



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

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

*Contents*

|  | <i>Page</i> |
|--|-------------|
| PART ONE: <i>General report</i> .....  | 3           |
| A. Introduction.....   | 3           |
| B. General questions relating to international labour standards .....  | 10          |
| C. Reports requested under article 19 of the Constitution: Hours of Work (Industry) Convention, 1919 (No. 1) and Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)..... | 20          |
| D. Compliance with specific obligations.....   | 34          |

---

## PART ONE

### GENERAL REPORT

#### A. Introduction

1. In accordance with article 7 of the Standing Orders, the Conference set up a Committee to consider and report on item III on the agenda: “Information and reports on the application of Conventions and Recommendations”. The Committee was composed of 205 members (125 Government members, 10 Employer members and 70 Worker members). It also included 8 Government deputy members, 77 Employer deputy members, and 164 Worker deputy members. In addition, 34 international non-governmental organizations were represented by observers.<sup>1</sup>

2. The Committee elected its Officers as follows:

|                           |  |
|---------------------------|--|
| <i>Chairperson:</i>       | Mr. Sérgio Paixão Pardo (Government member, Brazil)  |
| <i>Vice-Chairpersons:</i> | Mr. Edward E. Potter (Employer member, United States) and<br>Mr. Luc Cortebeeck (Worker member, Belgium) |
| <i>Reporter:</i>          | Ms. Carine Parra (Government member, France)   |

3. The Committee held 20 sittings.

4. In accordance with its terms of reference, the Committee considered the following: (i) information supplied under article 19 of the Constitution on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference; (ii) reports supplied under articles 22 and 35 of the Constitution on the application of ratified Conventions; and (iii) reports requested by the Governing Body under article 19 of the Constitution on the Hours of Work (Industry) Convention, 1919 (No. 1), and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30).<sup>2</sup> The Committee was also called on by the Governing Body to hold a special sitting concerning the application by Myanmar of the Forced Labour Convention, 1930 (No. 29), in application of the resolution adopted by the Conference in 2000.<sup>3</sup>

#### ***Homage to Mr. Alfred Wisskirchen***

5. The Employer members paid tribute to the work of Mr. Alfred Wisskirchen, who had retired from his role as Employer spokesperson after 22 years of the 35 years that he attended the ILO Conference. They underlined that he had participated in the work of this Committee with integrity, legal rigour and compassion. The Employer members saluted

<sup>1</sup> For changes in the composition of the Committee, refer to reports of the Selection Committee, *Provisional Records* Nos. 3 to 3J. For the list of international non-governmental organizations, see *Provisional Record* No. 2-1.

<sup>2</sup> Report III to the International Labour Conference – Part 1AI: Report of the Committee of Experts on the Application of Conventions and Recommendations; Part 1AII: Information document on ratifications and standards-related activities; Part 1B: Hours of work: From fixed to flexible?

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

---

him for his contribution to improve all aspects of the ILO supervisory machinery. The Worker members joined the Employer members in paying tribute to the work of Mr. Wisskirchen.

### **Work of the Committee**

6. In accordance with its usual practice, the Committee began its work with a discussion on general aspects of the application of Conventions and Recommendations and the discharge by member States of standards-related obligations under the ILO Constitution. In this part of the general discussion, reference was made to Part One of the report of the Committee of Experts on the Application of Conventions and Recommendations and to the information document on ratifications and standards-related activities. During the first part of the general discussion, the Committee also considered its working methods with reference being made to a document submitted to the Committee for this purpose.<sup>4</sup> The second part of the general discussion dealt with the General Survey on *Hours of work: From fixed to flexible* carried out by the Committee of Experts. A summary of all aspects of the general discussion is set out in Part One of this report.
7. Following the general discussion, the Committee considered various cases concerning compliance with obligations to submit Conventions and Recommendations to the competent national authorities and to supply reports on the application of ratified Conventions. In this regard, reference was made to the Information note on the cases of serious failure by member States to respect their reporting or other standards-related obligations, submitted to the Committee by the secretariat for the first time this year. This note enumerated the principal difficulties encountered in fulfilling constitutional obligations and sought to identify some elements on which the technical assistance to help resolve these difficulties should focus.<sup>5</sup>
8. The Committee held a special sitting to consider the application of the Forced Labour Convention, 1930 (No. 29), by Myanmar. A summary of the information submitted by the Government, the discussion and conclusion is contained in Part Three of this report.
9. During its second week, the Committee considered 25<sup>6</sup> individual cases relating to the application of various Conventions. The examination of the individual cases was based principally on the observations contained in the Committee of Experts' report and the oral and written explanations provided by the governments concerned. As usual, the Committee also referred to its discussions in previous years, comments received from employers' and workers' organizations and, where appropriate, reports of other supervisory bodies of the ILO and other international organizations. Time restrictions once again required the Committee to select a limited number of individual cases among the Committee of Experts' observations. With reference to its examination of these cases, the Committee reiterates the importance it places on the role of the tripartite dialogue in its work and trusts that the governments of all those countries selected will make every effort to take the measures necessary to fulfil the obligations they have undertaken by ratifying Conventions. A summary of the information submitted by governments, the discussions,

<sup>4</sup> Work of the Committee on the Application of Standards, ILC, 93rd Session, C.App/D.1.

<sup>5</sup> ILC, 93rd Session, Committee on the Application of Standards, C.App/D.4.

<sup>6</sup> In one case, Bosnia and Herzegovina's Government did not attend in response to the Committee's invitation.

---

and conclusions of the examination of individual cases is contained in Part Two of this report.

10. To select the cases to be discussed in the second week, the Officers of the Committee submitted a draft list of the individual cases to be examined.<sup>7</sup>
11. The Worker members agreed with the adoption of the list of individual cases contained in document D.5. Once again, the adoption of the list had been the subject of important discussions within the Workers' group, as the criteria of rigour, equity and impartiality, which governed the work of the Conference Committee, the supervisory system and the ILO, were essential. The objective of the discussions on the list of individual cases was to seek solutions together to resolve problems of application. The proposed list contained 25 individual cases, which was a very limited number having regard to the Conference's schedule this year, which included the Governing Body elections. Of the 25 cases selected, 12 concerned freedom of association. A decrease in the number of cases relating to freedom of association would only be possible if determined actions were taken by the governments concerned. It should also be emphasized that the Committee of Experts had asked the Government of Sudan to provide to the Conference Committee information on the application of Convention No. 29 and the Government of Ecuador to provide information on the Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77), and the Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78).
12. The Worker members regretted that, because of time constraints, a certain number of cases could not be discussed. It was therefore important to urge governments to take the necessary measures to give effect to the respective Conventions. Particular attention should be given to the case of Pakistan with respect to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), on which it had not submitted a report this year. The Worker members also regretted that no case concerning the application of the Employment Policy Convention, 1964 (No. 122), for example that of Italy, had been chosen. Finally, they deeply regretted that the Committee could not discuss the application of Convention No. 29 by Japan. Even if the facts dated back over more than 60 years, the case was still relevant today. A discussion on the case had been requested in 2003. There was the risk that the categorical and systematic refusal to deal with this case would lead the supervisory system into an impasse. Therefore, as a definitive solution was desirable on this case, the Worker members proposed that an informal tripartite meeting be held, including all parties concerned, under the aegis of the Office. It was to be hoped that the Government and Employers of Japan would agree to collaborate to find an adequate solution.
13. The Employer members commended the Worker members on their efforts which enabled the Committee to adopt the list of individual cases as early as possible. This provided the governments concerned with adequate time to prepare. The Employer members would also have liked to see other cases on the list, in particular cases of progress. In addition, they commented on the statement by the Worker members concerning the application by Japan of Convention No. 29. The Conference Committee had discussed this case two years ago in the same context and the Committee of Experts had recognized that little could now be done concerning events that had occurred 60 years ago. In its two last observations, the Committee of Experts had made the point that it had no mandate to rule on the legal effect of bilateral and multilateral treaties that might have a bearing on the case. In the view of

<sup>7</sup> ILC, 93rd Session, Committee on the Application of Standards, C.App./D.5.

---

the Employer members, a discussion of the case of Japan in the Conference Committee would not be effective and would not have a tangible impact.

14. The Employer members also noted that once again nearly half of the individual cases selected for examination by the Conference Committee concerned the freedom of association Conventions. Many years ago, the Committee had adopted a system under which the cases mainly concerned freedom of association one year, and the following year was devoted to the examination of non-freedom of association cases. They suggested that the Committee might give some thought to a system of this type, which would make it possible to pay greater attention to cases of progress and to technical Conventions. They concluded by recommending the list of individual cases for adoption.
15. The Government member of the Republic of Korea indicated that, with regard to Convention No. 29, he shared the deep concerns and regrets expressed by the Worker members over the fact that the issue of so-called comfort women, involving sexual slavery by the Japanese military prior to and during the Second World War, had not been included in the individual cases for examination by the Committee. His Government considered this issue to be very important and hoped that, in the future, it would be taken up as an individual case in this forum. His delegation took note of the proposal presented by the Worker members that a tripartite meeting should be held to find an adequate solution for the issue.
16. The Government member of Japan stated that the discussion of specific cases should be conducted on the basis of the list agreed to by the Government, Employer and Worker members. His delegation believed that it was not appropriate to discuss a specific case in the course of the general discussion.
17. The Government member of Cuba stated that her delegation had for years been expressing serious concerns about the criteria for establishing the list of individual cases. Noting that the selection of cases in the list this year showed that an effort had been made to achieve a better regional balance, she thanked the Officers of the Committee. Nevertheless, she felt that the selection of cases still retained aspects of the previous politicized system under which developed countries which, according to the report of the Committee of Experts, had violated fundamental Conventions such as the Worst Forms of Child Labour Convention, 1999 (No. 182), were not included in the list. In conclusion, she stated that, while she appreciated the efforts made, she urged the Committee to continue to move forward so as to achieve more equity in the selection of individual cases.
18. The Government member of Zimbabwe recalled that his country had been continuously called before the Conference Committee for reasons related, not to the violation of the respective Convention, but to the political agendas of former colonial powers. He added that spending time refuting groundless claims by the purported representatives of the workers' movement took away from the time that could be gainfully spent on bettering the welfare of the workers in his and other countries. He therefore called for his country to be taken off the list of individual cases to be examined by the Conference Committee.
19. Following the general discussion on the draft list of individual cases to be examined, the Committee adopted the list (document D.5).

### ***Working methods of the Committee***

20. Referring to the establishment of the list of cases, the Worker members pointed out that the 2005 report of the Committee of Experts contained 774 observations and 1,419 direct requests, which meant more than 2,000 comments representing an increase of over 25 per cent in comparison to the previous year. The proposed list contained 25 cases, showing a

---

balance between Conventions and regions. The criteria used for the adoption of the list were the following: the nature of the comments of the Committee of Experts, in particular the presence of a “footnote”; the seriousness and persistence of cases of failure to apply the Conventions; the urgent and specific nature of the situation; and the possibility that the discussions would have a tangible impact on the situation. The additional elements proposed by the representative of the Secretary-General were also important. These were: the quality and significance of the replies provided by governments or the absence of any replies on their part; the comments submitted by workers’ and employers’ organizations; and the discussions held at previous sessions of the Conference Committee and its conclusions, in particular the existence of a special paragraph.

- 21.** The Worker members pointed out that the approach of selecting certain cases rather than others had the result that the cases selected by the Committee consisted solely of violations of international labour standards. They were nevertheless of the view that certain cases of progress had to be mentioned as demonstrating through practical action adherence to the principles and standards of the ILO. This was the case, for example, of New Zealand on the application of Forced Labour Convention, 1930 (No. 29) or of the United Republic of Tanzania with respect to Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). As emphasized by the representative of the Secretary-General, it was important to give greater visibility to the results achieved by the supervisory system. These cases of progress could inspire other countries to pursue dialogue and to believe that real changes were possible.
- 22.** The Worker members also emphasized that the work of the Conference Committee formed part of the ILO’s mandate and supported the work of other departments, particularly those involved in technical cooperation or in the promotion of standards. The discussion of the individual cases had to be held in this positive context of encouraging improvements in law and in practice relating to conditions of work and the life of men and women workers. In this regard, the Committee of Experts had also mentioned several cases of progress on the application of the Labour Inspection Convention, 1947 (No. 81). The application of this Convention was very important for the implementation of other Conventions ratified by a particular country. The Worker members also thanked the Committee of Experts for the general observation on the application of the Worst Forms of Child Labour Convention, 1999 (No. 182), on the sale and trafficking of children in West Africa. The Committee could discuss this issue when examining the case of Niger in relation to Convention No. 182.
- 23.** With regard to the selection of individual cases, the Employer members were of the view that, in addition to the criteria set out in document D.1, other criteria could be taken into consideration, including the history of a case, whether or not the case involved technical Conventions not previously discussed or examined, whether the country concerned had ever appeared before the Committee, and any relevant cases of progress. These cases were important because they demonstrated that the supervisory bodies were reflecting on successful cases, which could help other countries to learn about implementation in law and practice. In addition, they would have liked to see more cases concerning technical Conventions, such as those on occupational safety and health, which involved issues of life and death, as well as a selection of countries that had never appeared before the Conference Committee. They pointed out that the selection of a case was not necessarily negative, but rather a process of dialogue to improve implementation in law and in practice. The selection of cases was based on criteria applied in the Committee’s methods of work and, while there was always some level of imprecision, it was a sensible and honest process.

- 
24. The Government member of the United States, speaking on behalf of the Government members of the Industrialized Market Economy Countries (IMEC), recalled that the Conference Committee had been debating for several years whether and how it should improve its methods of work, with the aim of making them more transparent, fairer and more efficient, and thus making the Committee more effective. As a consequence of this ongoing debate, some adjustments had been made and continued to be made. IMEC welcomed in particular the new practice of pausing after each individual case to allow the Chairperson sufficient time, in consultation with the Officers, to put forward a conclusion that accurately reflected the content and tone of the debate. IMEC also appreciated the efforts made this year to adopt the list of cases earlier than ever before. However, no major problems related to the methods of work of the Conference Committee had come to light and the Committee had come out in favour of its existing methods of work, including the system for selecting cases. The criteria and the process by which those criteria were applied were generally felt to be fair and just, although, as in any procedure, there might be room for improvement. IMEC continued to believe that the Committee's methods of work were sound, including the manner in which it selected cases for discussion. While the criteria listed in document D.1 could not guarantee a purely scientific list of cases, they did however lay the foundation for developing a list that was balanced and equitable and that engendered the confidence of the three groups. Nevertheless, IMEC had always supported efforts to promote genuine improvements in the ILO supervisory system and would continue to do so.
25. Regarding methods of work, the Government member of Italy welcomed the measures taken to improve transparency and objectivity. With respect to individual cases, he emphasized that the only reason for their being discussed in the Committee on the Application of Standards was to encourage compliance with international labour standards.
26. The Government member of Bahrain, speaking on behalf of the Government members of the Gulf Cooperation Council (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates and Yemen), expressed appreciation of the positive reaction of the Committee to the request to adopt the list of individual cases at the very beginning of the Committee's work so as to give governments more time to prepare their responses. He also commended the Committee's real willingness to review its working methods so as to ensure a tripartite balance, while pointing out the need to ensure that the Government group played a role in determining the criteria for selecting individual cases in cooperation with the Employers' and Workers' groups.
27. The Government member of India welcomed the efforts to reform the functioning of the Conference Committee, although there remained room for further improvement. He hoped that the criteria for the selection of cases would be more transparent and objective in the future so that there could be greater transparency in the supervisory system. The views of Governments and the Employer and Worker members from the countries concerned should be heard before the list was finalized. He believed that the appropriate forum to achieve a tripartite consensus on the selection of cases would be the Governing Body, which could take a decision at its March session. Finally, he stated that the discussion in the Conference Committee should take into account the socio-economic and cultural diversity of member States, and the conclusions adopted by the Committee should reflect the views of the constituents.
28. The Government member of Cuba expressed satisfaction at the diversity, clarity and sincerity that prevailed during the discussion of the methods of work of the Committee during its last session in June 2004. There were clear opinions expressed about the possibility of accepting or improving the methods of work, and there was consensus that the ILO was an institution of tripartite dialogue. He recalled that during the last meeting of the Committee, Cuba had presented ideas on behalf of a group of 18 countries (Algeria,

---

Belarus, Burundi, China, Cuba, Egypt, Ethiopia, India, Indonesia, Libyan Arab Jamahiriya, Malaysia, Myanmar, Pakistan, Syrian Arab Republic, Sudan, Venezuela, Viet Nam and Zimbabwe) on methods of work. The Movement of Non-Aligned Countries had endorsed this proposal. The methods of work were intended to provide more transparency and democracy in the Committee. He noted that, during the 91st Session of the Conference (June 2003), the members of the Movement of Non-Aligned Countries had expressed significant concern about the process agreed to by the Committee on cases of some developing countries. The treatment was selective and based on imprecise criteria. Some regional groups had also expressed similar concerns. As a result of these discussions, the Chairperson of the Committee on the Application of Standards in 2003 invited all of the members to prepare new proposals to be examined at the 92nd Session of the Conference.

- 29.** In reply to the request, the group of 18 countries drafted a document suggesting some changes in the methods of work of the Committee. A document was presented to the Committee in 2004. Subsequently, the Ministerial Meeting of the Movement of Non-Aligned Countries endorsed this document and their proposals suggested, among others, that the Committee of Experts establish objective and transparent criteria that would provide a basis for the drawing up of the list of individual cases. The criteria should consider geographic balance and an equitable distribution of the fundamental and technical Conventions. It was further proposed to give enough time to member States to prepare their responses during the preparation of the list of individual cases. The list should be made available in March during the Governing Body and seek, among other things, to maintain the balance between the developed and developing countries. It was further suggested that sufficient time be given to the Chairperson of the Committee so that the deliberations could be adequately reflected in the Committee's conclusions. The objective of the document and its declarations was to support the improvement of the working methods of the Committee by looking for ways to promote greater transparency, objectivity and balance in the selection of individual cases. A total of 20 Governments (Algeria, Belarus, Burundi, China, Cuba, Egypt, Ethiopia, India, Indonesia, Libyan Arab Jamahiriya, Malaysia, Mauritania, Myanmar, Pakistan, Sudan, Syrian Arab Republic, Thailand, Venezuela, Viet Nam and Zimbabwe) expressed their recognition of the efforts made by the Office this year, especially under the guidance of the Department of International Labour Standards, to improve the methods of work of the Committee on the Application of Standards, which would strengthen its credibility. He expressed the hope that during the work of the 93rd Session of the Conference, the Committee would examine this question, and adopt tripartite methods, supported by new ideas of the Office, to find more appropriate ways of solving the problems that continued to preoccupy many Governments.
- 30.** The Government member of the Bolivarian Republic of Venezuela expressed support for the statement of the Government of Cuba. She indicated the need to balance selection of individual cases to be examined. This stated selection must include developed and developing countries. Geographic distribution and diversity of Conventions examined should also be considered.
- 31.** The Government member of Zimbabwe questioned the procedures used for the selection of the individual cases to be examined by the Conference Committee. Despite concerted efforts by his country to comply with the standards in question, his country had once again been called before the Committee this year. He therefore called for a review of the working methods of the Conference Committee, especially with regard to the criteria and reasons for the selection of individual cases. The continued abuse of the procedures would seriously impair the credibility of the ILO as a whole.

---

## B. General questions relating to international labour standards

### *General aspects of the supervisory procedure*

32. The Committee first of all noted the information presented by the representative of the Secretary-General concerning recent changes undergone by the International Labour Standards Department, as well as the vision and strategy for ILO standards proposed by her to the three groups of the Governing Body at its March 2005 session. She explained that the vision and strategy were organized around three major concepts: renewal, trust and visibility:

- (i) **“renewal”** which placed emphasis on a broad approach to the application of standards, which encompassed ratification, implementation, enforcement and influence. It relied on technical cooperation and assistance as important components to buttress social progress and international labour standards. In addition, a strong economic case had to be made for standards to support the ILO’s traditional approach;
- (ii) **“trust”** which focused on a modernized, integrated and coherent supervisory system. The ILO supervisory system had to live up to the expectations raised by its status of being the most developed system at the international level. It should be and be seen as transparent, fair and effective;
- (iii) **“visibility”** which targeted an effective communication of the ILO standards message.

She highlighted that the proposed vision and strategy was the framework within which the Department had been restructured. The Department has also developed a detailed plan of action to give effect to the proposed vision and strategy. She sincerely hoped that the Department, as it was now organized, would provide the best service possible to the supervisory bodies, including this Committee.

33. The Committee also noted the information presented by the representative of the Secretary-General concerning the mandate of the Committee and its working methods, information on the ratification and application of international labour standards, cases of progress, constitutional and other procedures, special procedures for freedom of association, policy regarding the revision of standards and the Global Report on forced and compulsory labour. She reported that, as of 31 May 2005, 7,312 ratifications had been registered, which constituted 92 new ratifications over the past year. She pointed out that 110 countries had ratified all eight ILO fundamental Conventions. On the obligation to submit reports, governments had submitted 64 per cent of the reports requested – a slight decrease over last year. Moreover, the Committee of Experts had expressed its deep concern regarding the fact that only 25 per cent of the reports requested had reached the Office by 1 September when they were due. She underlined that this was certainly an aspect which the Office needed to closely examine to determine what remedial steps were within its mandate to take.

34. In concluding, the representative of the Secretary-General conveyed her hopes as well as expectations from the Committee. She saw a tremendous synergy between the Committee of Experts, this tripartite Committee and the Office. She expected to see both firmness and fairness in ensuring that Members of the Organization honour the obligations which they had voluntarily assumed. She also expected understanding in the case of particular difficulties encountered by ILO Members as well as imaginative ways of resolving them. Moreover, she hoped to see how each of the tripartite groups individually approached the

---

various problems and issues before this Committee and how they worked together to reach a tripartite decision. Finally, she hoped that her colleagues and herself would be able to use what they had learned to enhance the vision and strategy to which she referred at the beginning of her statement, so that the Office's action with respect to the application of standards could be seen to be what it should be and was: an integral part of the action of the Organization as a whole.

- 35.** The Committee welcomed Justice Robyn Layton, Chairperson of the Committee of Experts. She noted a number of changes in the composition of the Committee of Experts, including the retirement of Mr. Albuquerque, Mr. Bhagwati, Mr. Razafindralambo and Mr. Nwabueze, as well as the appointment of two new members, Mr. Cheadle and Ms. Nussberger. She pointed to the continuing decline of reports received as well as the late reporting of governments, both of which had a significant impact on the work of the secretariat in processing reports, which in turn affected the work of the Committee of Experts. On a positive note, however, there had been a significant increase in the number of observations made by employers' and workers' organizations which was essential to the good functioning and impact of the supervisory system.
- 36.** The speaker also indicated that the Committee of Experts was continuing to review its working practices through its Subcommittee on Working Methods. The topics for discussion both in the Subcommittee and in plenary session concerned: logistics and the process of dealing with the increasing workload of additional reports, particularly now that there had been a large number of first reports requiring detailed analysis on the Worst Forms of Child Labour Convention, 1999 (No. 182), the interface of the work of the Committee of Experts with the secretariat in order to efficiently process the workload; the modification of the allocation of Conventions amongst the members of the Committee which allowed families of Conventions to be specially considered by both a member with a common law background as well as a member with civil law background; and continued efforts to improve the content, presentation, structure and comprehension of the Experts' report.
- 37.** Moreover, in response to matters raised by this Committee, the Committee of Experts had adopted the following measures: (i) ensured in the report that there was clarity as to the member States, which had been the subject of footnotes. These were set out in paragraph 35 of the General Report and in footnotes 9 and 11; (ii) listed the cases of progress in which the Committee was able to express its satisfaction, or note with interest measures taken by particular countries. In total they had amounted to 320 for the year. She concluded by welcoming the participation of the two Vice-Chairpersons of this Committee to one of the plenary sessions of the Committee of Experts. The Experts regarded this collaboration as important for increasing the effectiveness of both committees in their respective supervisory roles.
- 38.** The Employer members and the Worker members as well as all Government members who spoke welcomed the presence of the Chairperson of the Committee of Experts in the general discussion of the Conference Committee.
- 39.** With regard to the General Report of the Committee of Experts, the Employer members laid out a number of suggestions for improvement. First, the cases of serious failure by member States to respect their reporting or other standards-related obligations should be dealt with in the same manner as special paragraphs since they constituted cases of "serious failures to report" and involved situations which undermined the whole supervisory process. The Committee of Experts could provide more in-depth analysis on why certain member States were not reporting, including better information on each country's specific circumstances and an overview of relevant developments over a period of years. Document D.4 represented a start in this analysis, but they believed it did not take

---

sufficiently into account questions of economic development and extraordinary natural catastrophes and war. Secondly, the Information Document on ratifications and standards-related activities contained valuable information on technical cooperation, but this should be enriched. It would be useful to know the context of the technical cooperation, how it related to comments of the Committee of Experts and the present Committee, and how it differentiated from technical cooperation under the Declaration on Fundamental Principles and Rights at Work.

40. Moreover, the Employer members felt that the Reader's Note at the beginning of the report could provide more detail and history on the Committee of Experts. This could include more information on the Committee of Experts' establishment in 1926 at the instigation of the present Committee, and the fact that this was done for a three-year trial period which had been extended to the present day. This fact underscored the close working relationship between the two Committees. Mentioning this might also correct the impression given in the last sentence of the second paragraph of the Reader's note that the Conference Committee was an ancillary body to the Committee of Experts. The Employer members added that the relevant elements of the briefing to the Conference Committee which had been given before this session could also be included in the Reader's note but that the briefing itself should continue because there would always be new members.
41. The Employer members believed that paragraph 37 of the Experts' report regarding the practical application of ILO Conventions through judicial and administrative decisions should be further developed. The Committee of Experts' report should be released as soon as possible after its adoption, preferably already by the end of February via the Internet. This would allow countries that might be selected for examination by this Committee to have enough time to prepare. In the view of the Employer members, the emphasis of the present Committee should be on the discussion of individual cases, and less emphasis should be placed on the general discussion and the General Surveys. With regard to the Subcommittee on Working Methods, it might consider holding a session with users of the report. This could also be done through regional consultations or a survey. Finally, the Employer members were of the view that Part III of the General Report dealing with collaboration with other international organizations went beyond the Experts' mandate and did not belong in the Committee of Experts' report. This section could be published elsewhere and it could provide more detail on the parties to collaboration and the time and place of collaboration.
42. The Worker members welcomed the good interaction and collaboration between the Committee of Experts and the Conference Committee which they considered to be essential. Despite their different roles, these two Committees shared the same objectives, and their smooth functioning continued to be vital to the success of the ILO supervisory system.
43. With regard to the changes made to the presentation of the report of the Committee of Experts, the Worker members were pleased to note that even more efforts had been made to make it more readable, particularly due to the inclusion of lists and annexes which gave a clearer indication of standards-related developments and the member States' implementation of their obligations. The footnotes concerning the countries that were obliged to provide full information to the Conference were also useful for identifying the cases to be discussed.
44. The Worker members pointed out that they had always advocated the cases of progress mentioned in the Committee of Experts' report. The governments concerned – particularly New Zealand in respect of Convention No. 29 and the United Republic of Tanzania in respect of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949

---

(No. 98), should be commended. The cases of progress could serve as models. It would be moreover interesting to know the criteria used by the Committee of Experts to express its satisfaction or interest about the measures taken by the governments and to have more information on this topic. It would also be useful to more clearly define what is meant by “progress” and to distinguish the cases of progress regarding the fundamental and priority Conventions from cases concerning other Conventions or from those referring to the obligation to supply reports.

- 45.** The Worker members regretted the absence of information on the results obtained following the introduction of a new procedure requesting the United Nations and other specialized international organizations to provide information on the application of certain Conventions of common interest. With regard to the integrated approach, within the framework of which three topics had been already examined by a special Conference Committee, the Worker members were still not sure about the effective scope and added value of this approach in the fields which it intended to promote for the following two reasons. First, this approach had not yet led to concrete results. The conclusions adopted last year by the Conference by consensus on the subject of migrant workers referred to an action plan of the ILO to be established in partnership with other competent international organizations. The action plan included the elaboration of a non-binding multilateral framework for a rights-based approach to labour migration and the identification of actions to be undertaken with a view to a wider application of the relevant international labour standards. The ILO could ensure in this regard the better promotion of the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and the principles embodied by these instruments. Active promotional measures were expected in this field. Secondly, the integrated approach appeared to have the effect of stagnation in the adoption of the new Conventions and Recommendations. For some years now, no new Conventions had been adopted except in the maritime field. The twenty-first century was likely to become less “conventional” and more “promotional”.
- 46.** The Worker members noted with interest the strategic vision for standards presented by the representative of the Secretary-General and wished to reaffirm, along with the International Labour Standards Department, their confidence in a more modern and coherent supervisory system, and to make the message on standards more visible. Even if an economic argument could be used to support actions in favour of standards, the starting point of the Worker members’ approach remained the full respect of social standards. The Worker members recalled the importance of international labour standards and noted with satisfaction that the Director-General had dedicated a part of his speech to standards-related activities at this session of the Conference.
- 47.** The Government member of the United States, speaking on behalf of the IMEC countries noted the quality of the Conference Committee’s work was dependent to a large extent on the quality of the annual report of the Committee of Experts. IMEC therefore appreciated the continuing efforts of the Committee of Experts to enhance the impact of its report and to make the report more readable and more accessible for all potential users. She noted that the Committee of Experts intended to consider further improvements in its working methods to enable it to manage its mounting workload. She emphasized that the Office itself was vitally important to the efficiency, effectiveness and integrity of the ILO supervisory system. She hoped that the recent organizational changes in the International Labour Standards Department, as well as the new vision and strategy for standards, would enable the Department to fulfil its mandate better and looked forward to working with the representative of the Secretary-General towards that goal. IMEC also called on the Director-General to ensure that the essential and ever-increasing work of the Department was among his highest priorities. The effectiveness of the Office in supporting the ILO supervisory system had a direct bearing on the credibility of the Organization as a whole.

- 
- 48.** Several speakers (Government members of Brazil, China, India, Italy, Lebanon, Portugal and Denmark, also speaking on behalf of the Government members of Iceland, Finland, Norway and Sweden, as well as Worker members of Brazil and Pakistan) commended the Committee of Experts for a clearer, user-friendly and comprehensive report which provided an overview of the problems encountered in the application of ratified Conventions and cases of progress. In this regard, the Government member of Italy emphasized the importance of the report of the Committee of Experts to the work of the Conference Committee. The complementary nature of these two Committees was essential for the efficient functioning of the supervisory system. The Government member of Denmark noted with particular interest that the Committee this year had taken due note of previous discussions in the Conference Committee on improvements in the presentation of its report and that changes were now being implemented. This remarkable accomplishment had been achieved through tripartite willingness and consensus supported by a competent staff. He noted that the improvement of standards and the effectiveness of the supervisory system was a continuing process. It was important for the supervisory system to be as effective as possible in the light of the high and increasing number of ratifications.
- 49.** With regard to the content of the individual observations, the Employer members were of the view that the comments of the Experts needed to have a common and clear presentation. Some comments were cryptic, opaque and incomprehensible. They needed to be more consistent. A starting point would be a clear setting out of what a Convention called for. The comments should also make a clear distinction between allegations by third parties and the views of the Experts. Information requests should be consolidated. Along with individual observations, the content of direct requests corresponding to these observations should be published as well. This would put the comments in context and make them easier to understand. In this regard, the Worker member of Brazil emphasized the importance of not overly simplifying or reducing the amount of information. It was important not to fall into the trap of synthesizing too much, which could lead to the omission of information that was essential for an understanding of the issues.
- 50.** The Government member of China said that her country was committed to the implementation of international labour standards and had started the process of ratification of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Occupational Safety and Health Convention, 1981 (No. 155). She underlined that there existed good cooperation between her Government and the ILO on Convention No. 29 and the Abolition of Forced Labour Convention, 1957 (No. 105). Studies had been carried out on the practice in her country in relation to these Conventions and effective measures would be taken to ensure that they were given effect. She emphasized that her Government was intent on pursuing humanitarian policies, safeguarding the rights of workers and improving living conditions. However, her country was faced by great disparities between rural and urban areas and problems related to the globalization process. If all workers were to benefit from decent work, it would be necessary to adopt practical measures. Her country was therefore seeking to strengthen its cooperation with the ILO and other international organizations with a view to achieving economic and social progress.
- 51.** The Government member of Bahrain, speaking on behalf of the Government members of the Gulf Cooperation Council, stated that the adoption of the Declaration on Fundamental Principles and Rights at Work and its Follow-up in 1998 had led to an increase in the number of fundamental Conventions ratified by the member States of the Council. This movement was part of a reform process to broaden the scope of political participation in the decision-making process. While welcoming the increasing number of ratifications, the Government member of Denmark pointed out that the high number of ratifications gave rise to a growing need for governments to receive consistent and reliable advice on the meaning and scope of the obligations that they assumed when ratifying ILO Conventions.

- 
- 52.** The Government member of the United States, speaking on behalf of the IMEC countries, and the Government member of Lebanon highlighted that due to the dramatic increase in the number of ratifications of ILO Conventions, especially the fundamental Conventions, the workload of the Committee of Experts had also increased dramatically. IMEC was therefore concerned about the current number of vacancies on the Committee of Experts and hoped that it would soon be operating at full capacity. Indeed, with due regard to budgetary considerations, it might be time to explore the possibility of increasing the maximum number of Experts, which had been maintained at 20 since the late 1970s. The Government member of Lebanon wondered whether the integrated approach would not place an undue burden on member States' reporting obligations. She also drew attention to the decrease in the number of Experts and wondered why the Governing Body had not made any nominations to the vacant posts, especially since the number of ratifications was continuing to increase. She hoped that the appointments would include Experts from the Arab region.
- 53.** The Government member of Denmark welcomed the fact that the influence of international labour standards outside the ILO continued to increase and that there was a growing conviction in other international organizations that sustainable economic development could not take place without careful attention to the situation of the people in each country, particularly in economies undergoing the effects of globalization. The Worker member of Pakistan recalled that the workers in developing countries were facing major challenges due to globalization and economic deregulation, which were doing much to increase poverty, unemployment and social problems. The working people of the world therefore had great expectations of the ILO, which had a vital role to play in ensuring that national policies were in line with the requirements of social protection. The ILO, and particularly its supervisory system, was the social conscience of the world and the fundamental principles set out in its Conventions were of universal application. The Worker member of Pakistan made an appeal that certain industrialized countries ratify more Conventions.
- 54.** The Worker member of India said that the community of workers throughout the world had the bitter experience of noting that most countries did not ratify ILO Conventions and that there was no effective mechanism to ensure that Conventions were duly ratified. Moreover, there was a major gap between ratification and actual implementation. Most countries did not have adequate laws to give effect to the ILO Conventions that they had ratified. In an era of exploitative globalization, retrograde reforms of current labour laws were being carried out in every country under the pretext of increasing competitiveness to the detriment of the working people. The processes of contract work, casual work and outsourcing were everywhere prevalent. When unemployment was the order of the day, the noble standards of the ILO were rapidly losing their relevance. It was necessary for the ILO to take this grim situation into account so that the ILO Conventions could be saved from the attacks of globalization.
- 55.** The Worker member of France emphasized that standards-related activities were the soul of the ILO and it was on these activities that the visibility referred to by the representative of the Secretary-General should be based. Indeed, improving the effectiveness of standards-related activities would enhance the authority and pre-eminence of the ILO, as indicated by the World Commission on the Social Dimension of Globalization. The World Commission was of particular importance in view of the concerns, which were being heard increasingly broadly, particularly from the workers, concerning the direction taken by globalization, as financial and economic markets tended to prevail over labour standards. When labour inspectors were challenged in the exercise of their duties, and were even assassinated, as had been the case in France in 2004, the ILO was affected in a certain manner. Two things were important if standards-related activities were to be more effective: on the one hand, it was essential to insist on promoting the ratification of Conventions and, on the other, on the transposition of standards into national law.

---

Moreover, it was indispensable for States to attribute to their labour inspection services the means and the authority necessary to carry out their functions. In this regard, the Government member of Brazil pointed out that with the support of the International Labour Standards Department and the Social Dialogue Department a course had been held on international labour standards in MERCOSUR for labour inspectors with the participation of employer and worker representatives, to ensure that Conventions were not only ratified, but were applied in practice.

56. The Government member of Lebanon welcomed the Committee of Experts' efforts in improving its working methods. She wondered whether the Chairperson of the Committee of Experts could give further clarification on the procedures being considered within the Committee of Experts to enhance its supervisory work. Referring to the cooperation between the Committee of Experts and the other organizations of the United Nations system in the context of supervising the application of standards, she requested clarification on the manner in which information received from these organizations was being used and its impact on ILO standards-related activities. She once again called for a correction to be made to the term "representation" in the Arabic version of article 24 of the ILO Constitution and asked for the exact definition of the words "consensus" and "unanimity". She recalled that Lebanon lately had ratified the Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148), the Labour Administration Convention, 1978 (No. 150), and the Prevention of Major Industrial Accidents Convention, 1993 (No. 174), and that the Human Resources Development Recommendation, 2004 (No. 195), was going to be submitted to Parliament and that all obligations under Articles 19 and 22 of the ILO Constitution had been complied with. Finally, the speaker, along with the Government member of Bahrain, speaking on behalf of the Government members of the Gulf Cooperation Council, emphasized the need for Arab Experts on standards-related issues in the field and at headquarters and for translation of the Committee of Experts' reports and report forms into Arabic.

### ***Discussion on highlights and major trends in certain areas***

57. The Worker members regretted that the 2005 report of the Committee of Experts did not contain any highlights or major trends in the application of international labour standards or more in-depth reviews of certain Conventions. It was hoped that the Committee of Experts would once more begin to carry out those specific reviews which were invaluable in so far as they focused attention on less visible Conventions. The effort put into preparing the general observation on the trafficking of children for labour exploitation in West Africa was much appreciated in this regard.
58. Concerning the general observation made by the Committee of Experts, it was important for governments to include in their next report information on: (1) the legislative measures adopted or envisaged to prohibit trafficking of children under 18 years of age for the purposes of economic and sexual exploitation by: (a) making any violation of this prohibition a criminal offence; and (b) imposing penal and other sanctions of an effectively dissuasive nature; (2) the measures adopted or envisaged to: (a) prevent such trafficking; and (b) formulate and implement programmes of action targeting multiple levels of society; (3) training, collaboration and awareness-raising for public officials on action to combat the trafficking of children; (4) statistics on the number of violations, investigations, prosecutions and convictions relating to the trafficking of children and the text of any court decisions in such cases; (5) the effective application of the principle of free and compulsory schooling for children, particularly for girls; and (6) the time-bound measures taken to prevent the engagement of children in trafficking, remove children from trafficking, protect the victims of trafficking and provide for their rehabilitation and social integration. The Worker members also emphasized the importance of international

---

cooperation in combating the transnational dimension of child labour. In this regard, they once again thanked the Committee of Experts for its general observation, which raised the issue of the international dimension of child labour and emphasized that in future this matter could be addressed in general observations on the application of other Conventions.

59. As a general matter, the Employer members believed that special surveys by the Committee of Experts should be the exception and not the rule. The General Survey method was the preferred approach. In the case of the special survey on the worst forms of child labour, the Employer members believed that this brief survey was appropriate in this case in that it provided a means for the Experts to provide information to governments on the content of their reports on the application of Convention No. 182 which was a very recent Convention.

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

60. The Employer members noted that an astoundingly low number of reports were received on time and that a high number of first reports were received late. These failures hindered the work of this Committee and cast doubts about the level of commitment of a concerned government to meet its obligation to implement ratified Conventions in law and practice. They also expressed the concern that this Committee might be examining cases where the information was out of date.
61. On the subject of the submission of ILO Conventions and Recommendations to the competent authorities, the Employer members indicated that the purpose of this procedure was to ensure that newly adopted standards were rapidly brought to the attention of the authorities in member States, without prejudging whether or not a particular Convention should be ratified, which remained a matter of choice for the country concerned.
62. The Worker members expressed their concern over a series of shortcomings that continued to undermine the supervisory mechanism. One of the shortcomings concerned the obligation to submit instruments adopted by the Conference to the competent authorities – an obligation which formed the preliminary stage of the ratification and implementation of Conventions. In that connection, it was hoped that the memorandum concerning submission to the competent authorities, which had recently been revised by the Governing Body and which explained more clearly the obligations of the member States, would be widely circulated. The Office should launch a campaign in that respect, and personalized letters should be sent to the member States that had failed to comply with that obligation. It was regrettable that 14 member States had not submitted to the competent authorities the instruments adopted over the previous seven years.
63. The Worker members also regretted the fact that less than two-thirds of the reports requested from governments had been received. The Office should develop a more personalized approach for those countries failing to send reports and provide the Committee with more information on their situation. Furthermore, a growing number of governments did not respond to the comments made by the Committee of Experts: no response had been given to 444 comments concerning 49 countries, as opposed to 325 concerning 37 countries in the previous year. Further concern was expressed over the very high number of reports received late – one that was even more serious where first reports were involved. The 23 States that had not submitted first reports for several years should make a particular effort in that regard. Such delays adversely affected the progress of the work of the Committee of Experts and the present Committee and led to an unfortunate time-lag in the supervision of the application of standards. At the same time, a considerable increase in the number of observations communicated by the employers' and workers' organizations (533, as compared to 297 received last year) could be noted. This unprecedented high number proved the workers' confidence in the ILO in general and in

---

its standards in particular. The observations made by the social partners should be more widely used, since they constituted a necessary and useful supplement to the more legal conclusions reached by the Experts.

64. The Government member of Portugal indicated that the submission of texts to the competent authorities was of great importance, but raised difficulties due to the need for translation. The ILO Office in Geneva and the multidisciplinary teams should disseminate the new memorandum on submission. She took the opportunity to report that her Government had disseminated the instruments adopted between the 88th and 91st Sessions of the Conference and had examined them in consultation with the social partners. The information on unratified Conventions had in the past constituted an institutional problem, which was now resolved. She agreed with the statement by the Employer members that the cases of serious failure by member States to respect their reporting or other standards-related obligations were extremely important. In this respect, collaboration with other international organizations would facilitate supervision of the application of standards. As failure to submit reports on time interfered with the work of the Committee of Experts, it would be advisable to provide governments with assistance.
65. The Government member of Italy noted that this year his Government had sent all its reports and replied to all the comments within the required time period. He emphasized the need to send reports on time and to request assistance from the Office, where necessary. Furthermore, his Government had complied within the time limits with its obligation to submit to the competent authorities the instruments adopted at the 90th and 91st Sessions of the Conference.
66. The Government member of India stated that his Government had sent all the reports due for 2004 to the ILO and that in Part II of its report, the Committee of Experts had made some observations on the application of Conventions ratified by his country. It had also raised issues in requests addressed directly to the Government on the Abolition of Forced Labour Convention, 1957 (No. 105), the Indigenous and Tribal Populations Convention, 1957 (No. 107), and the Labour Statistics Convention, 1985 (No. 160). The information requested was being sought from the sources concerned and his Government was hoping to send a response to the ILO within the set deadliness. In addition, he wished to make some general observations regarding the necessity of evolving a holistic overview of all the reporting procedures and formats, whether under articles 19 and 22 of the Constitution or under the 1998 Declaration on Fundamental Principles and Rights at Work and its Follow-up. There was a need for simplification and avoidance of overlapping and repetition. The reporting procedures were in general burdensome and the questions in the report forms were not always user-friendly. In certain cases, data collection and recording under federal policy did not always conform to the requirements of ILO procedures.
67. The Worker member of France highlighted that the issue of allocating adequate resources to labour administrations was also related to the capacity of member States to fulfil their obligations, in particular with respect to reporting within the established deadlines. The decrease in the number of late reports was as essential to the supervisory system as the obligation to communicate reports to workers' and employers' organizations in accordance with article 23 of the ILO Constitution. The pressure exerted upon those member States, which were the most reticent in complying with standards, would be all the more effective, the greater the number that fulfilled their reporting obligations.

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

68. The Chairperson of the Committee of Experts expressed gratitude for the appreciation of the work of the Committee of Experts, which was making efforts to improve its methods of

---

work. She noted the suggestions made for further improvements and indicated that they would all be discussed, especially with regard to giving greater emphasis to cases of progress and providing further indications of the basis upon which progress was deemed to have been made. Concerning the question of the content of the observations and the call for them to be more consistent in their presentation, especially in relation to the level of detail provided, she said that it was necessary for the Committee of Experts to perform a balancing act to ensure that the comments were sufficiently detailed without being too burdensome. It was also necessary to take into consideration the fact that the report was already long. Concerning the question of the current membership of the Committee, due to the retirement of some of its members, she referred this issue to the representative of the Secretary-General. Finally, she said that her presence during the general discussion of the Conference Committee would undoubtedly enrich the discussions of the Committee of Experts.

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

69. The representative of the Secretary-General expressed her sincere thanks and gratitude to the members of the Committee for the very positive and constructive dialogue that had taken place. With reference to the suggestion concerning the term “automatic cases” in document D.4, the speaker indicated that the Office would propose for consideration to refer instead to “cases of serious failure by member States to respect their reporting and other standards-related obligations”. In response to the questions by the Employer and Worker members on how to link the general factors set out in document D.4 with each particular situation of the countries concerned, she explained that the secretariat would identify the means to review more closely the reasons for such serious failures and would report back to the Committee at its session next year. As regards suggestions that the Office should adopt a more “personalized” approach to the treatment of the serious failures to fulfil reporting and other obligations, the speaker pointed out that the document D.4 already provided the beginning of the analysis which would enable the Office to focus technical assistance to countries where needs were clearly identifiable. The countries currently appearing on the list would be requested to identify such specific difficulties.
70. She further stated that the Office would take due note of the Employer members’ suggestion that the Reader’s note in the Committee of Experts’ report should contain more information (in particular historical elements) and that the last sentence of the second paragraph should be revised. Regarding the hope expressed by the Worker members that the section on highlights and major trends that appeared in the 2004 General Report would be resumed next year, she indicated that the Committee of Experts had been duly informed of the discussions that had taken place last year in the Conference Committee. She had decided to provide for more time to reflect on these sections, and in particular on their contents and objectives. As regards the distinction between “consensus” and “unanimity”, she explained that the Committee of Experts took its decisions by consensus, which meant that every member either agreed with the proposal or did not wish his or her disagreement to block the adoption of the proposal, in contrast to unanimity, which signified that every member agreed with a proposal. In response to the remark by the Employer members on paragraph 37, the speaker indicated that the Office, in collaboration with the Turin Centre, was proactively pursuing the training of judges to enable them to better take into account international labour standards, the supervisory system and other procedures. Regarding the Employer members’ comments concerning collaboration with other international organizations addressed in the report, she recalled that the examination by the Committee of Experts of the European Code on Social Security was linked closely to the Social Security (Minimum Standards) Convention, 1952 (No. 102), and compliance with this Convention also implied compliance with the Code. The speaker also stressed the need for

---

policy coherence within the UN system, taking into account, where appropriate, relevant international instruments.

71. With reference to the questions concerning the insufficient number of Experts, the speaker emphasized that the identification of candidates for the six current vacancies in the Committee of Experts would be one of the top priorities after the Conference, so that at its next session all of the vacancies would be filled. As for an increase in the number of Experts, a decision would have to be made by the Governing Body in this respect. Besides, a request was being prepared to the Officers of the Governing Body to add three extra days to the next session of the Committee of Experts.
72. In response to the Worker members' concerns about the integrated approach, the speaker observed that there were many aspects of the integrated approach which reinforced strong standards activities in the classical sense: for example, the need to ensure that each new standard harmoniously integrated into the existing corpus of standards as well as into the current economic and social context. With regard to a concern about "promotional instruments rather than conventional ones", she could only consider the standards activity in terms of *conventional* instruments, establishing clear rights and obligations (or recommending the establishment of such rights in the case of a Recommendation). Whatever the activity concerned, whether it was the adoption of a new standard or a promotional activity outside the area of standards, the effect must always be to contribute to a strong standards activity in the classical sense. In response to the comments concerning the Arabic translation of the ILO Constitution and in particular article 24, she indicated that these remarks would be transmitted to the competent services. Regarding the Employer members' proposal that the information document on ratifications and standards-related activities provide more detail on technical assistance, she responded that this proposal would be duly taken into account and stressed that an improved link between standards objectives and technical cooperation was a clear component of the Office's vision and strategy. Responding to the remarks by the Worker members, she emphasized that while the "rights" case for international labour standards was fundamental and could not be called into question, explaining the economic advantages of standards was a necessity today. Such arguments needed to be developed and made widely available. In terms of visibility, new tools needed to be developed to make standards accessible to the broadest audience possible, including the general public.

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

#### ***Hours of Work (Industry) Convention, 1919 (No. 1) and Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)***

73. The Committee devoted part of its general discussion to the examination of the General Survey carried out by the Committee of Experts on the application of the Hours of Work (Industry) Convention, 1919 (No. 1), and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30). In accordance with the usual practice, this survey took into account information communicated by governments under article 19 of the Constitution, as well as the information communicated by member States which have ratified the instruments in their reports submitted under articles 22 and 35 of the Constitution and the comments received from employers' and workers' organizations to which the government reports were communicated in accordance with article 23, paragraph 2, of the ILO Constitution.

---

## Opening remarks

74. The Employer members stated that the General Survey provided for a good basis of analysis and discussion on some aspects of working time, but by no means covered the entirety of issues relevant to this very complex matter. Further discussions on other important aspects of working time, such as holidays with pay, the organization of working time, night work, and weekly rest was required before a final diagnosis could be made by the Conference.
75. This observation raised the very important question as to how to deal with such a matter, and whether ILO guidance could be provided in this field. Already in 1967, the Committee of Experts had noted that several provisions of Conventions Nos. 1 and 30 were too restrictive in scope. It had also noticed an evolution towards more flexible approaches to methods of regulating working time at national level. As rightly indicated by the Committee of Experts in this year's survey, intensification of competition resulting from globalization, new information and communication technologies, new patterns of consumer demand for goods and services in the "24-hour economy", had a large impact on production methods and work organization. From the perspective of the enterprise, the drive to enhance use of capital, optimize labour costs, manage human resources in innovative ways, and respond to customer demands had resulted in new methods of flexible production and organization of working time. The Committee of Experts also noted that the profound demographic changes occurring in the modern world of work as reflected in the increasing entry of women into the paid labour market, the shift to dual-earner households, and the growing concern over the quality of working life had also shaped innovative arrangements concerning the duration and timing of work, which varied according to each worker's, and in some instances employer's, preferences and needs.
76. The Employer members expressed support for the approach taken by the OECD's Policy Brief *Clocking in and clocking out: Recent trends in working hours* to the effect that workers and employers should have considerable discretion to negotiate working time arrangements in a decentralized manner, although general rules were needed to structure this process to enforce certain minimum standards, for example concerning maximum hours of work related to health and safety aspects. They also drew attention to the World Bank's *World Development Report 2005*, according to which improvements in working conditions – including limitations to working time – in developed countries evolved gradually, hand in hand with more general economic progress and thus, attempting to apply the same or higher standards to countries at earlier stages of economic development and with weaker enforcement capacity often led to poor or even perverse results.
77. The Worker members expressed satisfaction for the fact that the General Survey of the Committee of Experts was an exhaustive, balanced and reliable report on the effects given to ILO instruments, as it was every year. The issue of working hours and the need for greater flexibility in working time was common to the entire industrialized and non-industrialized world. Wages and salaries, which were unavoidably linked to working hours, were of vital importance to the workers. At the European level, working hours were under the spotlight in the rediscussion of the Directive concerning certain aspects of the organization of working time.
78. The issue of working hours touched on two fundamental aspects of the human being: individual development through quality work which protects safety and health, but also guarantees the right to a social and civic life and to a balanced family life. It was therefore not an accident that the oldest ILO Convention concerned working hours. Limits on working hours and a working day of eight hours have always been one of the main claims of the worker movement since the nineteenth century. At its First Session in 1919, the ILC clearly declared itself in favour of retaining these two values by setting a double limit on

---

working time: eight hours a day and 48 hours a week. Eight hours a day for the sake of the worker's safety and health, 48 hours a week in order to lead a normal life. In 1930, Convention No. 30 extended these principles to the commercial and office sector.

- 79.** The General Survey highlighted the fact that the long-term trend towards a reduction in weekly working hours had stopped in the last ten years. Moreover, this reduction in weekly working hours was accompanied by moves towards flexibility, which opened the door to even greater disparities. The concept of the working week was losing ground to the concept of an average calculated over a longer period, which led one to inquire whether the term working hours remained appropriate in absolute terms and if the trend to a reduction in this time was effective. In the industrialized countries, governments and employers were invoking the need for growth and competitiveness and becoming hostile to restrictions on working hours, at the same time contesting the need for social dialogue as a means of negotiation. Changes in family lifestyle and greater presence of women at the workplace, as well as decentralization of collective bargaining and growing individual relations between employers and workers were all having an impact on the notion of working hours. Unfortunately, the latter were now being considered only as an economic variable and the principles laid down in 1919 were being questioned.
- 80.** The Worker members could not accept that these values be put into question. A worker without the legal protection of a limit of working hours was left defenceless before the laws of the market. International labour standards rightly sought to prevent the worker being considered as merchandise. The limit on working hours was a fundamental part of legal protection of workers and there was no question of making it a flexibility tool for economic performance. The Worker members fully agreed with the Committee of Experts that the minimal standards on working hours were a determining factor in the current environment. Technological, scientific, or cultural development would not change the basic reality that the worker's only wealth was his or her work. Consequently, labour law had to be a corrective right, which made a fundamental balance between the worker and the employer or rather, in current terms, between the worker and the person who held the wealth.

### ***Hours of work: A multifaceted issue***

- 81.** A common thread in the interventions of all those who participated in the discussion was the cross-cutting and complex nature of working time issues. The Employer members stated that it was clear for them that the multifaceted topic of working time raised questions as to its suitability for international regulations. Although one could agree that there was a need for clear rules allowing for human working conditions with regard to protection against undue fatigue, reasonable leisure and opportunities for a personal life, it was also evident that work today was by nature very diverse and that therefore a "one size fits all" approach to working hours was simply not practical.
- 82.** The Employer member of Denmark drew attention to some particular problems concerning local public employers in Denmark and most of Europe. These employers constituted major public service providers in services operating 24 hours a day, seven days a week. The main problem in relation to the General Survey was the unfortunate definition of the term "working hours" in Article 2 of Convention No. 30, which focused on the time during which the persons employed were at the disposal of the employer. This was a very unfortunate formulation because it totally ignored on-call duties and standby duties. Although the Committee of Experts had acknowledged this issue in pages 18-21 and 85-86 of the General Survey, it did not recognize the problems this created in modern public service where various kinds of on-call duties applied, for instance, for firefighters, nurses, doctors, etc. Stressing the need for a deeper understanding of the complexity of working

---

time and its consequences for public services, he regretted that issues, which were specific to different sectors, such as health care, were practically not addressed in the survey.

- 83.** The Worker members took the view that in most countries, what was most important was not the methods by which working hours were regulated but the strictness with which they were applied in the different sectors. Law should not be confused with its effective application. For regulations on working time to become a reality, a labour inspectorate which was independent, in conformity with Convention No. 81, was required. More importantly, it was the application of the law or collective agreements to be guaranteed by the government and the judiciary, assisted by a well-equipped labour inspectorate and with the knowledge that workers would have access to the competent courts.
- 84.** The Worker member of Bangladesh noted that in his country, in the formal sector the eight-hour day and 48-hour week were generally respected in accordance with national legislation, which allowed an additional 12 hours per week of overtime. In the informal sector, however, there was no compliance with the legal provisions. Moreover, the legislation on working time contained a provision giving the Government the possibility to derogate its provisions in whole or in part for a period of six months, which was extendable, and the Government also had the authority to completely waive limits on the hours of work for the same period. Account should be also taken of the insufficient coverage of the legislation concerning hours of work and of its weak enforcement, which, together with the very low wage level, had led to the situation where the workers were being forced to work up to 18 hours a day throughout the year, thus sacrificing personal leisure, family and social life and ignoring health and safety concerns, in order to earn some extra money to survive. For instance, in the garment sector, under the pressure of international competition, employers of some 4,000 factories employing millions of workers (90 per cent of which are women) started engaging workers for up to 16 hours per day in some cases, while workers were unable to protest for fear of losing their jobs.
- 85.** The Worker member of Pakistan recalled that the regulation of working time had been a long struggle in the nineteenth and twentieth centuries. In the twenty-first century, new technologies led to new forms of working time, and with them, long hours of work, which were linked to occupational diseases and stress. The pressure of globalization had an effect on all workers, and especially those in EPZs, rural workers, workers in the informal economy and women. In this connection, the Worker member of the United Kingdom raised the issue of delivery lead times imposed on producers in developing countries by multinational retailers and brands, especially in the textile, garment and leather industry, and in the agricultural sector. He considered that there was a direct link between unreasonable lead times and excessive – and involuntary – overtime and emphasized that it was in these situations that women garment workers ended up working 72 hours without proper breaks – in some reported cases dying of exhaustion – or that workers worked through the night instead of spending time with their families, or that workers in EPZs clocked more than 100 hours in a single week. Multinational enterprises had to change these practices through strong national legislation, proper enforcement, strong international conventions that were fully implemented, and strong collective agreements on working time negotiated by independent trade unions.
- 86.** The Worker member of Paraguay indicated that, as regards hours of work, there was much concern in Latin America and the Caribbean about the constant violation of workers' rights. At the present time, it was important to tackle so-called "rubbish" contracts, named as such due to the abuse that they involved. Such contracts did not take into account the eight-hour working day, nor social security, holidays or bonuses, and the wages were pitiful. The approach of some sectors of the employers and the governments in the region was that investment required flexibility which fell below the rights enshrined in labour laws, in the constitutions themselves and in ILO Conventions. The speaker expressed his

---

opposition to investments made in the name of modernization, whether in assembly plants or in public transport companies. Workers were obliged, in many cases, to work a 12- or 14-hour day as drivers and fare collectors, which gave rise to real abuse and violation of human rights.

- 87.** The Worker member of South Africa pointed out that since the 1984 General Survey on working time, trends toward flexible working time had led to an increase in part-time employment, with the promise that more employment would be created. This promise had never materialized. Globalization, intensification of competition, increased diversification of customer demands and the feminization of the workforce had led to demands for increasing diversification of working time arrangements. The Worker member of Malawi noted that the actual level of working hours in each country was often pushed during peak seasons, as for example in the agricultural sector, where workers were sometimes exploited. These workers often worked 14-hour days without overtime compensation. The same situation could be found in the hotel industry. Multinational corporations had also taken advantage of such conditions. Given the importance of this issue, he wondered why efforts to address these problems were lacking. In this regard, he commended the efforts by the United Kingdom and South Africa to deal with the issue of working time in the context of developments in the world of work.
- 88.** The Government member of Spain emphasized that working time was merely a productive resource while limitations on hours of work was a labour right which should already be considered an *acquis*. What should be discussed were maximum hours of work, not in terms of a maximum length of a 35-, 40-, 44- or 48-hour week, but solely as an upper limit. In the limit resided the right, which did not preclude that, as a second step, the quantity of such a limit could be fixed through collective bargaining or in parliament, depending on the circumstances. The determination of such a limit, which should be a humane limit, had nothing to do with the flexibility or rigidity of working conditions. Such a limit, as a condition of ensuring a quality of life for workers, their health and safety, constituted and should constitute a right, which was as necessary as it was undeniable. Another very different concept was the organization of work, as was the distribution of hours of work in the day, week or year. There it was appropriate to discuss “flexibility”, which was of interest not only to the enterprise but also to the worker. The Government member of Lebanon commended the General Survey for its comprehensiveness and in-depth analysis of Conventions Nos. 1 and 30. She recalled that both Conventions had been ratified by Lebanon. The Lebanese Labour Code, which dated back to 1946, had provided for 48-hours maximum working week with no distinctions between the hours of work in industry and in offices. However, the actual hours of work in the public sector, the banking sector and in many enterprises in the public sector were less than 8 hours per day and 48 hours per week. Further exceptions for certain types of positions and jobs were also possible.
- 89.** The Government member of Mexico stated that the integrated approach of the General Survey made it possible to grasp the complexity involved in regulating hours of work in the presence of new challenges stemming from the global economy, something which forced us to bear in mind that, as stated in paragraph 317 of the General Survey, “to reflect the ‘human rights’ perspective in the international regulation of hours of work, continues to be valid today”. The speaker further indicated a number of inexact references to the legislation of her country and provided the correct information. Similarly, the Government member of Tunisia indicated that certain figures regarding working hours in his country were inaccurate and asked for the errors to be rectified.

---

***Working time in modern labour market conditions:  
Search for balance between flexibility and workers'  
protection***

90. Most of the members of the Committee who took part in the discussion addressed the problems related to working time regulation from a double perspective: on the one hand, the quest for flexibility, especially in a rapidly changing business environment, and on the other, the need for reconciliation of workers' welfare concerns with their work obligations.
91. The Employer member of the United Kingdom pointed out that flexible working time was essential for competitiveness, as it allowed employers to manage their workers and resources efficiently. Flexibility also allowed for job creation and quick adaptation to changing market conditions and fluctuating demand. Referring to the situation in the United Kingdom, he stressed that many flexible work patterns used in his country suited both employers and workers. United Kingdom employers had an excellent record in enabling workers to reconcile work and family life, which was demonstrated by the fact that the United Kingdom had the third highest employment rate for women across the European Union. The United Kingdom employers' experience with the EU's proposed changes to working time regulations highlighted the need for a very cautious approach to any idea of a new international instrument. It was essential to debate all the issues involved, such as opt-out, rest periods, night work, or paid holiday. These issues must be debated by social partners to avoid an instrument that defeats flexible working time patterns to the detriment of employers and workers.
92. The Worker members observed that admittedly working time regulations could not remain rigid or unchangeable, but added that recent developments in differentiated systems of working hours and working time organization showed that business needs for flexibility could be met in the framework of social dialogue. Therefore all normative work on these two instruments should be ring-fenced by all the necessary guarantees that protection of occupational safety and health and social and family life required. Thus, quality of life should be a just counterpart to any concession regarding flexibility to ensure a "win-win" situation. Furthermore, any revision of Conventions Nos. 1 and 30 which featured distribution of working hours should be based on the principle of solidarity, work distribution and on preserving the workers' quality of life. Discussions should be long-term and provide constructive responses to women's situation, given that their career path was fragmented by family requirements such as maternity, child care, parental care, etc. In addition, the discussion would be pointless if the intangible principle of decent pay were not included.
93. The Worker members further recalled that "working hours" were not defined in ILO Conventions. Nevertheless, they were described as "the time during which the worker is at the disposal of the employer". Despite everything, measuring working hours raised issues such as keeping the worker at disposal, which were far from settled. The discussion on the precise definition of working hours must remain open. For example, new forms of working time organization raise issues of integrating weekly rest periods and annual holidays into the equation, as the European Directive had shown. This progressive integration could lead to a new instrument, which would open several possibilities by allowing employers to respond to increased demand for flexibility and workers to take a more individual approach in order to better match professional with family needs.
94. The Employer member of South Africa referred to the South African Basic Conditions of Employment Act of 1997, which approached the issue of hours of work through a policy of "regulated flexibility". This Act was unique in combining effective protection with acknowledging that flexibility was best achieved through collective bargaining and social dialogue. Despite the pragmatic solutions offered by the Act, it had also shortcomings.

---

Sunday work continued to attract high premiums and was permitted only with an exemption, which was a problem in capital-intensive operations where continuous operations were justified and where shifts in customer demand and consumer preference required reorganization of weekly working time arrangements.

- 95.** The Employer member of Colombia stated that the regulation of working hours aimed at protecting workers and enterprises from excessively long hours of work, which endangered the health and interfered with the personal development of workers. Nevertheless, the legislation needed to be sufficiently flexible to allow hours of work to be adapted to fluctuations in demand. The stricter the legislation concerning temporary employment and penalties for dismissal of a worker, the more important the need for flexibility was. There had always been a concern for maintaining a balance between labour (working time) and other human activities (time not worked), that is, the relationship between work and family life.
- 96.** The Government member of India emphasized that in order to provide greater opportunities for employment and skills development to the workforce, flexibility of working hours with corresponding measures for providing optimal safety and health to the workers were very important, and national laws to ensure the above objectives should prevail at the workplace. The Government member of Lebanon regarded that Conventions Nos. 1 and 30 could be considered in certain respects as being flexible Conventions owing to the range of exceptions enumerated in their provisions. However, these exceptions may cause difficulties in implementation because of the lack of clarity and their ambiguous concepts. She also noted that there were some discrepancies between the provisions of the two Conventions and questioned whether these discrepancies were still justified.
- 97.** The Worker member of Singapore stressed that the familiar catchphrase of flexibility denoted a one-way path which did not involve any benefits for workers. The latter were expected to work at all times without fixed rest days or fixed working hours in a day and without adequate advance notice, so as to plan their lives. On top of this, further forms of flexibility were introduced, such as part-time contracts and temporary work, which offered no job security at all, and provided low pay. Flexibility was not allowed for the benefit of workers so as to balance work and family, do community service or simply go back to school. This situation imposed a responsibility on governments to inject some sanity in working hours, to act as a fair referee, to pass laws and regulations and to enforce them, in order to protect people from exploitation and abuse. If governments adopted a laissez-faire attitude, and allowed the market to regulate itself, in a framework of poor economic conditions and high unemployment, workers would suffer. Echoing the same view, the Worker member of Kenya noted that workers had fallen into the trap of accepting flexibility through intimidation by employers. Flexibility should not be the subject of a Convention but rather regulated by domestic law. He stressed that reduced hours of work led to greater worker welfare and, by extension, greater productivity and social and economic development. Increased productivity, however, was not synonymous with more hours of work. The “choice” offered by some employers with regard to flexibility was not genuine as the bargaining position of employers and workers was not equal.
- 98.** The Worker member of Brazil, referring to the excessively long working days in some sectors and the high number of accidents at the workplace related to long hours of work, emphasized that when talking about the health and lives of workers, one was not talking about goods, but rights. It was therefore dangerous to take only competitiveness into account, and economic considerations should not prevail over social ones. Any change must only be made with a view to improving quality of life and working conditions, subsequent to which the analysis and studies necessary in each country could be carried out. The Worker member of Cuba expressed the view that the flexibility of working time

---

was acceptable if guarantees were also included on incomes, health, the working day, personal time, holidays and weekly rest.

- 99.** The Worker member of France indicated that a standard which would provide for flexible hours of work should be rejected, as it would weaken the central role of the ILO in the area of globalization. Similarly, the Worker member of India stated that fixed working time was preferable over flexible working hours in order to ensure that workers were not treated as a commodity. He opposed the flexibility of working hours introduced for the purpose of increasing the number of daily working hours in order to increase competitiveness and added value. He drew attention to the role of technological revolution and underlined the paradox that although new technologies allowing for increased production in less time could have led to reduced working hours and better working conditions and quality of life, workers instead were being retrenched.
- 100.** The Worker member of Greece noted that in some parts of the world, work was synonymous with slavery. Since the end of the Second World War, productivity had increased exponentially, but poverty had increased at the same rate. New technologies had offered the hope of a better life for workers who would have more leisure time. But unemployment, precarious work, poverty and working time were increasing while a minority shared the wealth. In industrialized countries, especially in Europe, the struggle of the last half-century by the working movement had brought down working time to 40 hours a week and had gained paid holidays. But today, what the decision-makers were attempting to do on a worldwide scale was to reduce working conditions. He emphasized that the revision of a Convention to “legalize” socially regressive action could not be accepted and that the low number of ratifications for Convention No. 30 was not a sufficient argument for revision of the Convention.

### ***Working time regulation and collective bargaining***

- 101.** A recurrent theme in the Committee’s discussion was the crucial role of social dialogue and collective bargaining in matters of organization of working time. The Worker members recalled that in the light of a trend resulting from technological, economic and industrial development, some enterprises would like to give priority to decentralized social dialogue, which could go as far as replacing dialogue between partners by individual negotiations directly with workers subject to precarious work and the threat of unemployment. Consequently, any revision of Conventions Nos. 1 and 30 must ensure respect for the principle of collective bargaining. It was in this sense that in the Worker members’ view, a legal system that allowed opting-out as in the United Kingdom was socially indefensible. All exceptions should be agreed to in social dialogue.
- 102.** The Employer members reiterated that workers and employers should have considerable discretion to negotiate working time arrangements in a decentralized manner. They also acknowledged that flexibility was best achieved through collective bargaining and social dialogue.
- 103.** The Government member of Greece underlined that encouraging social dialogue should be the main objective for all countries so that, through a collective bargaining procedure, an effective framework of working time organization would be achieved, which would meet workers’ needs and facilitate the operation of undertakings. The ILO ought to play a leading role in this process in the light of recent international developments in the labour market, so that the “general standard” set out in the Conventions could be more widely accepted and characterized by legitimacy and effectiveness.
- 104.** The Worker member of Australia underlined the importance of the ability of workers to influence the length and arrangement of their working time. The role of workers in

---

determining their working time arrangements underscored the importance of collective bargaining and strong trade unions. The Worker member of Singapore indicated that in order to ensure flexibility, but also fairness and long-term sustainability, strong trade unions, with freedom to negotiate and represent workers' interests effectively, were essential. In this sense, she found the suggestion made by the OECD policy brief cited in the General Survey to be particularly worrisome. According to the brief, workers and employers should have considerable discretion to negotiate working time arrangements in a decentralized manner. If by this the OECD was suggesting individual contracts, the impact would be serious as workers did not have the power to negotiate fair contracts on their own. The Worker member of France stated that decentralized collective bargaining at the enterprise level, often preferred to collective bargaining at the national sectoral level, did not prevent workers being pressured to accept to work more in order to ensure that the production was not re-located or subcontracted. This "blackmail" was more and more frequent, affected several sectors and did not concern industrialized countries only, as demonstrated by recent developments in the textile sector.

- 105.** The Worker member of Panama stated that regulation in the domain of working time had, as its objective, the weakening of the regulatory function of the State within the framework of neoliberal ideology. It was unacceptable to allow that fundamental social issues be regulated by market laws and be flexible. The speaker also wondered which collective agreement could be applied in countries in which workers were still being killed for organizing unions and how a collective agreement could be negotiated if the workers were dismissed because of their desire to establish organizations. Without trade unions, collective bargaining did not exist. The Worker member of South Africa noted that basic principles on working time needed to be set forth in national legislation, so as to ensure coverage for domestic and agricultural workers. National legislation in this regard should be the outcome of a tripartite consultative process. Exceptions to working time standards should only be possible by agreement between employers and trade unions, and exceptions should be subject to a time limit.

### ***Present-day relevance of Conventions Nos. 1 and 30***

- 106.** Some speakers referred in their comments to the continued relevance of the Conventions which were the subject of the General Survey. The Worker members fully agreed with the conclusions of the Committee of Experts, which stated that, even if Conventions Nos. 1 and 30 did not entirely reflect recent developments in work planning, they remained relevant. They observed that 85 years after the adoption of Convention No. 1, while globalization of the economy appeared to give the impression that the model of working relations was totally unsuitable for the needs of economic growth, it was striking that Convention No. 1 was still modern, and although it was designed to protect workers' health, it had flexibility built in, which was not intended at the outset.
- 107.** The Employer members referred to their previous comments in previous paragraphs that several provisions of Conventions Nos. 1 and 30 were too restrictive to work well under modern realities.
- 108.** The Worker member of Greece noted from other Worker member statements that the working day in developing countries was 12 hours, while in Europe the working week was around 40 hours on average. Conventions Nos. 1 and 30 were therefore still relevant. A Worker member of the United Kingdom stressed that the need to maintain a maximum 48-hour week was as compelling today as it was when Convention No. 1 was adopted. The speaker emphasized that long hours were a major health and safety issue. In the United Kingdom, hundreds of drivers at work died each year in road accidents when they lost concentration or fell asleep. Excessive hours caused heart disease, stress, fatigue and loss of concentration. The European Court of Justice had rejected the argument advanced by

---

the Government of the United Kingdom that hours of work was not a health and safety issue, making it clear that a maximum 48-hour week must be applied to all workers. It was important to remember what had been learnt in the first part of the twentieth century: people who work shorter hours are likely to be more productive, more efficient, safer and healthier. Only on that basis, a discussion on hours of work was likely to be productive.

- 109.** The Worker member of Singapore affirmed that the core principles enunciated in Conventions Nos. 1 and 30 were still valid and relevant in ensuring sane and humane working hours for workers. Hence, one should not look immediately into revising the two Conventions. Further general discussions might be useful in order to examine some of the issues raised in the General Survey and in the debate without eroding the protection given to workers. The Government member of Lebanon stated that Conventions Nos. 1 and 30 were still relevant and flexible as they allowed certain exceptions. However, in her opinion, the Conventions read together could raise several problems in practice, due, for instance, to several differences which today could be difficult to understand and justify.
- 110.** Some other speakers endorsed the Committee of Experts' conclusions that Conventions Nos. 1 and 30 no longer reflected modern realities and warranted revision. The Government member of Belgium noted that the needs of enterprises were not the same as in 1919 when Convention No. 1 was adopted. It was clear to the Government of Belgium that the Convention required revision and that a new instrument would be welcome which would allow enterprises, in return for the implementation of a strict framework and a guarantee of worker protection, to introduce the greater flexibility required by the current economy. The Government member of Canada indicated that, in the opinion of the Government, Conventions Nos. 1 and 30 were no longer relevant and that it was in favour of a more flexible approach on the matter. Nevertheless, the decision to formulate a new instrument should only be taken when more information was available on its scope and in the presence of a tripartite consensus.
- 111.** The Government member of Portugal, while noting that Conventions Nos. 1 and 30 were still relevant in their objectives, pointed out that they did not match present day realities and had lost their universal applicability. The reason for the limited number of ratifications lay in the necessity of tackling the question of hours of work in a more flexible manner, with new forms of work organization. Therefore, the revision of these Conventions could lead to universal ratification and application. She concluded by emphasizing that regulating working time created a way to achieve decent work in the world.
- 112.** The Worker member of Costa Rica stated that there was no need to revise Conventions Nos. 1 and 30 to achieve better productivity and efficiency. Daily working time of eight hours for six working days per week was not the result of a simple mathematical formula, but based on a guarantee of a dignified working life. It would also be preferable to revise the distribution of wealth. The Worker member of Senegal pointed out that Conventions Nos. 1 and 30 had been adopted in order to rein in the exploitative practices of employers. In spite of the inclusion of their provisions into national laws, these instruments had almost been rendered inadequate in response to current needs created by the rapid evolution of working time. Furthermore, the speaker considered that a better redefinition of the concept of working time could reconcile all the actors concerned and stressed the need for a clear method of computation of overtime work, especially with respect to certain categories of workers such as domestic workers, as a core element guaranteeing the respect of a maximum duration of hours of work.

### ***Prospects for future ILO action***

- 113.** Many members of the Committee welcomed the idea of undertaking the revision of Conventions Nos. 1 and 30 and possibly drafting a single instrument on both working and

---

non-working time issues. Others expressed strong reservations or suggested cautiousness in planning any new standard-setting activities in this field.

- 114.** The Employer members noted that the Committee of Experts was very clear as to the limits of its mandate and had stated that it could not dictate the way forward. However, the Committee of Experts did express its views on the matter. The ILO should consider innovative ways to provide guidance on the matter to member States – other than a normative approach. There was a need for a more flexible approach that took account of more modern forms of working time arrangements, such as part-time work, compressed workweeks, staggered hours, variable daily shift lengths, annualized working hours, flexitime and on-call work. Although the Committee of Experts did not go as far as to suggest the form the new instrument should take, they did make some practical suggestions as to its content. The Employer members believed that it was premature at that stage to decide whether the next step should be one which would take the ILO through a normative approach that would lead to the revision of the existing instruments. As highlighted by the General Survey, the ILO had already gone through that road and, through the years, the Committee had witnessed the shortcomings of the ILO Conventions on working time, particularly concerning their capacity to attract universal ratification.
- 115.** The Worker members were open to an approach that proposed a single instrument which would cover the issue of working time in all its aspects, by reflecting on a much broader concept of working hours, which would include work, rest, holidays and leave, as well as career prospects. The directions sketched out by the Committee of Experts were in line with the Worker members' expectations, which could be summed up as: linking flexibility and safety; focusing the debate on quality; and basing flexibility on collective bargaining and intersectoral, sectoral and enterprise levels totally excluding any idea of exclusion clauses negotiated directly with workers. Effectively, such an important issue could only be efficiently regulated by the law. There was no place for soft law. However, the Worker members felt that it was too soon to approve of a revision process, as they sought guarantees to ensure that their concerns could be taken into account by governments and employers.
- 116.** The Government member of Kenya supported the creation of a single instrument that would not only focus on flexibility but also on the length of working time, and which would address weekly rest, annual leave, and the various forms of the employment relationship affecting working time arrangements. The Government member of Austria underlined the importance of having a single instrument covering working time, as well as weekly rest and annual leave. In her view, such a new instrument had to be a binding Convention.
- 117.** The Government member of India welcomed the proposed comprehensive review of the existing system of international regulation of working time which was in line with his country's consistent stand to give priority to revision and consolidation of already existing standards rather than setting new standards every year. While he supported the proposal to undertake a comprehensive review of standards relating to hours of work, he also considered that the welfare of the workers, as well as the specificities of the developing countries should be taken into account. The Government member of Namibia supported the suggestion by the Committee of Experts for the revision of Conventions Nos. 1 and 30 and to also review the instruments concerning weekly rest and holidays with pay. In connection with such a revision, serious consideration should be given to the informal sector, which had been rapidly expanding in Africa, being the main sector responsible for the creation of employment opportunities.
- 118.** The Employer member of South Africa noted that the General Survey rightly highlighted the incompatibility of Conventions Nos. 1 and 30 with modern realities. The interface

---

between new forms of work and the appropriate regulation of working time was complex and needed further and comprehensive empirical study before the nature and form of any international regulation could be discussed meaningfully. At this stage, it was not feasible to conceive a single comprehensive instrument that would meet the criteria for modern standard setting. A prescriptive international instrument that was blind to the complexities of this issue risked affecting negatively levels of employment.

- 119.** The Government member of Lebanon considered that it was essential to reflect before undertaking any revision and recalled that, if the process of revision was to be undertaken, the following important factors should be taken into account: the diverse needs of various member States; the necessary protection of workers; the existence of other Conventions concerning hours of work; Conventions concerning hours of work and that any comprehensive standard should come within the context of a promotional framework. The Government member of Lebanon also recalled that Conventions Nos. 1 and 30 did not address those persons who performed work outside their normal working hours, nor did Convention No. 1 make provision for labour inspections. She considered that these two themes should be recognized in any new instrument together with the new patterns of work. The Worker member of Bangladesh expressed serious concern about the nature, scope and definition of flexibility of the hours of work, which, under the pressure of international competition, could give way to new exploitation. The issue required thorough examination before any steps were taken towards the revision of the existing Conventions.
- 120.** The Worker member of Cuba stated that, if a new instrument was adopted, it would not only have to account for the poor but ensure that they could aspire greater protection for health, safety and conditions of work, bearing in mind differences between developed and developing countries. The Worker member of Greece noted that the low number of ratifications for Convention No. 30 was not a sufficient argument for revision of the Convention. The revision of a Convention to “legalize” socially regressive action could not be accepted. As to regulating the problem of working hours through negotiated agreements, this assumed that workers and employers enjoyed the same possibilities of organization and action, which was not the case.
- 121.** The Worker member of Tunisia stated that it was appropriate to consider revising the two Conventions to take into account modern technological developments, provided that such measures also dealt with the health and safety of workers, as well as training and the development of skills. Nonetheless, he pointed to the increasing use of subcontracting in employment, which was tantamount to trafficking of labour and which undermined labour rights. The use of subcontracting should be treated with the same seriousness as forced labour and child labour. Until this problem was dealt with, there could be no discussion of the revision of Conventions Nos. 1 and 30. The ratifications of Conventions Nos. 135 and 151 should also be promoted to bolster trade union protection.
- 122.** The Worker member of Panama pointed out that what was sought through the revision of the Conventions was the intensification of, and regression to, new forms of slavery and exploitation involving workers all over the world. However, opposition to flexible working hours was clear. Behind all that logic lurked an ill-willed Machiavellism. Moreover, it was important to take into account the ethical aspect of the issue. The speaker wondered what sort of ethical and moral authority the Governments that had not ratified the Convention could have to request its revision. The revision of the Convention would create serious problems in individual companies. The speaker expressed his emphatic opposition to the revision of the Convention – a matter which should not have been raised in the first place.
- 123.** The Worker member of Canada indicated that in an age where workers were expected to work more to make ends meet, it was vital that rights enshrined in Conventions Nos. 1 and 30 were not cut back. Replying to the Employer member of the United Kingdom, who

---

believed that workers appreciated part-time work, he claimed the opposite was true. In his experience, most workers preferred a full-time job and he stated that the workers would always resist the goal of achieving prosperity through poverty. Finally, the Worker member of Kenya proposed that Conventions Nos. 1 and 30 should be included among the ILO fundamental Conventions, as a limit on working time was a human right.

### **Concluding observations**

- 124.** In their final remarks, the Employer members stated that they had listened attentively to the multi-faceted discussion of the General Survey. The interventions had raised important questions about the international regulation of working time. Workforces and worksites were by their nature different. As some speakers had noted, a “one size fits all” approach to working time was impractical. The Committee of Experts had recalled the many different arrangements of working time which now existed that had not been envisaged in Conventions Nos. 1 and 30. The instruments had failed to attract a significant number of ratifications. Working time standards were adequately provided for by national legislation and collective agreements, awards, and individual agreements.
- 125.** The issue of comparative advantage that had been present in the elaboration of the two Conventions was still valid. This could be seen as some European countries struggled to overturn their 35-hour work week and were forced to cut “less pay and increased working time” deals. In view of this, the ILO should not seek to establish a new standard on working time.
- 126.** The Employer members suggested that a proposal be put to the Governing Body to hold an expert meeting with a view to drafting a guidance document on working time, which should take into account these discussions and the General Survey. The results ought not be prejudged. There could additionally be Experts’ meetings that might eventually lead to a Governing Body decision to have a general discussion on the subject of working time at a future International Labour Conference. As the long discussion on contract labour had shown, there should be a full debate on the issue before further action was taken.
- 127.** In their closing statement, the Worker members indicated that they were not fooled by the strategy of contrasts adopted by the Employer members, which consisted in comparing two very different situations, that of South Africa (which seemed to be constructive but in which the debate on flexibility could not be conducted on an international level as, for reasons of national competitiveness it had to remain at the national level) and the somewhat exaggerated situation of the United Kingdom, and that they did not share their conclusions. They noted that the Employer members agreed to discuss certain issues in the debate on the flexibility of working time, such as health, safety, stress, and collective bargaining, but they did so by proposing another instrument, which would surely be promotional and therefore not binding. Furthermore, no suggestions to solve the problem of the low level of ratifications of Conventions Nos. 1 and 30 have been offered.
- 128.** The Worker members proposed that the issues of working time should be studied more in-depth by collecting information on existing practices of flexibility in different sectors. The pragmatic attitude adopted by the Worker members did not mean that they had renounced the fundamental protection contained in ILO standards. It was appropriate to reaffirm the value of the standard-setting activities of the ILO, which aimed to correct the imbalance between employers and workers. The Worker members warned against forgetting the social battles and their *acquis*, such as limitations on hours of work. The issue could not be disassociated from other issues covered by ILO standards, which would be addressed in the International Labour Conference in 2006, such as the issue of the employment relationship. The objective of that discussion would be to establish principles to define the concept of “worker”, entitled to protection by ILO standards. It was important to resolve

---

the legal issue raised by the fact that limitations on hours of work did not apply to workers with several jobs – an increasingly frequent situation due to the precariousness that often went along with flexibility. In addition, it would be appropriate to study the link between forced labour and work imposed on top of an ordinary working day. The issue of hours of work was also linked to respect for and promotion of collective bargaining with strong trade unions, whether on an inter-professional or sectoral level, as it was not adapted to the enterprise level or individual negotiation. Finally, the debate reaffirmed the goals of Convention No. 1, which were health, safety and protection of private life.

- 129.** In the Worker members' view, accepting a pragmatic debate implied accepting to envisage not only the qualitative aspect but also the quantitative aspect, in particular evidence for the hours worked, the power of control of workers to monitor and the strengthening of labour inspection. Before they would be able to decide on any procedure, the Worker members wished to be assured that any action by the ILO would not result in a reduction of their rights, and that employers and governments would enter into a discussion with workers on an equal footing. The possibility of having a tripartite general discussion taking into account the realities, and in which every one would present their concerns, in a spirit of compromise respectful of workers' rights, appeared to be taking shape.

\* \* \*

- 130.** With respect to the General Survey on hours of work, the Chairperson of the Committee of Experts pointed out that the issue of hours of work was a fundamental concern and at the heart of all employment relationships. There were three particular factors which gave increasing prominence to its ongoing relevance and importance, namely: (i) the increased emphasis on the need to balance work and rest to take account of family responsibilities; (ii) the effects of globalization; and (iii) the desire for flexibility to promote efficiency and competition in the market place but, at the same time, ensure appropriate protection for the needs and preferences of workers. This General Survey highlighted a number of major features including the development, over the past 20 years, of a broad range of working time arrangements such as compressed work-weeks, staggered hours, variable daily shift lengths, annualized rather than weekly hours of work, flexitime, and on-call work. After reviewing country practices and taking account of comments about the impact of working time arrangements, the conclusions of the Committee of Experts were as follows: many of these new forms of working arrangements were likely to contravene the Conventions which were the subject of the General Survey; these Conventions could prevent the implementation of modern flexible working arrangements; and changes in work practices warranted revision of these Conventions. In the final paragraphs of the report, the Committee set out the elements which might require addressing in the event that ILO constituents concluded that a new instrument was required.

- 131.** In her reply, the representative of the Secretary-General thanked the members of the Committee for the rich and varied discussion on this year's General Survey. She noted that the debate had brought forth strong views on the continued relevance of the two Conventions, the importance of balancing flexibility with protection of workers' safety, health, and family life, the importance of the role of a regulatory framework and collective bargaining, and the role of the social partners. She took due note of the suggestions and concerns of the Employer and Worker members as to the direction of any possible future ILO action in this area, and the fact that many governments supported the way forward as outlined in paragraph 332 of the General Survey. Referring to this Committee's message that the ILO should not consider a normative approach but should explore innovative ways to move ahead, she stated that the Office would prepare a document for the Governing Body which would summarize the views expressed during the discussion and leave it to the Governing Body to determine the appropriate course of action. She noted the proposals that such action could call for the holding of a tripartite meeting of experts on the topic of

---

working time, with a view to preparing a guidance document, opening up the possibility of placing the question of a general discussion on the issue on the agenda of a future session of the International Labour Conference.

#### **D. Compliance with specific obligations**

- 132.** The Employer members stated that document D.4 was partly a response to the suggestion made last November to the Committee of Experts by the Employers' group that a better analytical tool should be developed to understand why governments were not complying with their reporting obligations. This document was a first step in that it provided some history and background in relation to the reporting obligations and indicated the main reasons why governments did not submit the instruments adopted by the ILO to the competent authorities. They added that there was nothing wrong with the list of reasons mentioned, but that other significant reasons also needed to be taken into account such as economic difficulties and the resources available for the preparation of reports as well as the existence of the situation of war in the countries concerned. The main difficulty was that the failure by governments to submit reports in practice took on a far greater significance than violations which were currently mentioned in a special paragraph in the Committee's report on ratified Conventions. This was because the failure to report or to submit instruments to the competent authorities in effect undermined the effectiveness of the supervisory system.
- 133.** The Worker members welcomed the opportunity to hold an exchange of views of the cases of serious failure by member States to respect their reporting or other standards-related obligations. In the first place, it had to be mentioned that these cases covered both the failure to meet the obligations established by the Constitution and the failure to meet standard-related obligations. Secondly, they often involved failure to supply reports or information in response to comments. These types of failure were just as important. Indeed, the failure to supply reports could be considered a deliberate strategy by countries to avoid an examination which would show failure to comply with Conventions, particularly fundamental Conventions. This attitude was unfair to those countries which complied with their commitments and had sent reports, which had submitted new instruments to the competent authorities or which had consulted with the social partners. Moreover, the reports submitted were sometimes very brief or prepared without consultation with the social partners. Thirdly, the cases of serious failure by member States to respect their reporting or other standards-related obligations were also subject to criteria that were quantitative in nature, such as the repeated failure to send reports without any justification to explain the delay.
- 134.** The Worker members made some suggestions to improve the examination of the cases of serious failure by member States to respect their reporting or other standards-related obligations. Firstly, a distinction could be made for those countries, which could provide objective excuses or attenuating circumstances. Document D.4 presented by the Office contained an instructive list of the principal reasons for the failure of a member State to fulfil its obligations. Some of these reasons appeared to amount to insurmountable or attenuating circumstances. For example, the general situation of a country due to conflict or natural disasters could be mentioned. Moreover, institutional factors, such as the situation of the labour administration, or the possibility of mobilizing the social partners, or the languages of the countries, could also be accepted in the beginning. The use of such excuses could not, however, be tolerated over a long period of time, as the situation should improve progressively. As such, countries that were encountering difficulties should develop a strategy compliance with their obligations, which should be supported by technical assistance from the ILO. The obligation to submit instruments adopted by the ILO to the competent authorities should be based on the revised memorandum on

---

submission. Moreover, the involvement of the social partners should be encouraged by promoting the ratification of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). In conclusion, the Worker members stated that the current approach of the cases of serious failure by member States to respect their reporting or other standards-related obligations should be diversified. However, for those countries that did not comply with their obligations, it would be appropriate to re-establish the serious nature of their failure to send reports or to undertake tripartite consultations. In this case, it would be advisable to look into the possibility of including a special paragraph and an explicit reference in the final report of the Conference.

- 135.** In examining individual cases relating to compliance by States with their obligations under or relating to international labour standards, the Committee applied the same working methods and criteria as last year.
- 136.** In applying those methods, the Committee decided to invite all governments concerned by the comments in paragraphs 20 (failure to supply reports for the past two or more years on the application of ratified Conventions), 27 (failure to supply first reports on the application of ratified Conventions), 31 (failure to supply information in reply to comments made by the Committee of Experts), 61 (failure to submit instruments to the competent authorities), and 67 (failure to supply reports for the past five years on unratified Conventions and Recommendations) of the Committee of Experts' report to supply information to the Committee in two half-day sittings devoted to those cases.

### ***Submission of Conventions and Recommendations to the competent authorities***

- 137.** In accordance with its terms of reference, the Committee considered the manner in which effect is given to article 19, paragraphs 5-7, of the ILO Constitution. These provisions require member States within 12, or exceptionally 18, months of the closing of each session of the Conference to submit the instruments adopted at that session to the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action, and to inform the Director-General of the ILO of the measures taken to that end, with particulars of the authority or authorities regarded as competent.
- 138.** The Committee noted from the report of the Committee of Experts (paragraph 53) that considerable efforts to fulfil the submission obligation had been made in certain States, namely: **Guatemala, Morocco, Nigeria and South Africa.**
- 139.** In addition, the Committee was informed by various other States of measures taken to bring the instruments before the competent national authorities. It welcomed the progress achieved and expressed the hope that there would be further improvements in States that still experience difficulties in complying with their obligations.

### ***Failure to submit***

- 140.** The Committee noted with regret that no indication was available that steps had been taken in accordance with article 19 of the Constitution to submit the instruments adopted by the Conference at the last seven sessions at least (from the 84th to the 90th Sessions) to the competent authorities, in the cases of **Afghanistan, Armenia, Cambodia, Haiti, Lao People's Democratic Republic, Sierra Leone, Solomon Islands, Somalia, Turkmenistan and Uzbekistan.**

---

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

**141.** In Part B of its report (General questions relating to international labour standards), the Committee has considered the fulfilment by States of their obligation to report on the application of ratified Conventions. By the date of the 2004 meeting of the Committee of Experts, the percentage of reports received was 64.03 per cent, compared with 65.87 per cent for the 2003 meeting. Since then, further reports have been received, bringing the figure to 72.1 per cent (as compared with 72.6 per cent in June 2004, and 71.8 per cent in June 2003).

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

**142.** The Committee noted with regret that no reports on ratified Conventions had been supplied for the past two or more years by the following States: **Antigua and Barbuda, Armenia, Denmark** (Greenland), **Grenada, Iraq, Kiribati, Liberia, Paraguay, Solomon Islands, Tajikistan, United Republic of Tanzania – Zanzibar, The former Yugoslav Republic of Macedonia** and **Turkmenistan**.

**143.** The Committee also noted with regret that no first reports due on ratified Conventions had been supplied by the following countries: since 1992 – **Liberia** (Convention No. 133); since 1995 – **Armenia** (Convention No. 111), **Kyrgyzstan** (Convention No. 133); since 1996 – **Armenia** (Conventions Nos. 100, 122, 135, 151); since 1998 – **Armenia** (Convention No. 174), **Equatorial Guinea** (Conventions Nos. 68, 92); since 1999 – **Turkmenistan** (Conventions Nos. 29, 87, 98, 100, 105, 111); since 2001 – **Armenia** (Convention No. 176), **Kyrgyzstan** (Convention No. 105), **Tajikistan** (Convention No. 105); since 2002 – **Azerbaijan** (Conventions Nos. 81, 129), **Bosnia and Herzegovina** (Convention No. 105), **Gambia** (Conventions Nos. 29, 105, 138), **Saint Kitts and Nevis** (Conventions Nos. 87, 98, 100), **Saint Lucia** (Conventions Nos. 154, 158, 182); and since 2003 – **Bahamas** (Convention No. 147), **Bosnia and Herzegovina** (Convention No. 182), **Dominica** (Convention No. 182), **Equatorial Guinea** (Convention No. 182), **Gambia** (Convention No. 182), **Iraq** (Conventions Nos. 172, 182), **Kiribati** (Conventions Nos. 29, 105), **Paraguay** (Convention No. 182), **Serbia and Montenegro** (Conventions Nos. 24, 25, 27, 113, 114, 156) and **Uganda** (Convention No. 182). It stressed the special importance of first reports on which the Committee of Experts bases its first evaluation of compliance with ratified Conventions.

**144.** In this year's report, the Committee of Experts noted that 49 governments had not communicated replies to most or any of the observations and direct requests relating to Conventions on which reports were due for examination this year, involving a total of 444 cases (compared with 325 cases in December 2003). The Committee was informed that, since the meeting of the Committee of Experts, 22 of the governments concerned had sent replies, which would be examined by the Committee of Experts at its next session.

**145.** The Committee noted with regret that no information had yet been received regarding any or most of the observations and direct requests of the Committee of Experts to which replies were requested for the period ending 2004 from the following countries: **Afghanistan, Antigua and Barbuda, Azerbaijan, Belize, Bosnia and Herzegovina, Burundi, Cambodia, Cape Verde, Comoros, Côte d'Ivoire, Democratic Republic of the Congo, Denmark** (Greenland), **Djibouti, Georgia, Grenada, Guinea, Guyana, Iraq, Kazakhstan, Kyrgyzstan, Liberia, Libyan Arab Jamahiriya, Netherlands** (Aruba), **Pakistan, Paraguay, Saint Lucia, Sao Tome and Principe, Solomon Islands, Tajikistan, The former Yugoslav Republic of Macedonia, United Kingdom** (Montserrat), **Yemen** and **Zambia**.

- 
146. The Committee noted the explanations provided by the governments of the following countries concerning difficulties encountered in discharging their obligations: **Afghanistan, Armenia, Bosnia and Herzegovina, Cambodia, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Denmark (Greenland), Djibouti, Guinea, Haiti, Iraq, Kiribati, Liberia, Netherlands (Aruba), Pakistan, Paraguay, Serbia and Montenegro, United Republic of Tanzania – Zanzibar, Uganda, United Kingdom (Montserrat), Yemen and Zambia.**
147. The Committee stressed that the obligation to transmit reports is the basis of the supervisory system. It requested the Director-General to adopt all possible measures to improve the situation and solve the problems referred to above as quickly as possible. It expressed the hope that the subregional offices would give all due attention in their work in the field to standards-related issues and in particular to the fulfilment of standards-related obligations. The Committee also bore in mind the reporting arrangements approved by the Governing Body in November 1993, which came into operation from 1996, and the modification of these procedures adopted in March 2002 which came into force in 2003.

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

148. The Committee noted that 143 of the 272 article 19 reports requested on the Hours of Work (Industry) Convention, 1919 (No. 1), and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), had been received at the time of the Committee of Experts' meeting, and a further four since, making 54 per cent in all.
149. The Committee noted with regret that over the past five years none of the reports on unratified Conventions and Recommendations, requested under article 19 of the Constitution, had been supplied by: **Afghanistan, Bosnia and Herzegovina, Congo, Democratic Republic of the Congo, Dominican Republic, Guinea, Guyana, Kazakhstan, Kyrgyzstan, Liberia, Sao Tome and Principe, Sierra Leone, Solomon Islands, Tajikistan, The former Yugoslav Republic of Macedonia, Togo, Turkmenistan, Uganda, Uzbekistan and Zambia.**

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

150. Once again this year, the Committee did not have to apply the criterion: "The Government has failed during the past three years to indicate the representative organizations of employers and workers to which, in accordance with article 23(2) of the Constitution, copies of reports and information supplied to the ILO under articles 19 and 22 have been communicated."

### ***Application of ratified Conventions***

151. The Committee noted with particular interest the steps taken by a number of governments to ensure compliance with ratified Conventions. The Committee of Experts listed in paragraph 38 of its report new cases in which governments had made changes to their law and practice following comments it had made as to the degree of conformity of national legislation or practice with the provisions of a ratified Convention. There were 53 such cases, relating to 35 countries; 2,429 cases where the Committee has been led to express its satisfaction with progress achieved since the Committee of Experts began listing them in 1964. These results are tangible proof of the effectiveness of the supervisory system.

---

152. This year, the Committee of Experts listed in paragraph 40 of its report, cases in which measures ensuring better application of ratified Conventions had been noted with interest. It has noted 267 such instances in 103 countries.

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

### ***Specific indications***

154. The Government members of **Afghanistan, Armenia, Barbados, Bosnia and Herzegovina, Cambodia, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Denmark (Greenland), Djibouti, Dominican Republic, Guinea, Haiti, Iraq, Kiribati, Liberia, Netherlands (Aruba), Pakistan, Paraguay, Serbia and Montenegro, United Republic of Tanzania – Zanzibar, Uganda, United Kingdom (Montserrat), Yemen and Zambia** have promised to fulfil their reporting obligations as soon as possible. The Government member of Pakistan indicated that it was in the process of amending some of its labour legislation, including the Industrial Relations Ordinance, 2002.

### ***Cases of progress***

155. The Committee noted with satisfaction that in a number of cases – including some involving basic human rights – governments have introduced changes in their law and practice in order to eliminate divergences previously discussed by the Committee. It considers the highlighting of these cases a positive example to encourage governments to positively respond to comments of the supervisory bodies.

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

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

### ***Special cases***

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

158. As regards the application by **Belarus of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee took note of the written information supplied by the Government, the statement made by the Government representative, the Deputy Minister of Labour, and the discussion that took place thereafter. The Committee noted from the comments of the Committee of Experts that the Commission of Inquiry submitted its report to the Governing Body at its 291st Session in November 2004. The Committee recalled that the conclusions and recommendations of the Commission of Inquiry concerned the application of rules and regulations relating to the activities of trade unions and other public associations in a manner amounting to a

---

condition of previous authorization for the formation of unions and with an impact uniquely upon those unions outside of the traditional trade union federation or which oppose it, contrary to Article 2 of the Convention; the non-conformity of the law on mass activities, and its application, with Article 3 of the Convention and of Presidential Decree No. 8 on measures for receiving and using foreign gratuitous aid with Articles 5 and 6 of the Convention. The Committee, like the Committee of Experts, further noted with deep concern the information concerning proposed amendments to the law on trade unions aimed at substantially increasing the requirements for trade union registration at various levels. The Committee noted the Government's indication according to which it had adopted an appropriate plan of action to give effect to the recommendations of the Commission of Inquiry and that it had submitted to all interested parties an Explanatory Letter on the norms and provisions of international and domestic legislation. The Government also indicated that the recommendations of the Commission of Inquiry were published in a magazine of the Ministry of Labour, which was sent to almost all enterprises in the country. It also referred to an experts' council established to review the labour legislation, which included in its composition the Federation of Trade Unions of Belarus (FPB) and the Congress of Democratic Trade Unions (CDTU). The Committee expressed its grave concern at the serious discrepancies between the law and practice on the one hand and the provisions of the Convention on the other, which it considered seriously threatened the survival of any form of an independent trade union movement in Belarus. It deplored the fact that no real concrete and tangible measures had yet been taken to resolve the vital matters raised by the Committee of Experts and the Commission of Inquiry, including as regards a number of recommendations made by the latter that were to have been implemented by 1 June 2005. It urged the Government to take the necessary measures immediately to ensure that full freedom of association was ensured in law and in practice so that workers could freely form and join organizations of their own choosing and carry out their activities without interference by the public authorities and to ensure that independent trade unions were not the subject of harassment and intimidation. Furthermore, the Committee supported the recommendation made by the Commission of Inquiry that the presidential administration issue instructions to the Prosecutor-General, the Minister of Justice and court administrators, that any complaints of external interference made by trade unions should be thoroughly investigated, and considered that such steps aimed at ensuring truly effective guarantees for the rights enshrined in the Convention would further benefit from the Government's implementation of the recommendations made by the United Nations Special Rapporteur on the independence of judges and lawyers. The Committee requested the Government to provide a full report on all measures taken to implement the recommendations of the Commission of Inquiry for examination by the Committee of Experts at its next meeting. The Committee further urged the Government to accept a mission from the Office to assist in the drafting of the legislative amendments requested by the Commission of Inquiry and to evaluate the measures taken by the Government to implement fully the Commission's recommendations. The Committee decided to include its conclusions in a special paragraph of its general report.

- 159.** As regards the application by **Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee took note of the statement made by the Government representative and the detailed discussion that followed. The Committee recalled that it had discussed this serious case on many occasions over more than 20 years, and that since 1996 its conclusions had been included in a special paragraph for continued failure to implement the Convention. The Committee deplored the fact that, despite these continued efforts of dialogue between this Committee and the Government, there was still absolutely no progress made in adopting a legislative framework that would allow for the establishment of free and independent trade union organizations. Moreover, the Committee noted with grave concern from the Committee of Experts' comments that the report supplied by the Government contained none of the information requested by this present Committee, relevant draft laws were not provided,

---

nor did the Government reply to the comments made by the ICFTU. The Committee could only condemn the absence of any meaningful dialogue with the Government in this respect and trusted that its future reports would provide all requested information. The Committee took note of the statement made by the Government, which referred once again to the need to await the promulgation of the Constitution before a legislative framework for the recognition of freedom of association could be established. The Government also indicated that the National Convention had agreed that laws to protect the rights of workers and to create job opportunities should also be enacted. Recalling that fundamental divergences existed between the national legislation and practice and the Convention since the Government had ratified the Convention 50 years ago, the Committee once again urged the Government in the strongest terms to adopt immediately the necessary measures and mechanisms to guarantee to all workers and employers the right to establish and join organizations of their own choosing, as well the right of these organizations to exercise their activities and formulate their programmes, and to affiliate with federations, confederations and international organizations, without interference from the public authorities. It further urged the Government to repeal Orders Nos. 2/88 and 6/88, as well as the Unlawful Association Act, so that they could not be applied in a manner that would infringe upon the rights of workers' and employers' organizations. The Committee was obliged once again to stress that respect for civil liberties was essential for the exercise of freedom of association and firmly expected the Government to take positive steps urgently, with full and genuine participation of all sectors of society regardless of their political views, to amend the legislation and the Constitution to ensure full conformity with the Convention. It further requested the Government to take all measures to ensure that workers and employers could exercise their freedom of association rights in a climate of complete freedom and security, free from violence and threats. The Committee urged the Government to ensure the immediate release of all workers detained for attempting to exercise trade union activities and to ensure that no worker was sanctioned for having contact with a workers' organization. The Committee urged the Government to communicate all relevant draft laws as well as a detailed report on the concrete measures adopted to ensure improved conformity with the Convention, including a response to the serious matters raised by the ICFTU, for examination by the Committee of Experts this year. The Committee recalled all of its conclusions in the case concerning the application of Convention No. 29 in Myanmar as regards the ILO's presence in the country. The Committee considered that, given that the persistence of forced labour could not be disassociated from the prevailing situation of a complete absence of freedom of association, the functions of the Liaison Officer should include assistance to the Government to fully implement its obligations under Convention No. 87. The Committee firmly hoped that it would be in a position to note significant progress on all these matters at its next session. The Committee decided to include its conclusions in a special paragraph of its report. It also decided to mention this case as a case of continued failure to implement the Convention.

### ***Continued failure to implement***

- 160.** The Committee recalls that its working methods provide for the listing of cases of continued failure over several years to eliminate serious deficiencies, previously discussed, in the application of ratified Conventions. This year the Committee noted with great concern that there had been continued failure over several years to eliminate serious discrepancies in the application by **Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**.
- 161.** The government of the country to which reference is made in paragraph 159 is invited to supply the relevant reports and information to enable the Committee to follow up the abovementioned matter at the next session of the Conference.

---

## ***Participation in the work of the Committee***

162. The Committee wished to express its gratitude to the 69 governments which collaborated by providing information on the situation in their countries and participating in the discussions of their individual cases.
163. The Committee regretted that, despite the invitations, the governments of the following States failed to take part in the discussions concerning their countries' fulfilment of their constitutional obligations to report: **Azerbaijan, Bahamas, Belize, Burundi, Cape Verde, Congo, Georgia, Kazakhstan, Kyrgyzstan, Libyan Arab Jamahiriya, Tajikistan, Togo and Uzbekistan**. It decided to mention the cases of these States in the appropriate paragraphs of its report and to inform them in accordance with the usual practice.
164. The Committee noted that the Permanent Mission of Bosnia and Herzegovina to the United Nations Office in Geneva had indicated in a letter dated 10 June 2005 that, for reasons of force majeure, the delegation of Bosnia and Herzegovina regretted that it would be unable to attend the meeting of the Conference Committee on the Application of Standards on 11 June 2005. Information was appended to the letter summarizing briefly the action taken by the Government to comply with its constitutional and standards-related reporting obligations and the assistance requested from the Office. All the above information was reflected in document D.13 submitted to the Committee. The Committee regretted that **Bosnia and Herzegovina** did not participate in the discussion of individual cases on the application by **Bosnia and Herzegovina of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, although the Government delegation was accredited to the Conference. The Worker members expressed their indignation at the attitude of the Government of Bosnia and Herzegovina in relation to both the Committee and the ILO. It should be recalled that this was the third year that this case had been examined by the ILO supervisory bodies. Despite the observations made by the Committee of Experts in 2003, 2004 and 2005, the Government had not replied. The information contained in document D.13 did not provide any new elements. As this was a case of repeated failure to cooperate with the ILO supervisory system, they called for it to be included in a special mention of the Committee's report. The Employer members expressed the belief that there was little the Committee could do in relation to this case in view of the absence of the Government representative before the Committee. In its report, the Committee would have to confine itself to expressing regret at the failure of the Government to appear before the Committee to discuss the problems relating to its application of Convention No. 87 and to note that by this omission the Government was undermining the ILO's supervisory system.
165. The Committee noted with regret that the governments of the States which were not represented at the Conference, namely **Antigua and Barbuda, Comoros, Dominica, Equatorial Guinea, Gambia, Grenada, Guyana, Lao People's Democratic Republic, Saint Kitts and Nevis, Saint Lucia, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, The former Yugoslav Republic of Macedonia and Turkmenistan**, were unable to participate in the Committee's examination of the cases relating to them. It decided to mention these countries in the appropriate paragraphs of this report and to inform the governments, in accordance with the usual practice.

Geneva, 14 June 2005.

*(Signed)* Mr. Sérgio Paixão Pardo,  
Chairperson.

Ms. Carine Parra,  
Reporter.