this regard it may be recalled that, at the International Labour Conference in June 2000 a first discussion will be held on possible new standards for safety and health in agriculture, which also concern small-scale farmers.
- 80.** In order to raise the productivity of informal sector workers it is necessary to develop measures that effectively combine services to enable micro-enterprises to increase their income, and services to assist them in protecting their health and improving their working conditions. The protection of the health and welfare of workers in the informal sector is a challenge that should be faced with an integrated approach to health promotion, social protection and quality employment creation, and must therefore be part of a strategy to improve the basic living and working conditions of the urban poor, seeking a higher level of social protection and more sustainable and equitable development.

### ***Suggested issues for a general discussion at the Conference***

- 81.** A discussion was held at the International Labour Conference in 1991 on the Director-General's Report, *The dilemma of the informal sector*. Since then, the ILO has carried out substantial work on

<sup>23</sup> GB.271/TC/4.

the topic with regard to statistical and definitional issues, macroeconomic policies, standard setting and technical cooperation, including micro-enterprise development, gender, training, organization and representation, social protection and safety and health at work.

- 82.** A general discussion on the informal sector would now be timely and appropriate for three reasons: (1) the commitment by the ILO and its constituents to the concept of decent work for all workers; (2) the challenge to ensure the application of the ILO Declaration on Fundamental Principles and Rights at Work to all workers; and (3) the need to better understand the newly emerging forms of work in the informal sector and how the forces behind them can be influenced to ensure more and better employment opportunities at the global level. The disproportionate representation of women and young people in the informal sector is also a consideration.
- 83.** As one alternative, the Office is examining the possibility of holding a separate conference on the informal sector in 2002 (the thirtieth anniversary of the ILO's comprehensive mission to Kenya, which identified and developed the concept of the informal sector), depending on the outcome of the Governing Body discussion on this item.
- 84.** Should the Governing Body decide to include such an item on the agenda, the following are some suggested issues that the Conference may wish to address:
- (a) How can national policies help to optimize the level of labour and social protection with the growth of informal employment? What role can policies play in preventing the deterioration of social protection resulting from the process of informalization, e.g. increased use of cost-effective methods such as outsourcing and subcontracting? How are the forces of globalization encouraging this growth and changing the nature of rural and urban economies? How can countries or regional organizations for trade or economic integration influence these trends? What policies should governments and international financial institutions implement to prevent the adverse implications of such changes?
  - (b) Given the changing nature and composition of the informal sector, is there a need to review and revise the concept and definition of the informal sector?
  - (c) How can the core labour standards addressed in the ILO Declaration on Fundamental Principles and Rights at Work be extended to the informal sector? What should be the role of the social partners and the ILO in doing so? How can relevant existing promotional instruments and/or those pertaining to specific activities be effectively applied to protect workers in the informal sector? Is it timely and appropriate to consider the development of a new instrument? If so, what form should it take?
  - (d) How can trade unions and employers' organizations assist in organizing informal sector workers, and how can they best represent and defend their interests? What should be the role of the ILO in this regard? How can governments facilitate the development of representative organizations of informal sector workers? What kinds of linkages and alliances need to be established between independent representative organizations and conventional workers' and employers' groups?
  - (e) How can the social partners ensure increased access by informal sector workers to basic services and social protection? In particular, how can innovative approaches increase the outreach and scale of services, for example by working through existing private sector channels? How can governments and the private sector expand and extend established social security systems to provide coverage to informal sector workers? How can group-based solidarity schemes be enlarged so as to rapidly expand coverage and achieve economies of scale? How should such schemes be designed to ensure gender equity and the provision of maternity and childcare benefits to women workers in the informal sector?
  - (f) What type of international cooperation (by the ILO, trade unions, regional groupings, etc.) could best promote the interests of informal sector workers? How can technical cooperation in general achieve the outreach and scale needed to have significant impact on such a large and diverse sector of most economies?

## 4. Investment and employment

### Summary

Globalization has strengthened the importance of private investment at the national level. Globally, foreign direct investment (FDI), which companies make to only a limited number of countries, has largely replaced public investment, such as development aid. The share of portfolio investments has increased. These trends have a considerable impact on the level and structure of economic growth, employment and income distribution.

As was made clear in the conclusions of the report submitted to the International Labour Conference in 1996 on "Employment policies in a global context", investment is a crucial element in the process of employment generation and output growth. Since then, concern has only intensified about how labour markets that remain local are affected by capital markets that are increasingly global.

Governments, trade unions and employers' organizations have several means to encourage investments in general, especially those with positive employment effects, even though the role of a State as an investor and provider of finance for investments has decreased radically. Changes in the composition, location and sources of finance for investments have affected the selection of available means to influence the investment decisions that are taken primarily in enterprises.

The discussion of investment and employment is motivated by the underlying question of how more and better jobs can be generated from investment in the changing context of decision-making, especially in areas where they are needed most: in least developed countries; in less developed regions within countries; and in smaller enterprises.

### ***The role of enterprises in investment and employment***

#### Areas of concern

85. Until the mid-1980s, private and public investment tended to move at a more or less equal pace. Since then, the level of private investment has surpassed public investment initiatives. Increased privatization, deregulation and economic stabilization have expanded opportunities for private sector growth, and new sectors, such as infrastructure for public utilities, telecommunications and transportation, have been opened to private investment. The role of private enterprises as investors and contributors to employment has grown in importance.
86. Over the last 20 years, and particularly in the 1990s, production has gradually shifted towards more knowledge-intensive products and services. It has been estimated that production will grow much faster in such industries and that consequently their share of total production will increase. Much of the value in goods such as cars also derives from computer software and other intangible inputs. Knowledge-intensive international firms showed their particular significance for employment creation in the early 1990s when they were able to expand employment while it was declining in other sectors.
87. With respect to the availability of resources for research and development (R&D), home-market companies are in a disadvantaged position. Many such companies are relatively small and depend on the consumption of goods and services by international companies. In recent years competition between these companies has increased as international enterprises are trying to reduce the number of their principal subcontractors.
88. R&D is associated not only with knowledge-intensive products but also with knowledge-intensive organizations. In general, front-runners in the development of flexible forms of work organization – such as decentralized management responsibility, the use of work teams and job rotation, continuous skills development and the use of remuneration systems based on results and quality – are international, larger companies employing people with high levels of education. Companies that have pursued such innovations have, according to many comparative studies, shown improved productivity and profitability, as well as the ability to attract and retain highly skilled employees.

## Points for discussion

- 89.** What are the survival strategies of companies that operate in traditionally labour-intensive industries? How is it possible to ensure that these companies make a successful transition towards better use of technology and human skills? Many traditionally capital-intensive companies face the same problems, especially in primary production. There are local projects concerning this issue, but the ideas and experience generated by these projects are not accessible to many because the information has not been compiled or organized globally.
- 90.** How can those companies that operate in regions where access to modern information and communication technology and infrastructure is very limited, such as sub-Saharan Africa, avoid being excluded from knowledge-intensive development? What can be learned from the experience of those European countries that have not been in the mainstream of globalization? For example, what has been the role of foreign direct investment (FDI) and the promotion of inward investment in the creation of jobs for skilled labour?
- 91.** What is the future of SMEs in an environment that stresses growth – including the growth of companies – as a key to survival? Is shifting from small to large a desirable or requisite aim for all small companies? If not, what are the determining factors – technology, organization, market conditions – that allow companies to remain small but successful in different industries and regions?

***The State's role as an investor and contributor to investment***

## Areas of concern

- 92.** There is a global trend away from state ownership to private ownership, and from monopoly toward competition. Large-scale privatization of state property has occurred in most parts of the world. Consequently, the State's role as an owner of production facilities has declined and its role as an investor has changed.
- 93.** Until the mid-1980s, private and public investment tended to move together. Since then, the level of private investment has risen. As industries have been transferred to the private sector, deregulation and economic stabilization have increased growth opportunities, and new sectors such as infrastructure have opened to private investment.
- 94.** The State's role as an investor now lies increasingly in social services and especially in human resources. Development of human resources provides excellent investment opportunities in terms of its contribution to sustainable economic growth. There is a strong positive association, for example, between school enrolment and average rates of growth. An educated population is the key to long-term growth and employment. In spite of this, education and training have been among the main targets for cuts in public expenditure in many developed countries.
- 95.** The State's role has shifted from that of an investor to a promoter of private investments: even where a telecommunications network and service are provided by private companies, the government is expected to play a promotional and developmental role to facilitate and ensure the flow of investment funds to the sector. This role consists of research and development, pilot networks, purchasing policy, basic infrastructure, etc. Telecommunications is a good example of an industry that is a prerequisite for a modern network enterprise, and, at the same time, a business which itself requires developed infrastructure starting from the raw physical connectivity. A network enterprise is the actual unit of business operation, made up of different companies, or segments of companies, and of consultants and temporary workers attached to specific projects. The agents of the business project form, for each project, an enterprise that is defined by the task and the performance, not by its legal boundaries.
- 96.** States allocate public funds also to the private sector's own investments, both in the national framework and international framework. Usually there is some conditionality involved in such funding, for example in the form of adjustment programmes.

- 97.** At the national level, various investment incentives are tied to employment expansion: a grant or credit of a certain amount is provided for investments in businesses that commit themselves to increase net employment by an average of a certain number of full-time positions during a fiscal year. Although the short-term positive result is evident – new jobs – these types of incentives have been questioned. They are relevant if a company cannot otherwise afford an investment that would truly improve its performance.
- 98.** It has been increasingly recognized that the capability of small and medium-sized enterprises to compete and survive is crucially affected by the quality of inter-firm and firm-institution networks in which they are embedded. Much policy attention is therefore directed at the needs of clusters of firms, rather than at individual firms. Firms may collaborate on such issues as product upgrading or training, and the initiative may come from the firms themselves, from a government agency, from a local training institution or, as with the Garment Industry Development Corporation in New York, from a tripartite body. Such firm clusters are by their nature regional or subregional, and encouraging cluster development can aid local development, investment and employment.
- 99.** At the international level, grants and credits are parts of adjustment programmes. The selection of instruments for promoting growth and employment is an important consideration in the design of adjustment programmes. Adjustment programmes have increased growth in some of the countries where they have been effectively implemented, but in many regions only the numbers of the poor continue to grow, even in countries with strong adjustment programmes. Adjustment policies have been criticized for not taking into account local circumstances and traditions: in Africa the programmes have often failed to pay attention to the fact that most people live in rural areas and are self-employed smallholders, and adjustment programmes that move the terms of trade in favour of the rural sector and focus on broad-based growth in agriculture consequently offer the most immediate opportunity for alleviating poverty and promoting economic growth.

#### Points for discussion

**100.** Points for discussion might include:

- The different government roles that need to be balanced, including the creation of a sound macroeconomic framework; public investments in human resources; the promotion of private investment; the funding of private investment; special measures to support small and medium-sized enterprises to further employment-generating investment. In the balancing of these governmental roles, should priority be given to those which most evidently bring the wanted result in the long term, or on the development of new, experimental roles and means?
- As regards the formulation of guidelines for public sector expenditure that facilitate employment-generating investment, what are the short- and long-term prospects for investing the available public resources; for public and private sector contributions to the provision of essential services or to meet the demands of various services related to investment and employment (basic education, training, employment services, etc.)?
- As regards the formulation of guidelines for government intervention in private investment, should governments restrict their role to infrastructure building or intervene more directly in private capital formation? What means of intervention are appropriate in the national and international context, taking into account competition and other policies, as well as cultural, political and other differences between regions and States? Should adjustment programmes concentrate on supporting and developing existing structures or on creating new alternatives?

### ***Targeting of investments***

#### Areas of concern

- 101.** The globally prevailing trend is away from labour-intensive production and towards capital-intensive production in almost all industries.

- 102.** Technological advances have made it possible to develop technical solutions for various kinds of tasks that were formerly handled manually. The unpredictability of the economic context where many firms operate has made them more circumspect about employing workers.
- 103.** The employment decision is similar to the investment decision for a firm, where it is desirable to hire a worker only when the net current value of the hiring decision is positive. A firm must compare the cost of investing in workers with that of investing in machines and equipment. In many cases, a worker is more flexible than a machine. Rising unit labour costs contribute to the erosion of competitiveness.
- 104.** The key issue in the discussion on labour costs has been flexibility: employment security regulations affect labour-market flexibility; in general they reduce numerical flexibility, but promote functional flexibility.
- 105.** The degree of employment security that firms are willing to provide depends partly on the extent of their existing investment in staff. The firm calculates that providing employment security will also increase the return on the firm's investments in labour force training and skills development, both specific and general. Consequently, low-skilled employees are more vulnerable in times of economic downturns in the business concerned and in the region.
- 106.** In addition to labour laws and collective bargaining, tax laws also affect labour costs and employment. The taxation of labour is often heavier than that of capital. Employee and employer payroll taxes – from which various social transfers are covered – have been at the centre of the discussion on the relationship of taxation to employment creation. Payroll taxes raise the relative cost of labour, creating a disincentive for firms to create jobs. Moreover, as payroll taxes are not profit-based, they put pressure on firms during cyclical downturns.
- 107.** High labour costs in developed countries have been cited as an argument for investing in labour-saving, capital-intensive technology and outsourcing to countries where production is less expensive. This has had an impact by raising structural unemployment, and the associated costs have added to the fiscal burden. This in turn has necessitated higher tax rates, which have further discouraged investment and, consequently, job creation.
- 108.** Small and medium-sized enterprises account for a large share of employment, but for a much smaller share of investment. This is inevitable given that capital-intensive industries are likely to be large scale. However, many small and medium-sized enterprises need a higher level of investment in order to expand, to raise product quality and to compete more effectively. With greater investment, some of the inefficiency and waste generated by enterprise failure can be avoided, and with better-quality equipment workers with a higher skill level can be taken on, thus contributing to the development of a broad-based training culture in the economy. Small and medium-sized enterprises clearly suffer from a number of constraints on their expansion and potential for increased profitability, such as problems of marketing, purchasing and location, etc.
- 109.** Employer payroll taxes are likely to affect small businesses differently than large businesses, for several reasons: payroll taxes constitute a much larger proportion of total taxes for small businesses; administrative costs are higher; smaller businesses tend to be labour-intensive and to hire more low-income, low-skilled employees; short-term market adjustment effects can have a heavier impact on cash flow for small businesses; and payroll taxes are not sensitive to profit.

#### Points for discussion

- 110.** Points for discussion under this section might include:
- How can labour laws and collective agreements be adjusted so that the regulations provide sufficient flexibility to the labour market without violating workers' rights and without reducing employment?

- How can taxation be adjusted so that the cost burden is decreased without eroding the social protection system? What is the effect of the level and kind of taxes (e.g. taxes on earned income, consumption and property, as well as social insurance contributions) on employment?
- How can regulations be reformed so that they promote employment in small and medium-sized enterprises?

## ***Location of investments***

### Areas of concern

- 111.** Investment and production decisions are now made by companies on a global basis. Investors base decisions concerning capital expenditure on potential sales volumes, raw materials potential, proximity to clients, customers' demands, market and cost structures and the prevailing political and legal conditions.
- 112.** Globalization offers investors in the international capital markets a wider range of investment opportunities, higher returns on savings and greater portfolio diversification. For the global economy as a whole, globalization promotes the more efficient allocation of resources worldwide and thus greater world growth, investment and employment.
- 113.** Investments – including foreign direct investment (FDI) which contributes directly to employment – are distributed unevenly among the regions and countries. Countries and regions that are unable to participate in the expansion of world trade or to attract significant amounts of private investment run the risk of being left behind by the global economy. The countries and regions at greatest risk of being marginalized are precisely those most in need of the trade, investment and growth that globalization could bring.
- 114.** Developing countries as a whole received 37 per cent of FDI inflows in 1997, compared to 17 per cent at the beginning of the decade. However, among developing countries, FDI inflows are concentrated in a small number of countries and regions. The main recipient regions are East Asia and the Pacific, Latin America and the Caribbean. Compared with other parts of the world, the overall volume of FDI in Africa remains low, and is thus a source of concern. Between 1991 and 1996, Africa attracted less than 5 per cent of total FDI flows to developing countries.
- 115.** The reasons for lack of FDI are varied, and the relationship between them is not fully understood. In addition to economic, there are also political reasons, which are in turn related to other economic considerations. Political instability and lack of confidence in governments are regarded as the ostensible culprits. Investors may perceive that reforms have not yet been firmly rooted in a given country, or that private investment does not enjoy the full commitment of the government as an objective, and they are thus hesitant. Some observers allude to the fact that there is little by way of an organized private sector in such countries. Finally, the risks to foreign investors are relatively high, while the rewards are low.
- 116.** Although the merits of globalization and foreign direct investment are recognized, globalization has also evoked fears. It has been argued that multinational enterprises have exported jobs from developed countries to developing countries through foreign investment and export production in special economic zones, and that through trade liberalization, governments have encouraged the replacement of domestically produced goods by goods produced abroad.
- 117.** Special economic zones belong to the numerous incentives that governments use in order to attract foreign direct investment. Basically, a special economic zone – giving free trade status to exporters – is a practical intermediate step for countries that cannot make the move to free trade quickly. Free trade zones (FTZs) and export processing zones (EPZs) are sites where foreign or domestic merchandise may enter without formal customs clearance or the payment of customs duties or government excise taxes. EPZs are dedicated to manufacturing for export, whereas FTZs also handle imports. But attitudes toward them vary considerably. Where they have been successfully applied, as in East Asia, the schemes have made a big contribution to the success of manufactured exports. Furthermore, export success has led not only to economic growth but also to generating the

momentum for trade liberalization. On the other hand, operators of special economic zones have been accused, inter alia, of violations of human rights.

- 118.** For the governance of globalization, a great number of regional organizations aimed at ensuring economic integration have been formed. As regards regional integration, three trends are visible: free trade areas develop into areas involving deeper economic integration. Either organizations are replaced with new ones, or new elements are added to existing organizations. Economic integration areas continue to enlarge, either by mergers of organizations or the admission of new members to existing organizations. Cooperation agreements between regional groups are increasing.

#### Points for discussion

- 119.** Points for discussion under this section might include:

- How can the conditions be ensured in a global economy whereby one country's success in attracting investment can be achieved without detriment to another?
- How should the policies and activities of global organizations (such as United Nations agencies), regional organizations for economic integration or free trade (EU, ASEAN, NAFTA, CARICOM, MERCOSUR, SAARC, SADC, etc.) and national governments be coordinated and prioritized in order to avoid the uneven distribution of FDI and other benefits of globalization? Should they have some common macroeconomic policy goals concerning, for example, interest rates, or policies concerning various means to attract FDI?
- How should the more successful economies help the others in ensuring a favourable climate for job-creating investment? What kinds of advisory, assistance and information services are needed regarding policy formulation, the streamlining and strengthening of mechanisms and administrative procedures, and updating information on global market trends and the policies and practices of other countries?

### ***Funding of investments***

#### Areas of concern

- 120.** In most developing countries, both public and private savings rates are far too low to finance the targeted levels of investment.
- 121.** Private capital has displaced official development finance as the main source of external financing for developing countries, accounting for 85 per cent of the total in 1997, compared to only 41 per cent in 1990. Between 1990 and 1997, disbursements by official aid agencies declined from nearly 60 per cent of net long-term resource flows to developing countries, representing a reduction of 15 per cent. There has also been a decline in absolute terms. This decline reflects better access to capital markets by an increasing number of developing countries as well as decreasing demand for official assistance in financing public sector investment, such as infrastructure projects.
- 122.** However, private FDI flows are heavily concentrated on a narrow range of countries, sectors and borrowers: 75 per cent of net private capital flows go to a dozen countries, which include the largest developing countries. This leaves over 100 developing countries with little access to private financing. Even among countries that receive private capital, borrowing is limited to a small set of top-tier countries, and is mainly targeted at extractive industries, infrastructure and the financial sector.
- 123.** This concentration suggests that multilateral development banks (MDBs) should play a more selective role in financing development in the twenty-first century, focusing on areas not adequately financed from other sources. This poses a dilemma for the MDBs, since the findings on aid effectiveness suggest that to achieve greater impact they must concentrate assistance on countries where policies and institutions are reasonably supportive of development. These are also likely to be the countries that are the most attractive to private investors. This raises the question of whether developing countries with good access to private finance should graduate from MDB borrowing. On

the other hand, the point at which they should do so is likely to be difficult to define, as disparities in the level of development and access to financing can be as great within countries as between them: for example, there is a huge gulf between living standards in coastal China and those in the interior, or between São Paulo and Manaus.

- 124.** Demand for policy-based lending, which remains one of the World Bank's major capabilities, is likely to continue to fluctuate. The size of rescue packages has increased in recent years with each major crisis. With further liberalization might come even greater volatility. Thus, MDBs may retain a role as a lender of last resort to countries, even where their role in financing investment has ceased.
- 125.** The structure of private financing of investments has changed radically in recent years. Traditionally, dealings between borrowers and savers occurred through banks and securities firms, with banks lending depositors' funds direct to firms, and securities firms providing the distribution of new issues of debt and equity to individual investors, pension funds, and insurance companies. Two notable trends have eroded this traditional view of financial intermediation.
- 126.** First, from the supply side, non-bank financial institutions have been slowly challenging banks' traditional assets, by facilitating the securitization of finance and by offering financial services that have historically been provided almost exclusively by banks. Investment banks, securities firms, asset managers, mutual funds, insurance companies, specialty and trade finance companies, hedge funds and even telecommunications, software and food companies are starting to provide services not unlike those traditionally provided by banks.
- 127.** Secondly, on the demand side, many households have bypassed bank deposits and securities firms in order to hold their funds with institutions better able to diversify risks, reduce tax burdens, and take advantage of economies of scale. The result has been a dramatic growth in the size and sophistication of institutions that specialize in investing money, increasingly on a global basis, on behalf of households.
- 128.** Non-bank financial sectors in the major advanced economies are very large. In the G-7 countries, insurance companies, pension funds, investment companies and other non-bank institutional investors managed assets totalling more than US\$20 thousand billion (\$20,000,000,000,000) in 1995. To put this figure in perspective, this amounts to some 110 per cent of the GDP of all the G-7 countries; it is more than half the value of all bonds and equities outstanding in these countries; and it represents 90 per cent of all assets in the banking systems in those countries. International financial capital movements have expanded enormously under the combined impact of financial deregulation and innovation. For example, cross-border transactions in bonds and equities soared in major industrial countries, from less than 10 per cent of GDP in 1980 to between 150 and 250 per cent in 1995.
- 129.** Although portfolio investments can make an important contribution to the financing of equity capital for local companies, concerns have been expressed by host countries, particularly regarding the volatility of these flows and their effect on exchange and interest rates. Tax policies have frequently supported the increasing share of portfolio investments.
- 130.** The abundance of sources tempts companies to use outside equity sparingly. Investment levels are kept high, even when the profitability is relatively low.
- 131.** Increasing the profitable investment of public sector revenues has recently been under debate in many developed countries. The discussion has focused in particular on the funds of various social insurance programmes, especially social security funds. Traditionally, these funds have been placed only in areas regarded as safe investments, such as government securities, which are mainly long-term bonds. However, the funds could obtain a much higher return by investing the money in equities. There are, at least theoretically, also other options: governments – or whoever is to decide – could finance investments that have an employment-generating impact.

## Points for discussion

**132.** Points for discussion under this section might include:

- What should be the role of MDBs and official development finance in general in financing investments in developing countries? How can effective aid and sustainable long-term development be combined?
- What kind of preventive safety nets are needed to avoid major economic crises and to reduce the need of MDBs to provide rescue packages? Should safety nets supplant or somehow strengthen private capital, monitoring, and closure mechanisms? What kind of risks should these safety nets take into account?
- Should the public financing of investments be somehow restored, for example by starting to invest the surplus money of social security funds extensively in stock markets?

## 5. Migrant workers

### Summary

International labour migration has become more complex and diverse and involves a much larger number of countries than ever before. There are growing problems with irregular migration, and much contemporary migration is organized by private intermediaries. The large majority of today's migrant workers are admitted only for temporary periods, which in many instances makes them subject to unequal treatment. In response to the low and declining rate of the ILO's existing standards on this subject, the Committee of Experts on the Application of Conventions and Recommendations was requested by the Governing Body at its 267th Session to undertake a General Survey on the state of law and practice. The Committee of Experts clearly saw the need for a general discussion of the subject of migrant workers at a future session of the International Labour Conference, with a view to reviewing and possibly revising the instruments.

**133.** Today, between 40 and 45 million persons are estimated to be economically active in a country other than their own, with or without authorization, and they are accompanied by at least as many dependants. This estimate does not include the millions of Russians, Kazakhs, Ukrainians, and others scattered across the successor States of the USSR. More countries than ever before are now engaged in migration either as receiving countries or countries of origin, or both. The 64 countries that were major senders or receivers in 1970 have grown to 98, 20 years later. By the beginning of the 1990s nearly 100 countries were significantly involved in international economic migration.

### I. *Contemporary trends in international migration*

#### A. New forms of labour migration

**134.** International labour migration has become more diverse and complex than in previous decades. Farmers or peasants with few skills to offer who leave their lands temporarily or permanently in search of wage-paid activities still represent an important component of cross-border migrants. Skilled industrial and construction workers<sup>24</sup> who move individually or as part of an enterprise's labour force and who may be tied to a specific project or perform recurrent tasks for a contractor, constitute an increasing proportion of present-day migrants, as do young women who undertake jobs as domestic helpers or caregivers for the aged in foreign countries. Highly qualified

<sup>24</sup> See ILO: *Social and labour issues concerning migrant workers in the construction industry*, Tripartite Meeting on Social and Labour Issues concerning Migrant Workers in the Construction Industry, Geneva, March 1996.

professionals, managers, technicians, and service providers circulate across the globe to a much greater extent than previously, both within and outside transnational enterprises, but their movements are seldom recorded. Young persons admitted as trainees for the purpose of upgrading their skills in foreign enterprises, and who may perform regular work as a result of their assignment, are just as much part of contemporary economic migration as are entrepreneurs who are admitted with the promise of future citizenship if they bring along enough funds to create employment for themselves and for others. No classification can neatly and comprehensively capture the variety of today's international labour migrants. Even the distinctions between temporary migrants and permanent settlers have become blurred.

- 135.** Several factors are combining to drive this rising cross-border mobility of workers.<sup>25</sup> The intensification of trade and investments is certainly an important factor, but among the developing countries it has so far affected only a small number of Asian and Latin American countries. Because many poor countries have not yet benefited from increased capital flows, the widening income differentials between the North and the South over the last three decades have probably contributed to increasing migration pressures. The declining cost of transport, allied with the increasing availability of information, as well as the spread of personal and institutional networks, are no doubt facilitating mobility. To these may be added the political changes such as the collapse of the former USSR, which lifted some of the previous obstacles to the free movement of people. Finally, there is some evidence that the growth of the informal sector is associated with greater absorption of foreign labour in the industrialized countries. It is not in the large manufacturing enterprises where foreign workers are usually found, but in intensely competitive small manufacturing shops, construction subcontractors, retail trade outlets, low-technology services, and in agriculture, sectors where low-wage, unskilled jobs are not attracting nationals.

## B. Problems and policy dilemmas

- 136.** Many new problems and policy dilemmas have surfaced with the growth and emergence of new forms of labour migration. The most significant include the following.

### 1. *Irregular migration and illegal employment of undocumented migrants*

- 137.** Although statistics on irregular migration are inherently weak, it is estimated that as much as a quarter of all international labour migrants are working without proper legal documents or authorization to work. While some are in privileged positions on account of their unique skills or education, most are ordinary workers who suffer exploitative treatment in terms of inferior wages and long hours of work. Among the most disturbing forms of irregular migration is the "trafficking", by transnational criminal syndicates, of young women for employment in the sex sector. Equally significant in numbers are those who have been admitted legally but not for the purpose of employment, as well as those who were earlier permitted to work but for a period that has already lapsed. In some regions the more significant phenomenon is the employment of non-nationals simply as the consequence of the break-up of States, as well as the emergence in the labour market of foreigners authorized only to "transit" through the State's territory.

### 2. *Commercialization of migration processes*

- 138.** The commercialization of recruitment through the activities of private fee-charging agents has contributed significantly to growing mobility of labour of all kinds across national boundaries. Profit-motivated recruitment agencies have succeeded in bridging national labour markets where States permit the movement of labour. Private agents have proven particularly effective in quickly sensing skills shortages in labour markets, finding labour to fill the void, and providing flexible and appropriate responses as economies become more complex. Their operations have, in effect, made it possible to overcome the information gaps and institutional obstacles separating national labour

<sup>25</sup> See Stalker, P.: *Global nations: The impact of globalization on international migration*, International Migration Papers No. 17, ILO, Geneva, 1997.

markets. Owing to the reluctance of many migrant-receiving countries to enter into bilateral labour agreements with sending countries, there are very few examples of labour migration processes organized under the auspices of public or state employment services.

**139.** However, many serious problems have been observed in countries that have not effectively supervised the activities of private intermediaries, including the victimization of workers through offers of false or non-existent jobs and misleading or false information about working conditions, exorbitant fees extracted from potential migrants, detention in destination countries or deportation due to the forgery by the agents of the workers' travel documents and admission visas, and workers being prematurely laid off due to mis-declaration of qualifications. Much more serious in their consequences are activities that involve subverting immigration laws and regulations through fraud and deceit, which place workers in an illegal situation in destination countries.

### 3. *Migrants in under-protected occupations*

**140.** Significant numbers of migrant workers, especially women, belong to occupations and sectors where conditions of employment fall far short of international and national standards because they are seldom effectively supervised by national authorities. For instance, there are no labour inspections in many countries of the conditions of employment of domestic service workers or helpers. In many countries foreign live-in maids regularly work in excess of normal hours but rarely receive the overtime compensation that is due to them. More serious problems have been reported in the case of "entertainers", whose employment in some countries is frequently controlled by agents, some with links to criminal elements. When they are admitted under the immigration category of "artists", they may fall outside the coverage of labour laws and are thus precluded from seeking official remedies for abusive and ill treatment. Other such situations also arise, particularly for agricultural work, where many migrants are employed in some countries.

### 4. *The growth of temporary migration for employment*

**141.** The recent increase and diversification of temporary migration has given rise to questions of equal treatment in matters of remuneration, social security, job security, job mobility, housing, and family reunification. Many of these are already addressed by existing norms in the case of permanently settled migrant workers, but the bulk of new migration comprises workers who are brought in for temporary periods such as seasonal agricultural workers, project-tied workers (e.g. construction), trainees who actually perform regular jobs, international service providers brought in by contractors particularly for design or repair and maintenance work, and special purpose workers. The temporary admission of non-nationals has undoubted short- and long-term benefits for a migrant-receiving country. The benefits derive, inter alia,<sup>26</sup> from the fact that a vacant job can be filled immediately; wages or salaries are unlikely to suffer upward pressure; while infrastructural expenditure on housing or schools may be significantly reduced compared with that for nationals, etc.

**142.** The cross-border movements of international service providers are a phenomenon of growing importance, especially since the liberalization set in motion by the Uruguay Round. Persons rendering service in a country where they are not habitually resident include self-employed or own-account workers<sup>27</sup> engaged in consulting, advising, supervising, training others, etc., rather than in the production of commodities in the traditional sense. Examples of special-purpose workers are academics, artists, entertainers, athletes, and middle-level personnel moved within a multinational

<sup>26</sup> The economic benefits for the various actors are set forth in Council of Europe: *Temporary migration for employment and training purposes: Report and guidelines*, Strasbourg, 1996, pp. 42 ff. See also K. Groenendijk and R. Hampsink: *Temporary employment of migrants in Europe*, Katholieke Universiteit, Faculteit der Rechtsgeleerdheid, Nijmegen, 1995.

<sup>27</sup> This sets them off from wage- or salary-earners moving inside a multinational enterprise from one country to another, who are included here under the earlier categories of special-purpose workers or project-tied workers.

company. Artists and entertainers are often self-employed workers and tied to an agent or sponsor rather than to an employer in the traditional sense of the word.

**143.** There are a number of problems associated with the admission of foreign workers for temporary employment. These are inherent in a situation where several sets of national or international laws may govern the economic activity of a person who resides in one country and enters into a contract for the provision of services in another for a period of time. Equal treatment is often at issue, whether in the matter of wages and remuneration, social security, or mobility in the labour market. In some cases labour laws do not apply to seasonal foreign workers. Temporary migrant workers are usually tied to employers – they are not permitted to change jobs or to change employers. There are issues regarding who should be responsible for the workers' accommodation. Temporary foreign workers may also be excluded from membership of social security schemes or, where this is not a problem, entitlement to benefits in the migrant-receiving country or upon return to the migrant's country of origin may vary considerably and leave much to be desired.

## 5. *High levels of unemployment among immigrant workers*

**144.** There is a growing marginalization of settled immigrant workers in some industrialized countries, inter alia, on account of the decline in employment opportunities in manufacturing and because of discrimination.<sup>28</sup> Unemployment levels among ethnic minorities, especially among the young, are sometimes double or even triple the rate for nationals of the same age groups and educational attainment. Research undertaken by the Office in collaboration with local research institutions in these countries has confirmed that discriminatory practices in recruitment explain a significant part of their poor performance in the labour market.<sup>29</sup>

## II. *Towards a comprehensive ILO strategy*

### A. ILO activities relating to the protection of migrant workers

#### 1. *ILO standard-setting activities*

**145.** The protection of workers employed in a country other than their country of origin has always had an important place among the activities of the ILO,<sup>30</sup> since more than any other workers they are vulnerable to exploitation, particularly if they are in an irregular situation or victims of manpower trafficking. Although all the ILO's instruments are of relevance to migrant workers, in so far as they are of general application to all workers, the ILO has adopted several standards of specific relevance to migrant workers: the Migration for Employment (Revised) Convention, (No. 97), and Recommendation (No. 86), 1949; and the Migrant Workers (Supplementary Provisions) Convention

<sup>28</sup> See W.R. Bohning and R. Zegers de Beijl: *The integration of migrant workers in the labour market: Policies and their impact*, International Migration Papers No. 8E, ILO, Geneva, 1995. See also Doornik, J.: *The effectiveness of integration policies towards immigrants and their descendants in France, Germany and the Netherlands*, International Migration Papers No. 27, ILO, Geneva, 1998.

<sup>29</sup> See for example P. Arriijn, S. Feld, and A. Nayer: *Discrimination in access to employment on grounds of foreign origin: The case of Belgium*, International Migration Papers No. 23E, ILO, Geneva, 1998; M. Bendick, Jr.: *Discrimination against racial/ethnic minorities in access to employment in the United States, Empirical findings from situation testing*, International Migration Papers No. 12, ILO, Geneva, 1996.

<sup>30</sup> For more details, see para. 32 of *Migrant workers*, General Survey on the reports on the Migration for Employment Convention (Revised) (No. 97) and Recommendation (Revised) (No. 86), 1949; and the Migrant Workers (Supplementary Provisions) Convention (No. 143) and Recommendation (No. 151), 1975, ILO, Geneva, 1999.

(No. 143) and Recommendation (No. 151), 1975.<sup>31</sup> The 1949 Convention, a milestone in international migration legislation, grew out of the turmoil of post-war Europe and the desire to facilitate the transfer of surplus labour from this continent to others. The 1975 Convention was the international community's first attempt to tackle the questions of irregular migration movements and illegal employment. It also aimed to promote greater equality of opportunity and treatment for lawful migrants in respect of employment and occupation. Convention No. 97 has so far been ratified by 41 and Convention No. 143 by 18 member States.

## 2. 1998 General Survey

**146.** The low number and declining rate of ratifications of the ILO's instruments on migrant workers were among the factors considered in the examination of these instruments by the Working Party on Policy regarding the Revision of Standards. This examination resulted in a decision by the Governing Body at its 267th Session (November 1996) to request the Committee of Experts on the Application of Conventions and Recommendations to undertake a General Survey<sup>32</sup> on the state of law and practice in member States in relation to Conventions Nos. 97 and 143 and their related Recommendations. It may be noted that this was the first time that a General Survey was initiated with the specific aim of re-examining "the possibility of including the question of migrant workers on the agenda of a forthcoming session of the Conference for a general discussion, and also in order to clarify the possible need for revision of Conventions Nos. 97 and 143".<sup>33</sup> The General Survey was discussed at the 88th Session (June 1999) of the International Labour Conference.

**147.** It is instructive to outline some of the most prominent changes that the Committee of Experts found had occurred in international migration since the adoption of the instruments and their effect on how these instruments are applied:

- It noted that the *gender stereotypes* that held when the instruments were drafted were no longer valid, and that women now form an increasingly significant proportion of migrants for employment. The Committee showed concern, in particular, over the lack of protection that the instruments offer to women trafficked for work in the sex sector.
- It observed that the *commercialization of recruitment* that had occurred in recent decades had led to a number of abusive practices, including the use of misleading propaganda, extraction of sometimes exorbitant fees from potential migrants, the withholding of information and the confiscation of travel documents – practices which may be insufficiently regulated by ILO instruments as well as by national law.
- It remarked that the recent *increase and diversification of temporary migration* had had important ramifications, and the Committee questioned whether the instruments' blanket coverage of permanent and temporary migrant workers reflected the contemporary diversity of their situations.

<sup>31</sup> A number of ILO standards make specific reference to migrant workers and urge member States to take into account their provisions. These include the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Private Employment Agencies Convention, 1997 (No. 181), the Maintenance of Social Security Rights Convention, 1982 (No. 157) and the Indigenous and Tribal Peoples Convention, 1989 (No. 169). Although most ILO standards do not contain provisions dealing specifically with migrant workers, the Committee of Experts frequently refers to the situation of migrant workers in supervising their application. This includes the numerous comments formulated by the Committee during its supervision of the application of the maritime Conventions. See para. 38 of the General Survey for a *non-exhaustive* list of these instruments.

<sup>32</sup> See above.

<sup>33</sup> See GB.267/LILS/4/2; see also GB.267/9/2, para. 14 and GB.267/PV, p. IV/6.

- It observed that the *effect of regional integration* on the movement of workers across borders has been significant, and in particular the application of the provisions respecting equality of opportunity and treatment of workers from outside regional groupings raised, in the Committee's opinion, questions of principle which needed to be addressed.
- It pointed to the fact that the *increase in irregular migration* had introduced difficulties in the interpretation of several of the provisions, in particular in relation to the lack of definition of the fundamental rights of migrant workers.
- It pointed out that the *growth of migration by air travel* had meant that some provisions of the instruments, such as Article 5 of Convention No. 97 (which requires medical examination both prior to departure from the home country and upon arrival in the host country) might be outdated. The Committee concluded its analysis of this point by stating that "this question should be considered in the framework of a Conference discussion on migration for employment".<sup>34</sup>

**148.** In addition to the lacunae in Conventions Nos. 97 and 143 due to changes in practice, a comparison between national legislation and international labour standards relating to migrant workers has made it clear that other lacunae exist in these instruments. For example, they do not deal with the elaboration or establishment of a national migration policy, in consultation with employers' and workers' organizations, within the framework of national employment policy. Questions relating to migrant workers' contracts, which are of vital importance for protecting workers, are not addressed in existing instruments. The same can be said of questions touching certain aspects of the payment of migrant workers' wages. In addition, the Committee drew up a list of the provisions mentioned by governments in their reports as giving rise to difficulties, and observed that nearly all of the provisions of the Conventions, the annexes, and the relevant Recommendations were cited.<sup>35</sup> In the Committee's opinion, certain difficulties cited ought not to constitute fundamental obstacles to the ratification of these Conventions, and it seemed to be generally agreed that the principles enshrined in these instruments were still valid.

**149.** At the 276th Session (November 1999) of the Governing Body, 16 governments and both the Workers' and Employers' groups supported the proposal for a general discussion in order to clarify the need for future standard-setting action.<sup>36</sup>

### 3. *Other ILO activities in the field of migration*

**150.** In addition to the adoption and supervision of standards, the ILO has undertaken a number of activities in the field of migration aimed at improving the situation of millions of migrant workers across the globe.

#### (a) *Technical cooperation and technical advisory services*

**151.** The major part of the ILO's activities in the field of migration, in addition to promoting the ratification and application of ILO standards on migrant workers, consists of providing assistance to countries in the formulation of migration policies and legislation and in managing migratory flows more effectively, in line with the provisions of the ILO instruments. The Office also organizes training courses for the benefit of officials wishing to be familiar with best practices in migration policy and administration, the functions of labour attachés, and methodologies for migration

<sup>34</sup> See para. 653 of the General Survey.

<sup>35</sup> See para. 642 of the General Survey.

<sup>36</sup> The governments that expressed support for a general discussion were *Algeria, Brazil, France, Germany, Guatemala, India, Italy, Mexico, Peru, the Philippines, Portugal, Slovakia, Switzerland, Sudan, the United States and Venezuela.*

surveys, etc. The ILO has also made use of less formal means of tackling such problems as helping member States to resolve specific problems which have been the subject of a complaint or a representation.

(b) *Other projects*

**152.** In the early 1990s, the Office launched a project entitled “Combating discrimination against (im)migrant workers and ethnic minorities in the world of work”. The aim was to reduce discrimination against migrant workers and ethnic minorities by informing policy-makers, legislators, employers, workers, NGOs and persons engaged in anti-discrimination training on how legislative measures plus training activities could be rendered more effective, based on an international comparison of the efficacy of such measures and activities. Another project was the 1994-95 “Interdepartmental Project on Migrant Workers” which resulted in a number of studies and publications on a variety of subjects pertinent to international migration. One of the most significant projects to be undertaken by the Office in recent years was a regional programme entitled “Informal network on foreign labour in Central and Eastern Europe” which brought together policy-makers and legislators from countries of the region in an informal setting to develop and improve bilateral and multilateral migration policies.

(c) *Recent ILO activities*

**153.** In April 1997, the ILO held a Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration, which recommended two sets of *guidelines*: one on special protective measures for migrant workers in time-bound activities; the other on special protective measures for migrant workers recruited by private agents. It also recommended the use of *pattern or practice studies* of the exploitation of migrant workers as a means of action not falling under Convention-based procedures.<sup>37</sup> Since the approval by the Governing Body in 1997 of the creation of the *International Labour Migration Database*, the Office has collected data on the magnitude and nature of contemporary migration flows which is now accessible via the Internet.<sup>38</sup> The ILO continues to undertake research in a number of regions of the world, and regularly publishes books and working papers.<sup>39</sup>

4. *Related developments*

**154.** In 1990 the UN General Assembly adopted the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*.<sup>40</sup> This convention, which recognizes

<sup>37</sup> See Report of the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration, MEIM/1997/D.4, ILO, Geneva, Apr. 1997.

<sup>38</sup> <http://www.ilo.org/public/english/protection/migrant/ilmdb/index.htm>.

<sup>39</sup> The Office’s *International Migration Papers* series covers a large area of migration issues ranging from the evaluation of emigration pressures in some regions, to assessing the extent of discrimination against immigrants in the world of work, the effectiveness of employers’ sanctions in reducing the illegal employment of undocumented migrants, the implications of EU accession on the migration policies of some Eastern European countries, and the impact of remittances on some Asian countries of origin. Mention may be made of recent ILO publications: *Employing foreign workers: A manual on policies and procedures of special interest to middle- and low-income countries*, by W.R. Böhning (Geneva, 1996); *Sending workers abroad: A manual for low- and middle-income countries*, by M.I. Abella (Geneva, 1997); and *International migration statistics: Guidelines for improvement of data collecting systems*, by R. Billsborrow, G. Hugo, A. Oberai and H. Zlotnik (Geneva, 1997); E. Hoffmann and S. Lawrence: *Statistics on international labour migration: A review of sources and methodological issues*, Interdepartmental Project on Migrant Workers, ILO, Geneva, 1996.

<sup>40</sup> See GB.249/IO/3/2.

and builds on the provisions contained in existing ILO Conventions, aimed at articulating the rights of migrant workers regardless of their legal status. Since only 12 States have so far become a party to the UN convention through ratification or accession, it has not yet entered into force.<sup>41</sup> When it does, the UN will create a separate body for its supervision. The reasons why this new convention has not yet received a sufficient number of ratifications to enter into force should be analysed and taken into account in future ILO work on this subject.

**155.** With respect to the specific question of liberalizing the rules governing the temporary movement of “natural” persons rendering specific time-bound services, it will be recalled that the World Trade Organization adopted the “*General Agreement on Trade and Services (GATS)*” in April 1994.<sup>42</sup> In the GATS, these natural persons are dominated by “international service providers”. Three governments<sup>43</sup> have proposed that the ILO examine this issue further.

## B. Towards a comprehensive ILO strategy

**156.** Against this background (new forms of labour migration and the state of ratifications and ratification prospects of ILO Conventions on migrant workers), the Director-General stated in his Report to the International Labour Conference at its 87th Session (June 1999), that in the next biennium the ILO’s activities would “reflect the growing importance of labour migration in the global economy. The primary objective should be to help forge an international consensus [...] on how to ensure adequate protection for migrant women and men and their families, while allowing orderly and advantageous movements of workers in search of better lives”.<sup>44</sup> It would thus seem highly relevant to develop a comprehensive ILO strategy for achieving this objective. Such a comprehensive strategy should be developed in order to guide ILO action in the following areas:

- to assist member States in understanding migration problems, in designing policy and improving administration;
- to follow up on the findings of the General Survey of ILO Conventions on migrant workers and campaign for wider ratification, or examine revision as determined by the Conference;
- to promote bilateral or multilateral agreements as a means of fostering more orderly forms of migration;
- to encourage the development of codes of conduct for the treatment of migrant workers;
- joint action with other UN and international as well as regional organizations in fostering orderly migration and promoting the integration of settled migrants;
- to expand the ILO’s International Migration Database and enhance its accessibility to constituents.

### 1. Proposed action

**157.** The Office notes that it emerged from the discussions at the Conference that the ILO could opt between three main courses of action. It could decide:

<sup>41</sup> In 1998 a Global Campaign for Ratification of the Convention on Rights of Migrants was launched. For more details on the work of the United Nations and its specialized agencies, see paras. 49-61 of the General Survey.

<sup>42</sup> For the text of the GATS see WTO: *Results of the Uruguay Round of Multilateral Trade Negotiations*, Geneva, June 1994 or, internet: <http://www.wto.org/services/gats.htm>.

<sup>43</sup> Chile, Finland and Switzerland.

<sup>44</sup> *Decent work*, Report of the Director-General to the 87th Session (1999) of the International Labour Conference, “New programme on labour migration in the global economy”.

- to include the subject of migrant workers on the agenda of a future session of the Conference for a general discussion, with a view to reviewing and possibly revising the relevant instruments;
- to place the revision of Conventions Nos. 97 and 143 on the agenda of a forthcoming session of the International Labour Conference;
- to maintain the existing Conventions, while placing on the agenda of the Conference the question of adopting a new Convention to address contemporary migration concerns.

**158.** Although the general trend in the discussion of the General Survey tended towards revision of Conventions Nos. 97 and 143, a clear consensus was not reached on this issue. The Office proposes, therefore, to hold a general discussion on the question of migrant workers. Such a discussion might contribute to the development of a comprehensive strategy for the ILO in this area and of a common understanding on the most appropriate course of action to take.

## 2. *Issues to be discussed*

**159.** A general discussion of the issues raised by the growing mobility of workers and the alternatives for ILO action might be organized around the following subjects:

- (a) *International labour migration in the era of globalization.* How can migration be better managed in the era of globalization to ensure that it plays a positive role in the growth and development of countries of origin and countries of employment, while protecting migrant workers in their search for a better life? What role can the ILO play in bringing about an international consensus on how to manage migration?
- (b) *Best practices in dealing with irregular migration for employment.* What strategies compatible with the ILO's principles and basic human rights would be likely to have reasonable success in curbing irregular migration?
- (c) *Improving migrant workers' protection through standard setting.* What approach should be taken to ensure wider ratification and application of ILO Conventions on migrant workers? How can the international standards be made more relevant in view of the emerging new forms of migration? In particular, should the existing standards be revised?

### 6(a) **Recording and notification of occupational accidents and diseases;** (b) **Possible revision of the list of occupational diseases, Schedule I to the Employment Injury Benefits Convention, 1964 (No. 121)**<sup>45</sup>

#### Summary

International practice concerning the recording and notification of occupational accidents and diseases is far from uniform. Different definitions, differences in collection and notification procedures, as well as the lack of national expertise lead to disparate situations in member States. New international standards could contribute better than the existing instruments and documents to establishing appropriate national systems and improving

<sup>45</sup> Previous contributions on this theme were submitted to the Governing Body in March and November 1998. See GB.271/4/1, paras. 175-205, GB.273/2, paras. 153-166, GB.274/3, paras. 190-221, and GB.276/2, paras. 176-197.

and harmonizing both the terminology and the procedures involved, providing the basis for preventive action and for coherent national, sectoral and enterprise-level policies. A Convention containing basic principles, supplemented by a Recommendation, might be envisaged.

The international instrument(s) could provide for the obligation for the competent authorities of member States to establish and implement a coherent national policy, as well as systems, programmes, infrastructures and the relevant concepts and terminology for the recording, notification and investigation of occupational accidents and diseases, which would be consistent with international agreements and recommendations.

After a review of this item regarding some concerns and reservations expressed in previous consultations and discussions and in line with a resolution adopted by the Sixteenth International Conference of Labour Statisticians (ICLS) in October 1998 which calls for the development of standards for statistics of occupational diseases, the suggested exclusion of occupational diseases from the scope of an international instrument is not proposed. The reason is that such exclusion would maintain the lack of guidance for legal requirements, the existing information and awareness gaps and the insufficient measures carried out for prevention. It is proposed, however, that member States may accept the obligations of this Convention separately in respect of occupational accidents and occupational diseases.

For the implementation of the proposed new instrument(s) it would be appropriate to adopt a new ILO list of occupational diseases simultaneously with the elaboration of the international instrument(s) and complementary to the revision of current ILO classifications of accidents encouraged by the Sixteenth ICLS and being undertaken. Two new options for the new list are proposed: (a) updating Schedule I to the Employment Injury Benefits Convention, 1964 (No. 121) as revised, for the purpose of compensation and recording and notification; and/or (b) establishing a mechanism for the periodic updating of the list of occupational diseases in Schedule I to Convention No. 121 for compensation purposes and for the elaboration, adoption and periodic updating of any other corresponding list adopted by ILO bodies for the purpose of recording and notification.

## Background

- 160.** Recent ongoing research carried out in the Office together with the World Health Organization shows that, despite significant advances in dealing with many of the challenges to the safety, health and well-being of workers, around 1.2 million work-related deaths occur each year (based on a global estimate in 1999) and, in addition, each year approximately 250 million accidents and 160 million occupational diseases are estimated to occur worldwide.
- 161.** In developing countries in particular, a major obstacle to preventing loss of life and injury on this scale and to achieving effective control measures is the absence of both reliable information concerning the incidence of occupational accidents and diseases and knowledge and guidelines for the implementation of relevant national recording and notification systems as a tool for preventive action. Only about one-third of the 120 member States that have ratified the Labour Inspection Convention, 1947 (No. 81), include statistics of occupational accidents and diseases in their annual reports, as requested in Articles 20 and 21.
- 162.** Employers need to record information about accidents and diseases that arise in their enterprise and to investigate them. The record should include at least the essential facts required for notification, which makes it easier for the employer to analyse the recorded data so as to identify both the causes of accidents and diseases and the resulting losses, and to devise programmes and measures for their prevention and control. In addition, when this information is made available to workers' representatives it enables them to contribute to the improvement of working conditions.
- 163.** The information about occupational accidents and diseases recorded and kept at the enterprise forms the basis, and determines the quality, of its *notification to the appropriate authorities*, which are mainly the social security institutions or the authorities responsible for enforcing occupational safety and health legislation. The social security institutions require information in order to compensate injured persons and their dependants. The enforcement authorities need information to investigate individual cases and identify recurring accidents and diseases and, through the use of accumulated statistics, devise coherent national, sectoral and enterprise-level enforcement strategies and guidance for effective prevention programmes.
- 164.** Despite the existence of resolutions concerning statistics of employment injuries, adopted by the Tenth and Thirteenth International Conferences of Labour Statisticians in 1962 and 1982, which recommend standard terminology, definitions and concepts and provide guiding rules for the

classification and presentation of statistics, international practice is far from being uniform. A large number of member States do not have established recording and notification systems. Existing national definitions of occupational injuries frequently differ from the international standard definitions recommended by these resolutions. On account of differences in the scope of legislation on social security benefits and on occupational safety and health protection, due to a lack of national expertise or the fact that some countries have not yet introduced appropriate arrangements for data collection, there are national variations in the collection and notification procedures and in the coverage and sources. Inconsistent and non-comparable data prevent employers and governments from realizing comparative analyses at enterprise and national levels for the identification of preventive measures and setting priorities in their implementation and the economical and meaningful use of resources. Under-reporting is common, and the number of cases of occupational accidents and diseases that go unreported is difficult to quantify. In the study “Accidents at work in the European Union in 1994”, published by EUROSTAT in 1998, the average reporting level for occupational accidents with more than three days’ absence in eight common branches of activity of 15 Member States was 91.1 per cent. Only eight Members reported a 100 per cent level, three reported levels in the range of 41-56 per cent.

- 165.** In the past there have been several attempts at improving the situation: participants in the Latin American Regional Tripartite Seminar on the Organization of Occupational Health Services and the Recording and Analysis of Occupational Accidents and Diseases emphasized already in 1989 the need to harmonize recording and notification systems. The 24th General Assembly of the International Social Security Association (ISSA) adopted a report in 1992 which calls for a harmonized international system for the notification and compilation of accident statistics. In the European Union methodologies have been developed to provide for harmonized statistics on occupational accidents and for comparable statistics on occupational diseases. During the adoption of the Code of practice on the recording and notification of occupational accidents and diseases by a Meeting of Experts in October 1994,<sup>46</sup> the experts stressed that the collection, recording and notification of data concerning occupational accidents and diseases were instrumental for the identification and study of the causes of accidents and diseases. In addition, the experts acknowledged both the value of and the need for guidance by lists of occupational diseases, particularly in countries where such lists did not exist, and the difficulties inherent in the recognition of occupational diseases. They expressed concern regarding the current ILO list of occupational diseases given in Schedule I to the Employment Injury Benefits Convention, 1963 (No. 121), last amended in 1980, and recommended that this list be updated. The resolution concerning statistics of occupational injuries resulting from occupational accidents adopted by the Sixteenth International Conference of Labour Statisticians (Geneva, 6-15 October 1998)<sup>47</sup> calls for the development by each country of a comprehensive programme of statistics on occupational safety and health, including occupational diseases and occupational injuries. The objective of this programme would be to provide an adequate statistical base for the various users (see paragraph 194).

### ***Review of national practice***

- 166.** Measures at the level of the enterprise for the *recording of accidents* differ greatly. While large enterprises tend to make detailed records of accidents and their causes, smaller enterprises are less likely to do so. Some enterprises have introduced their own reporting systems, sometimes to compare figures in different factories within the same company, particularly in multinational enterprises. Different recording systems might be in use in specific sectors of the economy of one country. Many countries lack any legislative provision for recording.
- 167.** In general, only compensated accidents or those meeting certain criteria are covered by the *national notification schemes*, while many minor accidents, knowledge of which would be even more important for the development of preventive policy, are not considered. As a result, the relative incidence of notified accidents could differ widely between countries and often between different

<sup>46</sup> GB.261/STM/4/14 and GB.261/8/26, para. 14.

<sup>47</sup> GB.273/STM/7.

sectors of the economy of one country. Considerable discrepancies also occur in the notification of accidents in specific sectors of the economy. In particular, agricultural, construction, marine and mineworkers are subject to diverging notification criteria. Coverage may be limited to certain types of workers, or certain types of economic activity and enterprises employing more than a certain number of workers, and it is often low in the tertiary sector. Self-employed, part-time and casual workers or trainees/apprentices may be omitted by not having recourse to public insurance schemes. To a large extent, data on accidents resulting in fatal injuries are more reliable than those on non-fatal accidents, as fatal cases are almost invariably notified. Even then, differences may occur in interpreting the term “fatal” for notification purposes (e.g. accidents resulting in immediate death or with injury resulting in death which occurred within 30 days, between 31 and 365 days of the accident or without limit of time).

- 168.** An important problem in comparing occupational accident figures is the difference in the main categories of notifiable accidents in each country, which may range from accidents causing incapacity for work for a specified number of days to any accident irrespective of interruption of work. Most of the countries require information on the time, day and place, the type and primary cause of the accident as well as the nature of the injury and the part of body injured. Some call for information about what the injured person was doing at the time of the accident. Only a few require information about the occupation, qualification and training of the injured or the length of time they have been employed in that capacity or about required safety devices or personal protective equipment. The criteria for notification are different for accidents that occur on the way to and from work (commuting accidents) or traffic accidents which occur while at work.
- 169.** The *recording and notification of occupational diseases* is even more complicated. Most countries have a legal definition of occupational diseases in the form of a prescribed list of occupational diseases. In many cases the prescribed list is linked with compensation criteria. There are, however, differences between the chosen methods of definition. Some countries have a list of prescribed diseases which may be similar to, but not necessarily the same as, Schedule I to the Employment Injury Benefits Convention, 1964 (No. 121), as amended in 1980. Other member States operate a so-called mixed system (prescribed diseases and other diseases). As a result, national statistics on occupational diseases differ with respect to the diseases covered, their definitions, the criteria for the recognition of such diseases and the coverage of working populations. A particular difficulty arises for diseases due to multiple causes and those with long latency periods.
- 170.** Procedures for notifying occupational diseases differ considerably from those for occupational accidents, as regards both the persons responsible for making the reports and those receiving them. Either the employer or the physician is responsible for notification to the labour inspectorate or its equivalent, or the report is to be received first by the insurance body. In some countries a number of optional information channels exist. While such reports invariably go to the insurance organization responsible for paying compensation, the enforcement agency may not be notified of cases of occupational disease. There is little doubt from research conducted in many countries that there is vast under-reporting. A fairly large number of developing countries are not in a position to collect and publish national data on occupational diseases due to a lack of national expertise or facilities for the diagnosis of occupational diseases, or both.

### ***Role of new international instruments***

- 171.** Uniform national systems of reporting, recording, notifying and evaluating occupational accidents and diseases are essential for the collection of consistent data and their subsequent use for the identification and effective implementation of preventive measures. International labour standards deal only to a very limited extent with effective recording and notification as a tool for preventive action, and they neither specify uniform methods or appropriate national procedures or systems, nor include sufficient guidance (see paragraph 193). New international standards on the recording and notification of occupational accidents and diseases could establish more compelling obligations for governments and therefore be more effective than the existing imperatives, which are in particular the resolutions adopted by the International Conference of Labour Statisticians (see paragraph 194), and the general provisions of some Conventions and Recommendations (see paragraphs 193 and 194). Notwithstanding the existence of the Code of practice on recording and notification of occupational accidents and diseases, it is obvious that international standards could contribute better to establishing appropriate national systems and improving and harmonizing both the terminology

and the procedures, providing the basis for coherent national, sectoral and enterprise-level policies and action for prevention. While more detailed than the proposed instrument(s), the code could be used, however, as a point of departure for their preparation.

**172.** In previous consultations held with member States, the exclusion of occupational diseases from the scope of an international instrument was suggested. This exclusion would maintain the unsatisfactory situation highlighted above, in particular the lack of international standards on legal requirements for the identification and notification of occupational diseases, the existing information and awareness gaps and the insufficient measures carried out for the prevention of occupational diseases, the number of which all over the world is impossible to quantify for the time being. It should be noted that for future work by the ILO the development of standards for statistics of occupational diseases was recommended in paragraph 30 of the resolution concerning statistics of occupational injuries resulting from occupational accidents adopted by the Sixteenth International Conference of Labour Statisticians (Geneva, 6-15 October 1998).

**173.** The international instrument(s) could provide for:

- the obligation for the competent authorities of member States to establish and implement a coherent national policy, as well as systems and programmes and the relevant concepts and terminology for the recording, notification and investigation of occupational accidents and diseases, which are consistent with international standards and recommendations;
- the implementation of this national system by the competent authorities, and indirectly by the employers in consultation with workers and their representatives;
- the harmonized collection of consistent and comparable data and the realization of comparative analyses at national and enterprise levels for the identification of preventive measures, setting priorities in their implementation and the economical and meaningful use of resources;
- promotional measures at the national level and at the level of the enterprise.

In order to provide for flexibility and if convenient for ratification purposes, Members may be allowed to accept the obligations of the Convention separately in respect of occupational accidents and occupational diseases, as in the case of the Working Environment (Air Pollution, Noise and Vibration Convention, 1977 (No. 148) in respect of these three categories of hazards.

### ***Proposed solution regarding instruments on the recording of occupational accidents and diseases***

**174.** In response to the concerns and reservations expressed in previous discussions, three options could be envisaged for the form of the proposed instruments.

#### First option

**175.** The adoption of a Convention on the recording and notification of occupational accidents and diseases containing basic principles, supplemented by a Recommendation. These instruments would also provide for the establishment of mechanisms for the periodic updating of the list of occupational diseases in Schedule I to the Employment Injury Benefits Convention, 1964 (No. 121), or any other corresponding list adopted by ILO bodies.

#### Second option

**176.** The adoption of a Protocol to the Occupational Safety and Health Convention, 1981 (No. 155), with the objective to provide tools for the implementation of specific requirements. This option would be rooted in Articles 4 and 11 of the Convention and Paragraph 15 of the Occupational Safety and Health Recommendation, 1981 (No. 164).

**177.** Article 4 of the Convention calls for the formulation, implementation and periodic review of a coherent national policy on occupational safety, occupational health and the working environment, the aim of which shall be to prevent accidents and injury to health. To give effect to this policy, Article 11 provides for the competent authority or authorities to ensure that, inter alia, the following functions are progressively carried out:

- (i) the establishment and application of procedures for the notification of occupational accidents and diseases by employers and, when appropriate, insurance institutions and others directly concerned;
- (ii) the production of annual statistics;
- (iii) the annual publication of information on measures taken in pursuance of the policy and on occupational accidents, occupational diseases and other injuries to health; under the terms of Paragraph 15 of the Recommendation, employers should be required to keep records relevant to occupational safety and health and the working environment.

**178.** The Protocol might be adopted in a single discussion procedure. It would contain basic principles only, but might be supplemented by a Recommendation and would be open for ratification at the same time or at any time after the member State's ratification of Convention No. 155.<sup>48</sup>

### Third option

**179.** Adoption of a Recommendation on the recording and notification of occupational accidents and diseases containing basic principles and incorporating the essential requirements of the Code of practice on the recording and notification of occupational accidents and diseases (1996). This instrument would have the objective to help member States to achieve progress in this field without the need to comply with all the obligations put on them by a ratified instrument. In addition, a single discussion procedure might be applicable.

**180.** The proposed revision of the current ILO list of occupational diseases and the revision of current ILO classifications of accidents encouraged by the Sixteenth International Conference of Labour Statisticians and being undertaken, might prove essential to the implementation of the proposed new international instrument(s).

### ***Content of the new instrument(s)***

**181.** The instrument(s) could aim at reinforcing and incorporating various activities into consistent systems of collecting information on occupational accidents and diseases in member States. Such systems could cover methods of reporting and recording within an enterprise and notification to the national authority. Consistent recording and notification systems could facilitate the investigation and analysis of the causes of occupational accidents and diseases that could promote the implementation, review and continuous improvement of safety and health policies within the enterprise and at national level, in particular for the purposes of planning coherent and effective prevention programmes.

**182.** The following aspects of the recording and notification of occupational accidents and diseases might be covered.

#### (a) General provisions

**183.** The provisions could specify that the competent authority should formulate, implement and periodically review a coherent national policy and principles on the recording and notification of occupational accidents and diseases, and establish and progressively implement national procedures

<sup>48</sup> Thirty member States (31.08.1999).

and the necessary legal, institutional and administrative arrangements. Provisions for notification at the national level could cover fatal occupational accidents, all occupational accidents causing incapacity for work for a period to be established by the competent authority, and all occupational diseases included in a national list or covered by the definition of such diseases prescribed by the competent authority and diagnosed in a specified period. Provisions for recording at the level of the enterprise could be extended to include also accidents, diseases and happenings not covered by the notification requirements (commuting accidents, work-related diseases, dangerous occurrences and incidents).

(b) Action at the level of the enterprise

(i) *Measures for recording*

**184.** These measures could relate to setting up adequate procedures and allocating responsibilities within the enterprise for reporting by the worker and recording by the employer of occupational accidents and diseases. The provisions could specify the content and format of records, the period of time in which employers should have the records available, the confidentiality of medical and personal data, the cooperation of workers and their training in adequate reporting and recording. The information to be recorded should include at least the information that needs to be notified to the relevant enforcement body, the appropriate compensation organization or other designated bodies. Specifications could be made for additional or for progressively more detailed information to be recorded.

(ii) *Use of recorded information*

**185.** Accurate information concerning common causes of occupational accidents and diseases and the extent of injury will help in setting priorities for necessary preventive measures. It will also facilitate the assessment of the effectiveness of legislative and other measures. Provisions could thus specify measures to promote the uniform identification and assessment of causes of occupational accidents and diseases at each enterprise and, subsequently, in all branches of economic activity and at the national level by the use of the information recorded.

(c) Notification at the national level

(i) *General provisions*

**186.** These could specify how member States should prescribe and implement uniform procedures for notifying occupational accidents and diseases, including the determination of the bodies to which notification should be made, and could specify the responsibilities of employers and workers for compliance with the prescribed procedures. The instruments could also deal with enforcement measures.

(ii) *Requirements for notification*

**187.** The provisions could specify the types and extent of information to be notified to the relevant enforcement body, the appropriate compensation organization or other designated bodies, the timing for the notification depending on the type of injury and the notification arrangements to be set up within the enterprise. The notification of occupational accidents could include information on the enterprise where the accident occurred and its employer, the injured person, the extent, nature and location of the resulting injuries, the accident and its sequence, the investigation and action taken to prevent a recurrence of the accident. The notification of occupational diseases could include information on the enterprise and employer, the person affected, the occupational disease and its attribution to harmful agents and process and length of exposure. Specifications could be made for progressively more detailed information to be notified.

(iii) *Procedures for the use of the notified information*

**188.** The instrument(s) could also suggest the means of promoting the use of the notified information at the national level, including the creation of national databases and the production of reliable

statistics on occupational accidents and diseases as a basis for setting priorities and elaborating national policy and preventive action programmes. The instrument(s) could take into account the role of social security and sectoral institutions according to national law or practice.

### Proposed solution regarding the form and content of the list of occupational diseases

**189.** As a fairly large number of developing countries are not in a position to collect or publish national data on occupational diseases due to a lack of national legal requirements and expertise (lack of national lists or international references) or facilities for the diagnosis of occupational diseases, or both, guidance by reference to updated ILO lists of occupational diseases should be provided. With a view to improving the rapid response capacity of the Office and as a consequence of the concerns and reservations expressed in previous discussions on this item, it would be appropriate at the same time for the Conference to consider:

- (i) updating, for the purpose of compensation and recording and notification, the actual ILO list of occupational diseases (Schedule I to the Employment Injury Benefits Convention, 1964 (No. 121)), together with the international instrument(s) that might be adopted on the recording and notification of occupational accidents and diseases;

and/or:

- (ii) establishing a mechanism for the periodic updating of the list of occupational diseases in Schedule I to Convention No. 121 for compensation purposes and for the elaboration, adoption and periodic updating of any other corresponding list adopted by ILO bodies, such as meetings of experts, for the purpose of recording and notification.

**190.** The revised list will be conducive to an improved flow of information on the incidence of work-related diseases with a view to their prevention. It will offer useful guidance on the health surveillance of workers exposed to specific occupational hazards and will have the advantage of promoting close cooperation between insurance organizations and enforcement agencies.

**191.** On the basis of a review of the diseases that might appropriately be included in a revised Schedule I to the Employment Injury Benefits Convention, 1964 (No. 121), and of current practice and trends in the diagnosis and evaluation of occupational disease for compensation purposes, the proposed new list of occupational diseases could cover the following additional items:

- diseases caused by inorganic and organic chemical substances or their compounds not included in the current list;
- diseases caused by physical agents such as heat radiation, ultraviolet radiation, and extreme temperatures;
- occupational respiratory diseases not included in the current list;
- occupational musculoskeletal disorders and diseases caused by repetitive motion, forceful exertion and postures;
- occupational cancer caused by carcinogenic substances not in the current list;
- other diseases and disorders, including skin diseases caused by physical, chemical, or biological agents not included under other items, and any other diseases for which a direct link between the exposure of workers to such an agent and the diseases suffered is established.

### ***Origin of the proposal***

- 192.** Conference agenda items on the recording and notification of occupational accidents and diseases were proposed for consideration by the Governing Body for the Conference agenda in 1991, 1996, 1997, 1999, 2000 and 2001.<sup>49</sup> An item on the revision of the list of occupational diseases appended to the Employment Injury Benefits Convention, 1964 (No. 121), was proposed for the 1994 Conference agenda.<sup>50</sup>

### ***Relation to existing instruments***

- 193.** Some 20 Conventions and Recommendations encourage the compilation of statistics of occupational injuries and diseases, but only some of them refer to recording and notification. The Labour Inspection Convention, 1947 (No. 81), requires that the annual report published by the central inspection authority shall deal with statistics of industrial accidents and occupational diseases. According to the Protection of Workers' Health Recommendation, 1953 (No. 97), national laws or regulations should require the notification of cases and suspected cases of occupational diseases. The Occupational Safety and Health Convention, 1981 (No. 155), provides for the competent authority to ensure that procedures will be progressively established and applied for the notification of occupational accidents and diseases for the production of annual statistics. Under the terms of the Occupational Safety and Health Recommendation, 1981 (No. 164), employers should be required to keep records relevant to occupational safety and health and the working environment which might include records of all notifiable occupational accidents and injuries to health. The Labour Statistics Convention, 1985 (No. 160), and its accompanying Recommendation (No. 170) require the compilation of statistics of occupational injuries and, as far as possible, occupational diseases. There is, however, neither guidance regarding their structure nor reference to the resolution concerning statistics of employment injuries, which provides such guidance.

- 194.** The Employment Injury Benefits Convention, 1964 (No. 121), requires that legislation shall prescribe both the definition of an industrial accident and a list of diseases to be regarded as occupational diseases under prescribed conditions. National legislation should include a general definition of occupational diseases broad enough to cover at least the diseases listed in the most recent version of Schedule I to the Convention. The current version was amended in 1980 and needs to be reviewed. An informal consultation on the revision of Schedule I, convened by the ILO in 1991, prepared an updated list which has not been approved officially. The resolution concerning statistics of employment injuries, adopted by the Tenth International Conference of Labour Statisticians (1962), defined for statistical purposes the notions of fatalities, permanent disablement and temporary disablement, and suggested four classifications of accidents according to the type of accidents, the physical agency, the nature and the bodily location of the injury. As these classifications required updating to meet modern and future needs, a Meeting of Experts on Labour Statistics was held in Geneva from 30 March to 3 April 1998<sup>51</sup> with the objective of discussing the major issues involved in the measurement and classification of occupational injuries. Its conclusions were taken into account by the Sixteenth International Conference of Labour Statisticians, held in Geneva in October 1998. The Conference concluded, among others, with the resolution concerning statistics of occupational injuries resulting from occupational accidents which stipulates the collection of information about the enterprise, establishment or local unit, the person injured, the injury and the accident and its consequences. It contains, in addition, revised classifications of occupational accidents according to type of injury (Annex E) and to the part of body injured (Annex F). The preparation of a manual to provide technical guidance on the contents of the resolution and

<sup>49</sup> GB.244/2/2, paras. 96-116; GB.259/2/2, paras. 226-248; GB.262/2, paras. 69-94; GB.268/2, paras. 9-41; GB.271/4/1, paras. 175-205; GB.273/2, paras. 32-44, GB.274/3, paras. 190-221, and GB.276/2, paras. 176-197.

<sup>50</sup> GB.254/2/1, paras. 53-64.

<sup>51</sup> GB.272/3.

the development of standards for statistics of occupational diseases are recommended as part of action to be taken by the Office.

- 195.** Although the Code of practice on the recording and notification of occupational accidents and diseases is not a legally binding document, it provides useful guidance to competent authorities in developing national systems for the collection of comparable information and the overall prevention of occupational injuries and diseases. While more detailed than the proposed instrument(s), the Code could be used, however, as a point of departure for its or their preparation (see below).

### ***Progress made in research and preparatory work***

- 196.** The above code of practice was distributed by the Office to all member States in a special endeavour implemented in 1997 to review the establishment of national policies and programmes and to develop more comprehensive and internationally comparable statistics on occupational accidents, in particular fatalities. All member States were asked to provide available data or to explore the difficulties or special circumstances they may be facing in gathering national data. The replies received from 107 institutions of some 99 countries were evaluated and the results provide the base for future work of the Office in this field.
- 197.** Based on the experience acquired from previous work regarding the list of occupational diseases contained in Schedule I to Convention No. 121, the ongoing practical implementation of the Code of practice on the recording and notification of occupational accidents and diseases (see preceding paragraph), as well as research undertaken for the preparation of the Meeting of Experts on Labour Statistics (1998) and the Sixteenth International Conference of Labour Statisticians (1998) and the results thereof, the Office is prepared to provide the necessary preparatory work for a Conference agenda item.