



Final report of the discussion

**Global Dialogue Forum on the Role of Private Employment Agencies
in Promoting Decent Work and Improving the Functioning of Labour
Markets in Private Services Sectors**
(18–19 October 2011)

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Introduction

1. The Global Dialogue Forum on the Role of Private Employment Agencies in Promoting Decent Work and Improving the Functioning of Labour Markets in Private Services Sectors was held at the International Labour Office, Geneva, 18–19 October 2011. The Governing Body of the ILO had approved the convening of the Forum at its 304th Session (March 2009), based on proposals from the Employers' and Workers' groups to the Sectoral Advisory Body on Private Services in October 2008. Based on the agreed points of discussion, the Office prepared an Issues paper ¹ as a background for the Forum's deliberations.
2. The purpose of the Forum was to discuss private employment agencies – specifically in private services sectors (including hotels, catering, tourism; commerce; financial services; media and entertainment; posts and telecommunications; and property services) – and their role in improving the functioning of labour markets, and in promoting decent work through the expansion of protection for temporary workers.
3. The Chairperson of the Forum was Mr Jean-Jacques Elmiger, Ambassador, State Secretariat for Economic Affairs, International Labour Affairs (Switzerland). The Coordinator of the Government group was Mr Amir Shahmir (Islamic Republic of Iran). The Employer and Worker spokespersons were respectively Mr Fred van Haasteren and Ms Margriet Kraamwinkel. The Secretary-General of the Forum was Ms Alette van Leur, Director of the Sectoral Activities Department (SECTOR), the Deputy Secretary-General was Mr Bill Ratteree, the Executive Secretary was Mr John Myers, assisted by Mr John Sendanyoye, Ms Julia Lear and Ms Lucie Servoz, and the Coordinator of the secretariat services was Ms May Mi Than Tun.
4. The Forum was attended by 144 participants, including 25 Government representatives ² and five advisers, one representative of the European Commission, as well as 62 Worker and 50 Employer representatives.

Opening statements

5. The Secretary-General welcomed participants, stating that the Forum was part of wider interdepartmental efforts at the ILO on private employment agencies and temporary agency work, in which SECTOR was involved, notably through the 2009 Workshop to Promote Ratification of the Private Employment Agencies Convention, 1997 (No. 181). ILO interest in these issues had been reinforced by the prominence of agency work in times of economic crisis, and by specific requests from the social partners for the ILO to carry out activities in this area. The presence at the Forum of such large numbers of representatives of governments and employers' and workers' organizations was testimony to the topicality of Convention No. 181, the agency industry and the sectoral dimensions of

¹ *Private employment agencies, promotion of decent work and improving the functioning of labour markets in private services sectors*, Geneva, ILO, 2011, at http://www.ilo.org/sector/Resources/publications/WCMS_164612/lang--en/index.htm.

² From Austria, Bahrain, Brazil, Congo, Czech Republic, Egypt, Guatemala, Islamic Republic of Iran, Republic of Korea, Lebanon, Liberia, Malaysia, Mexico, Namibia, Netherlands, Niger, Philippines, Poland, Qatar, Spain, Switzerland, United Republic of Tanzania, Thailand, Bolivarian Republic of Venezuela and Zimbabwe.

agency work. The Office was aware that there were divergent views among ILO constituents about private employment agencies in general and the specific subject of discussion mandated by the Governing Body. Dialogue could help identify ways forward for governments and employers and workers' organizations on issues that had arisen since Convention No. 181 came into force. In order to have a focused discussion within the mandate set out by the Governing Body, the Office suggested that any legal questions relating to such ILO instruments or their interpretation be channelled through the appropriate existing mechanisms (for example, written information requests addressed to the Office), rather than raised inside this Forum. The Office would take account of the Forum's discussions and envisaged further activities in this field, including promotional efforts for the ratification and implementation of Convention No. 181 and research in 2012–13 (on the basis of a Governing Body decision in March 2011) on the sectoral impact of implementing Convention No. 181.

6. The Chairperson underlined that the Forum was intended to consider its four agenda points with special reference to temporary agency work in private services sectors. Such tripartite sectoral forums were designed to bring together people with relevant expertise to exchange views on labour issues of particular significance to a specific industry or range of sectors; promote consensus on how best to address them; and provide guidance for action at the enterprise, sectoral, national and international levels. The Forum should focus on promoting decent work in private employment agencies in private services sectors and on the functioning of labour markets. Participants needed to prioritize identifying consensus and areas on which all parties would concur that there was no agreement.
7. The Executive Secretary introduced the Issues paper, which had been prepared in accordance with the Governing Body's decision on the title, scope and objectives of the Forum. Its first draft had been revised to reflect comments received from workers' and employers' organizations and ILO colleagues, but suggestions aimed at substantially changing the title, scope and objectives of the Forum could not be fully incorporated as they would diverge from the Governing Body's mandate. The Issues paper had been written with the intention of highlighting some key sectoral issues relating to private employment agencies and temporary agency work from various different viewpoints, and giving a background on topics related to the suggested points for discussion. It did not, however, attempt to provide a consistent analysis of the role of agencies in promoting decent work and improving the functioning of labour markets in private services sectors, nor of wider issues about the impact of such agencies on the world of work in general. Its statistics on the agency work industry excluded some major countries and large numbers of workers from smaller agencies. It also contained three important annexes: the International Confederation of Private Employment Agencies (CIETT) members' commitment; the Memorandum of Understanding between CIETT and UNI Global Union; and the Global Union Principles on Temporary Work Agencies – these illustrated some potential points of consensus, while the latter also highlighted areas of disagreement. The Office believed that wider ratification and implementation of Convention No. 181 could encourage progress in promoting decent work and in enhancing social dialogue in user enterprises and agencies.
8. The Employer spokesperson recalled the 1997 session of the International Labour Conference, during which Convention No. 181 had been adopted with a large tripartite consensus (by 347 votes in favour, five votes against, with 30 abstentions), and confirmed that the Convention provided a framework that allowed countries to improve the functioning of agencies and protect agency workers. The 2009 Workshop's points of consensus were very important. He called for dialogue that would go beyond debate, towards understanding what the other side meant, and thus reach consensus. Agencies provided a range of labour market services that addressed the need for flexibility: temporary agency work, permanent recruitment, executive search, outplacement, training or payroll management. When regulated appropriately, agency work contributed to improved functioning of labour markets and fulfilled specific needs for both enterprises

and workers that complemented other forms of employment relationship. He stressed the importance of consistency between the ILO's Decent Work Agenda, the Declaration on Fundamental Principles and Rights at Work, and temporary agency work standards and regulations aimed at fighting illegal practices and abuses against agency workers. The Memorandum of Understanding between CIETT corporate members and UNI Global Union encouraged the two parties to use social dialogue to ensure fair conditions of work for agency workers, and arose from the European Commission's Sectoral Social Dialogue Committee for Temporary Agency Work established in 2000. Agency employers were also protected by the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and by the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Agency work was neither precarious nor atypical. Far from being responsible for all that some trade unions identified as being wrong in the labour market, agencies were effectively balancing flexibility and security for agency workers and user enterprises. The private employment agency industry ought to be seen as a sector on its own: globally employing 10 million (full-time equivalent) workers on average; comprising 72,000 companies; with more than 800,000 direct employees in their own agencies; with 169,000 branches. Agency work was more secure than other forms of flexible work, and created new jobs – without replacing workers on permanent contracts – in spite of and throughout the crisis, even though the industry had lost 1.3 million workers since 2007. The main question was how to create more jobs in a world where enterprises were confronted with constant change. Agencies were creating decent work that was not precarious, were developing social protection schemes, and were promoting social dialogue. The sector was already regulated by collective labour agreements in 25 countries around the world. He recalled that the issue of allocating responsibilities to the partners involved in the triangular relationship, considering that private employment agencies are also employers with their own rights of association and negotiation, was fully covered and resolved by Convention No. 181, Articles 11 and 12. For this reason, he invited Worker and Government representatives to work together on a programme to promote more ratifications of Convention No. 181. More ratifications of Convention No. 181 would particularly help fight abuses and illegal practices, and promote decent work.

9. The Worker spokesperson noted that agency work was currently spreading everywhere, because agency workers were earning less than directly hired employees and could easily be dismissed. The banking sector in the Netherlands, for example, had recently seen direct jobs replaced by agency jobs, but up to 25 per cent of new recruits working for “good” employment agencies were earning less than their co-workers. Problems for agency workers included pay, conditions, pensions, and health and safety issues, leading to indecent jobs. Her group was unhappy with the Office's Issues paper, which was unduly oriented towards the views of private employment agencies. The Workers expressed criticism towards the Issues paper had often not been taken into account, and some perspectives it provided sounded like conclusions based on assumptions, for example the phrase on page 4: “This can constitute a virtuous circle during economic booms and a vicious circle for all during recessions” and footnote 20 on page 7: “A total ban on agencies runs counter to the principles of Convention No. 181.” Her group did not accept the Issues paper as a background for discussions. She described agency employment as work which was carried out according to the instructions and under the control of another party, solely or mainly for the benefit of the user enterprise, within hours and at a workplace specified by them, and using the tools, materials and machinery of the user enterprise. Referring to the Employment Relationship Recommendation, 2006 (No. 198), she believed that agency work was a disguised employment relationship, and was therefore by definition precarious work. These triangular employment relationships represented serious challenges to equal treatment and access to rights. Precarious work could be insecure by being temporary, poorly paid and without access to social security or training; workers would be excluded from collective bargaining rights. Decent work should provide direct, open-ended contracts offering fair wages and access to social security, health and safety, freedom of association and collective bargaining. Her group regretted the growing

tendency to replace permanent jobs with various forms of temporary, precarious employment including agency work. The Office should undertake research on the scope, meaning, impact and application of Convention No. 181. There was no real collective bargaining or freedom of association – any complaints about wages or conditions would lead to termination of agency workers’ contracts. She agreed with the Employer spokesperson on the importance of looking at the “bigger picture”, which should include the effects of agency work on workplaces worldwide and on the permanent workforce. Agency employment often did not fulfil workers’ needs, and they would prefer direct, open-ended contracts where available. There was a need for collective bargaining with user companies – agencies did not fulfil the role of employers. The Forum participants should discuss how collective bargaining agreements would cover agency workers and ensure equal pay, treatment, and other conditions of employment. User enterprises should be liable for every worker, whether directly or indirectly employed. The ILO was the right place to discuss workers’ rights and protections, not workers’ choices. A growing number of firms were outsourcing their entire workforce to staffing agencies, so bargaining with user companies was essential. Job creation was done through investment and should not be attributed to employment agencies.

10. The Chairperson acknowledged that the Issues paper did not include all the points that the participants desired, but had been restricted to a specific sectoral mandate and theme. The Forum’s purpose was to seek consensus within that format, going beyond reaffirming the October 2009 Workshop’s points of consensus or the conclusions of the Workers’ Symposium on Policies and Regulations to Combat Precarious Employment (Geneva, 4–7 October 2011). He recognized the participants’ willingness to engage in dialogue and hoped that consensus would be reached.

Point 1: Private employment agencies’ contribution to job creation and decent work

11. An Employer participant from CIETT emphasized the contribution of employment agencies to each country’s economy and to job creation. Labour markets were dynamic and had been in perpetual motion and change in the past 20 years; while each year new jobs were being created, other jobs were being lost. Therefore, the dynamics of the labour market should be considered as an ongoing process rather than a snapshot. Agencies facilitated workers’ transitions from one job to another and their role was primarily to ensure better functioning of labour markets. Agencies were not only providers of temporary jobs, but also performed other functions, including executive search, training and retraining, facilitating access to permanent jobs. When properly regulated, agencies contributed to fostering decent work and ensuring better functioning of labour market by meeting employers’ as well as workers’ needs. Agency work should be seen as supplementing or complementing other forms of employment, not replacing them. Agencies helped to increase the employment rate by allowing more people to get a job and participate in the labour market, a view that had been supported by several studies. One study indicated that three-quarters of the permanent jobs studied would not have been created without private employment agencies’ involvement.³ Thus, there was no “substitution” of permanent staff in these cases. Agencies also enriched economic growth by transforming many informal or illegal jobs into formal temporary agency work. There was a clear correlation between growth in temporary agency work and decline in illegal employment. The agency sector transformed available work into jobs by finding people to

³ CIETT/Boston Consulting Group: *Adapting to change: How private employment services facilitate adaptation to change, better labour markets and decent work*, Brussels, CIETT, 2011, p. 38, fig. 16.

replace workers who were temporarily unavailable. There was no precarious work where appropriate regulation was in place. The development of cooperation between public employment services and private employment agencies was an illustration of the positive role played by the agency sector, and his organization's long-standing commitment to Convention No. 181 reflected private employment agencies' key role in labour markets.

12. An Employer participant from the Netherlands referred to a new report by a Dutch organization that illustrated private employment agencies' contribution and importance – in 2010, 41 per cent of agency workers subsequently obtained a contract with an employer, confirming previous research. About 600,000 former agency workers were now directly employed. Private employment agencies' contribution had a positive impact on reducing unemployment.
13. An Employer participant from South Africa commented that CIETT members were responsible, in favour of regulation, and abided by their members' code of conduct, practice and ethics. The Association of Personnel Service Organizations (APSO) had been calling for ratification of Convention No. 181 in South Africa ever since 1997. Temporary agency work had been essential to South Africa's successful hosting of the 2010 FIFA World Cup, as regards infrastructure development and employment in the whole range of private services sectors. He highlighted the importance of APSO's skills development initiative, including 20,000 learnerships, mostly for previously unemployed people. The industry was pioneering a project to establish a new call centre to process complaints on rogue agencies, a partnership with public employment services had been established and 120 people had been trained in 2010. Employers' strong commitment was demonstrated by seven Employers' delegates from his country being at the Forum, but no representatives of the South African Government or Workers.
14. An Employer participant from Italy reiterated that private employment agencies would lower the unemployment rate and the illegal labour market. In Italy, the legislation on private employment agencies was introduced in 1998 and since its introduction, the unemployment rate went down from nearly 12 per cent to 7.9 per cent, so the private employment agency sector was creating many job opportunities. The illegal market decreased from 27 per cent to 18 per cent, according to a CIETT publication.⁴
15. The Worker spokesperson was surprised that the terms "markets" or "efficiency" were used so uncritically regarding employment, and that they were credited for job creation or blamed for redundancies. The market and efficiency were not a force of nature; the market was a political arena where human beings made political decisions that influenced the lives of working people. If labour markets were transforming, workers should use their bargaining power to change this, to ensure they received equal treatment. Agencies could play a role in recruitment or placement in direct, open-ended jobs as long as they operated within legal limits, without charging workers. Workers should be free to exercise their collective bargaining and union rights and have access to other social rights. Temporary agency work was not "open ended" and one could see an increasing number of companies entirely staffed by agency workers. To fight such transitions at the workplace, workers should be able to organize and bargain collectively. Open-ended jobs were often replaced by temporary staff. Temporary workers were afraid to join unions and exercise their bargaining rights, because they feared dismissal for doing so. Independent research on the Netherlands by Tilburg University, the unemployment benefits authority, and the Central Bureau of Statistics indicated that the treatment of workers was deteriorating since agency workers did not find permanent employment as easily as employers had indicated, and that a further division on the labour market – between insiders and outsiders – had emerged.

⁴ *ibid.*, p. 43, fig. 23.

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16. The Secretary of the Workers' group, Mr Rossman, stated that it was clear that labour markets were rapidly changing, had become more dynamic, and so on – but the question was the nature and meaning of these changes. Jobs were being destroyed as well as created, but were the jobs being created what workers needed? What was driving the creation and destruction of these jobs, and to whose benefit? The process was being discussed as if it were a natural phenomenon. For workers, labour market efficiency meant labour markets that helped people to find decent, open-ended, freely chosen and direct employment; governments should pursue appropriate policies to encourage that along with the seemingly forgotten goal of securing full employment. Examining recent developments in the world of work, the central factor – as highlighted in ILO, OECD, IMF and World Bank research – was that the share of wages in national income in many countries was at its lowest level since the Great Depression. Therefore, when the Issues paper referred to the close correlation in many industrialized countries between GDP growth and the use of temporary agency workers, then if that was the case – and if there was agreement that wage growth had become de-linked from productivity growth – could it not be argued that there was a close correlation between those wage trends and the growth of agency work? This, and not the allegedly positive correlation between GDP growth and agency work asserted in the Issues paper, was the real issue. “Temporary work” was an inappropriate term – the Dutch statistics just cited showed that some people were still on temporary agency contracts after three years on the job. In every type of enterprise – for example in plantations, factories and offices – there was the phenomenon of the “permanent temp”. In some cases the entire workforce was “leased”; there were factories that worked seven days a week with three shifts per day, without a single direct employee. Clearly, these agency workers did not have access to equal treatment and it was impossible to organize trade unions under such circumstances – bargaining rights did not exist in such workplaces, even if the employers were legal private employment agencies.
17. A Worker participant from Sweden stated that in her country the number of agency hotel and restaurant workers had increased in recent years. This had led to increased performance demands for agency workers compared to directly employed workers with open-ended contracts. Agency workers employed as hotel housekeepers had to clean up to 25 per cent more rooms than workers directly employed with open-ended contracts on the same working hours. It was difficult to view this as decent work and career development.
18. A Worker participant from Cameroon remarked that massive expansion in the African telecommunications sector had seen multinational enterprises enter local markets; first, they employed workers directly, but then switched to agency recruitment, mostly of young graduates. Camerounian legislation viewed temporary employees as fixed-term workers (one year maximum), so they worked on three-month renewable contracts, therefore these employees were not used properly. They often had high-level experience and qualifications and worked in jobs not reflecting their abilities, on similar work to those with open-ended contracts. In one large firm, some staff with direct contracts worked with temporary workers on different levels of pay and other conditions, which created problems for teams. Temporary employment agencies had increased in number with little regulation, agency workers were unable to organize unions, and the Government did not deal with this issue. Solutions should be sought to satisfy all parties, reduce social inequalities and ensure that agency workers fulfilled their potential and obtained fair treatment. Workers did not always demand direct open-ended contracts, and recruitment through these temporary agencies was unavoidable but should be improved. The Government should ensure social dialogue to resolve this problem.
19. A Worker participant from the Philippines stated that in his country, private employment agencies were legal, more than 4,000 agencies were registered, but only 225 belonged to the Philippine Association of Local Service Contractors. Two types of agencies operated: one employing regular workers; the other employing contract workers. Philippine legislation expressly allowed contracting and subcontracting arrangements. Many agencies

had been established to cater for call centres in the Philippines, and such work could be considered precarious – contract call-centre workers had little job security as they only worked for up to five months. This circumvented provisions that those working for six months would become regular, permanent workers and restricted freedom of association because after five months they would be jobless. A Philippine airline with over 4,000 regular employees in ground service, catering and reservations operations had subsequently contracted out those services, forcibly retiring many workers employed by the firm for 20 years. This was why the entire labour movement was against contract work.

20. A Worker participant from the United Kingdom noted that London's hotel sector was among the most mature and successful worldwide, and was growing in capacity and employment as a direct result of massive investment (emphasizing that only investment creates jobs). However, employers had been replacing direct staff with agency workers, often breaching minimum legal conditions. Most agency room cleaners were female migrants; there was no effective collective bargaining; and workers were afraid, vulnerable and wary of all authorities. He had held hundreds of one-to-one meetings with agency workers who were underpaid (below minimum wage), overworked, treated with disrespect and effectively poor. He referred to the ill-health and psychological problems London agency hotel workers faced (in a survey of 100 agency room cleaners, 86 reported work-related disorders). Replacement of direct jobs by temporary agency work was responsible for this, undermining decent work while creating no jobs. The ILO should live up to its standards and address the problems of agency workers.
21. A Worker participant from Brazil referred to economic growth and its effects on employment. Direct jobs were being replaced by temporary jobs from agencies, clearly indicating risks of redundancies, with agency workers undertaking the same tasks as permanent employees. In the banking sector, standard daily work schedules were six hours for permanent workers and nine to 11 hours for agency workers, which meant fewer jobs. Her union noted that agency workers validated more banking documents per day than regular staff. This heavier workload had led to health (stress, fatigue and cardiac) problems for temporary workers, and there was no career development for them. Temporary agency workers' wages were much lower than for regular staff for the same job. Private employment agencies did not follow the regulations applying to banking sector workers and employers. Temporary workers received no training (which meant a loss in work quality and erosion of services) and agency workers had serious difficulties to unionize due to the fragmented nature of the industry and lack of clarity over which unions could represent them and who their real employer was. She concluded that agency workers who tried to organize unions were blacklisted and persecuted, and that in Brazil agency work had not contributed to decent work in any way.
22. The Government representative of Namibia remarked that his Government had been observing private employment agencies' activities in his country several years ago, and had recognized to a certain extent their contribution to employment, but also noticed a prevalence of "fire at will" and unequal treatment of agency workers compared with regular staff. Working conditions had been irresponsibly bad and high degrees of exploitation had been observed. The Government had to intervene and developed legislation to abolish private employment agencies in 2007. However, legal action undertaken by private employment agencies against that legislation and the Government went to the Supreme Court in 2009, where the agencies won the case. His Government was currently developing an appropriate legislative framework to regulate private employment agencies and combat exploitation of agency workers. By regulating the agency industry, their business would be rendered less lucrative, and the exploitation of workers would be stopped. He welcomed assistance from the ILO to devise such regulation, and noted that private employment agencies only facilitated recruitment and placement, but did not create new jobs.

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23. The Government representative of Switzerland referred to her country's liberal and balanced legislation on public employment services and private agencies, which regulated, monitored and controlled the agencies' operations to promote efficiency and smooth functioning of recruitment and placement and to eliminate malpractices. There were more than 5,000 private employment agency branches in Switzerland, playing an important role in the labour market along with public employment services. Those agencies were innovative, and there was a need to protect temporary workers. Respect for collective labour protection was mandatory in Switzerland, including for trade union rights, hours of work and minimum wages. Swiss law required written labour contracts for all temporary workers to protect them. Increases in temporary work corresponded to volatility in the labour market, and agencies had been useful in expanding flexibility while retaining stability. Placement activities in Switzerland had benefited from the Free Movement of People agreement, workers from the EU/EFTA area were welcome, and the usual wages and working conditions must be respected. The proportion of short-term employment relationships had remained stable since the 1990s and the level of agency work in the workforce was close to the European average. She recommended that the ILO undertake research to identify agencies' contribution to job creation.
24. The Government representative of Niger noted that in his country, regulation was in place, private employment and recruitment agencies operated and their role in the mining and oil industries had been important. The major problem in dealing with such agencies was ensuring decent work; workers' organizations had approached the Government with their concerns about short-term employment, since decent work was not properly respected in temporary employment. More than 50 enterprises were using agencies and public employment service centres.
25. The Government coordinator remarked that the world was dealing with one of the worst economic crises – a major employment challenge. Governments recognized private employment agencies' importance, but agencies were not the ones who created job opportunities: they only identified potential candidates. Experience in the Islamic Republic of Iran confirmed that there was no employment agency that was completely good, and Government had started to train and advise private employment agencies, but their efforts did not achieve the desired results. The Government had to be vigilant about unscrupulous employment agencies that were only looking for profit. Concerns remained on this issue for most governments, apart from those having ratified Convention No. 181 – 23 countries by October 2011 – a fairly low level of ratification. Governments should fight exploitation by private employment agencies and there were certain agencies that caused very serious concern.
26. Based on the discussions, the Executive Secretary provided tentative elements of consensus on point 1, but conditional wording such as “might”, “could” or “would” needed to be emphasized. The suggested points of consensus were:
- If well-regulated and effectively respecting workers' rights recognized under international labour standards, private employment agencies could contribute to job creation and decent work.
 - In discussing the agencies impact on the labour market, we need to look at the bigger picture, including the impact on the overall employment and economic situation.
 - The Private Employment Agencies Convention, 1997 (No. 181), provides protections for workers and employers, and much more research is needed on the scope and impact of Convention No. 181 on the labour market.

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- The fight against “rogue agencies” and illegal practices is a common cause, as is the need to ensure better monitoring of agencies to ensure compliance with the principles of Convention No. 181.
 - There is a need for meaningful social dialogue and bargaining on agency work, but also a need to reinforce freedom of association and collective bargaining. User enterprises should also engage in social dialogue with agency workers.
 - Fundamental principles and rights at work should be respected in all cases, also by private employment agencies.

The suggested points on which consensus was not reached were:

- There is a need to define criteria for when agency workers can be used, including limits on the range of circumstances under which the recruitment of agency workers is permissible and a ceiling on the proportion of agency workers in user-enterprise workforces.
 - Agency work might not be the best nor the worst form of temporary work.
 - Investment creates work, user enterprises create jobs, and private employment agencies match labour supply and demand.
 - Certain agencies operating within the law nonetheless violate the rights of workers.
- 27.** An Employer participant from CIETT remarked that they had not received any information or complaints from workers about agencies undermining their bargaining power. Agencies were spending and investing hugely in their people, but from what they had heard from the Governments and Workers, it seemed that only countries that had not ratified Convention No. 181 had given examples. The Employers’ group confirmed that private employment agencies *were* creating jobs.
- 28.** The Worker spokesperson was concerned about the wording for the consensus points. Her group preferred that the Forum consider the total impact of agency work on the wider economy and specifically on the labour market, as well as the intended result of regulation. She specified that the primary form of employment should be direct, open-ended and based on equal treatment with regular workers. Temporary agencies should not be utilized by companies to avoid collective bargaining with workers. Workers’ rights for freedom of association must be promoted, as defined in Conventions Nos 87 and 98, and Recommendation No. 198. They liked the idea of including research on the impact and implications of agency work, but there were some items they did not recognize from the earlier discussion, such as that agency work might not be the worst form of temporary work. They supported fighting criminal or illegal use of agency work, but also saw that agencies operating within the law were widely violating workers’ rights, and they opposed agencies taking over the staffing of whole companies. The ILO’s work should focus on protecting and extending workers’ rights rather than to facilitate enterprises in their activities, especially if these activities were harmful for workers; and there should be emphasis on collective bargaining rather than on social dialogue. The conclusions should talk about employment agencies that operated legally but did not guarantee equality, and denied workers their fundamental rights.

Point 2: Private employment agencies – Regulation, monitoring and control

29. A Worker participant from UNI Global Union asserted that outside Europe the vast majority of agency workers were not protected by collective bargaining agreements. It was not feasible to build unions for agency workers since their work status was unstable. Direct employment was the only way to ensure freedom of association. The executive board of UNI Global Union had supported the Memorandum of Understanding with CIETT corporate members and they had engaged in social dialogue. She cited the example of the Italian legislation that protected agency workers by linking their wages to the wages paid to direct employees of the user enterprise.
30. A Worker participant from Uruguay observed that the daily reality experienced by workers in his country was different from the picture portrayed by earlier speakers. His federation understood that Convention No. 181 was a useful tool to better regulate, monitor and control the private agencies, as demonstrated in his country, but the Convention did not cover all the ramifications of agency work. He well-understood that the provisions of that Convention should not be opened up to debate. However, guidance would be useful on issues such as the minimum and maximum appropriate durations for agency contracts; reasons for using agency workers (temporary or seasonal vacancies, coverage for illness or maternity leave, etc.); protection of freedom of association; and rights to a minimum wage.
31. A Worker participant from Denmark wished to explain that although Denmark had enjoyed a long tradition of collective bargaining, there had been problems with private employment agencies that failed to operate legally. The new Danish Government was planning new legislation that would allow the competent authorities to freeze the bank accounts of agencies that violate the law.
32. The Secretary of the Workers' group pointed out that the Employers had repeatedly emphasized the importance of labour market efficiency and of regulation. But just as the World Bank in its "Doing business" reports awarded the highest marks to those countries which had gone furthest in deregulating their labour markets and removing worker protection, the "regulatory efficiency index" included in the CIETT report ⁵ was constructed to award the highest performance to countries which had eliminated obstacles to the expansion of agency work. What was referred to by CIETT as regulation in fact consisted of removing regulatory protections. The expansion of decent work was equated with the expansion of the agencies. They were concerned that private employment agencies would prefer to operate where there were fewer regulations that did not (for example) require the provision of social protection to agency workers. The agencies appeared to consider that regulations were obstacles to their way of operating. It was not necessarily the case that decent work appeared as an automatic consequence of the ratification of Convention No. 181. Achieving decent work required joint efforts by workers, employers and governments to determine when and where agency work could be used, and defining the limits. The terms and conditions of employment should be negotiated between the workers, the user-enterprise employer and the employment agencies, and should not be predetermined by contractual agreements between the agency and the user enterprise.
33. The Employer spokesperson stated that the Forum should recognize that agency work was decent, safe, healthy and legal, and that it could be a stepping stone to direct, open-ended and permanent employment. He noted that the Workers' interventions had focused mainly

⁵ *ibid.* pp. 85–86.

on the question whether agency workers would replace some permanent staff in workplaces. However, he wished to emphasize that private employment agencies had helped to replace illegal work, and the CIETT study provided evidence of that trend. The employers supported the promotion of all the relevant ILO Conventions previously mentioned. Employers' rights to bargain and negotiate should also be protected as outlined in Conventions Nos 98 and 181.

34. An Employer participant from CIETT clarified that the CIETT/BCG report explained that the regulatory efficiency index was aimed at balanced regulations that covered social protection and negotiation rights, contribution to labour market policies, provision of services and establishment rights, and that it was not oriented towards removing all restrictions. He underlined that appropriate regulation was essential for the industry to operate properly and for this reason the Employers were promoting ratification of Convention No. 181 and implementation of the Convention and Recommendation No. 188 for countries that had not done so. He explained that all EU countries were reviewing national legislation regarding private employment agencies in the context of the implementation of the EU Directive on agency work (2008/104/EC).
35. An Employer participant from the European Confederation of Private Employment Agencies (Eurociett) stressed that agencies needed recognition as employers and that regulations should be balanced to allow agencies to operate. She described the different sources for regulation: including international (Convention No. 181 and Recommendation No. 188), European (the Directive), national and sectoral/enterprise level (through collective labour agreements). There was also self-regulation in the form of codes of conduct. Private employment agencies that operated within those regulations should be differentiated from the unscrupulous operators, and the appropriate incentives and sanctions should be used. There were three main principles guiding their approach: there should be no fees charged to jobseekers; there should be fairness in pay, safety and health, and working conditions; and there should be no undermining of freedom of association or collective bargaining for workers or employers. There was a significant problem of over-regulation and under-enforcement.
36. An Employer participant from the United States emphasized the need for recognition of agency employers as a collective bargaining partner and for appropriate regulation to combat unscrupulous operators. He stressed that private employment agencies created jobs and that many temporary agency workers freely chose that form of work.
37. An Employer participant from the Netherlands cited the Dutch example of regulation and social dialogue. The social partners negotiated conditions of employment and established social protection, pension and training funds. Agencies that did not comply with the collective labour agreement were fined, including for infringements relating to equal pay.
38. An Employer participant from Sweden described the Swedish regulatory system, which was also used in Finland and Denmark. There were four collective labour agreements covering agency work, signed with 29 trade unions. In order to be authorized to operate, each private employment agency must: complete a one-year probationary period prior to receiving authorization; be bound by collective agreements; be financially sound, comply with tax requirements, and have liability insurance; comply with the code of conduct; and pass an assessment to renew their authorization annually.
39. An Employer participant from the United Kingdom said that his confederation's members provided very good employment opportunities for workers and that their private employment agencies took the British Government's regulations seriously. They were involved in very practical and important work with the Trades Union Congress on a compliance committee that raised awareness of agency workers' rights. He was proud of

the positive contribution that agencies made to the labour market. He hoped that the Forum would be able to discuss good practices, codes of conduct, training and professionalization.

40. An Employer participant from France explained that agencies in France preferred to be regulated through collective bargaining agreements. Each trade union confederation in France had relationships with temporary employment agencies but they also had permanent workers. In the 1980s, the agencies negotiated union rights for collective bargaining and established the transferability of rights, allowing workers to retain their level of benefits when they moved to another company. More detailed information was provided on the PRISME website, through an observatory on employment services occupations.
41. An Employer participant from Mexico described the regulatory environment in Mexico, based on the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), ratified in 1991. Despite this, Mexican private employment agencies affiliated to CIETT did not charge fees to workers and they remained competitive while complying with regulations to protect workers' rights and participating in social dialogue.
42. The Government representative of Switzerland explained Swiss regulations to protect temporary workers. Temporary agencies had to receive authorization from the canton and the federal Government if they were operating abroad. Agencies also had to deposit a substantial bond to ensure that employees' severance could be paid. Switzerland also applied criminal sanctions and fines to companies that violated Swiss laws.
43. The Government coordinator considered the Issues paper useful for the discussion at the Forum but future research should give more attention to developing and emerging countries where private employment agencies played a more active role in the labour market. The Office should promote ratification of Convention No. 181 and provide more detailed research about the impact of its implementation. Governments also encouraged the Office to share lessons learned and good practices, as well as potential problems with full implementation of Convention No. 181. Through Convention No. 181, governments recognized the need to regulate and license employment agencies and user enterprises regarding agency workers.
44. The Worker spokesperson cautioned that Convention No. 181 merely set minimum standards: the Forum needed to analyse and research the meaning, scope, application and impact of the Convention. Second, the Forum should address *all* agencies (not just European ones) and recognize the difference between different types of agencies and how they should be regulated. Regulation should cover illegal activities of bogus or unscrupulous operators, but also non-compliance by CIETT members. The triangular relationship undermined traditional collective bargaining. From the Workers' perspective, it was important to include the user companies in social dialogue and collective bargaining. Self-regulation through codes of conduct could not replace labour standards. It was further of great concern to the Workers' group that the Employers had repeatedly and explicitly rejected the fundamental right to equality of treatment and non-discrimination by stating that they favoured, for example "fair pay" for agency workers as opposed to equal pay, "fair" working time rather than equal working time and "fairness" as regarded safety, health and working conditions.
45. The Employer spokesperson responded that discussion of Convention No. 181 would have filled the agenda. The respective responsibilities of agencies and user enterprises on a whole range of workers' rights and conditions were enshrined in Articles 11 and 12 of the Convention. The Forum ought to encourage more ratifications.

46. The Chairperson summarized the consensus thus:

- There is broad recognition of the need for regulation; such regulation should be based on relevant international labour standards.
- Regulation should be balanced, promote decent work and protect workers on the basis of labour law, social security, leave and pension entitlements and access to training; but also allow labour market flexibility, understanding the complementary role of private employment agencies in this regard.
- Ratification of Conventions Nos 87, 98 and 181, and effective implementation of these and of Recommendations Nos 188 and 198 should be promoted. Convention No. 181 and Recommendation No. 188 provide a framework for regulation and monitoring at national and sectoral level. Consequently, regulation has a promotional role, which must allow efficient monitoring and control, involving government and social partners on an equal footing. All of this should be put in place through social dialogue. Codes of conduct can be a useful addition to regulation, monitoring and control mechanisms.

Point 3: Agency workers' rights and working conditions

47. An Employer participant from the United States stated that in relation to discussion point 3 her group would highlight the active role that their industry was taking in order to enhance the rights and working conditions of their workers. They would focus on a few different areas and highlight examples from various countries. When appropriately regulated, temporary agency work delivered decent work to their employees, and could not be associated with precarious work. They were paid fairly, the employment relationship was clearly defined, their conditions were clear and transparent, through a written contract signed by both parties, and workers had the right to appeal or to seek remedies in various legislative systems.
48. An Employer participant from Portugal discussed the use of an independent ombudsman for agency staff in Portugal and Belgium, recognized by the social partners and public authorities, to ensure protection of temporary agency workers. The ombudsman system provided a mechanism whereby public authorities and the social partners could collaborate in regulating temporary work and verifying that agencies followed ethical business principles. The ombudsman's website gave legal information, reports of good practices, and access to an online questionnaire for workers to complete. Workers could sign in and fill out the compliance sheet, and within 24 hours would receive an answer to their questions. The ombudsman's report was published annually and presented publicly to the social partners. Both he and his Belgian colleague felt that the agency work ombudsman served as a good example of increasing public confidence and providing information to agency workers.
49. An Employer participant from Argentina spoke about the situation in his country. Argentina's legislation and Government was protective of workers' rights. Temporary workers could be used in specific circumstances and there were three levels of guarantees for such workers: the companies deposited a bond; the agency provided health protection; and workers had union protection, health and social coverage, and representation. If these workers moved to another company their wages would not be reduced. All temporary agency workers were in registered employment, in a country where 40 per cent of workers were unregistered. There was protection against child labour and in favour of disabled people, a high proportion of young people used agencies to obtain their first job, and

people under 25 were common among agency staff compared to other companies. Trade unions perceived these agencies as a source of major problems, but illegal work was the problem, not employment agencies. Under Convention No. 181, the Government could eliminate illegal work by providing more flexible and secure conditions for private employment agencies. He requested ILO support to improve dialogue with unions, as they were vital to industrial relations.

- 50.** An Employer participant from Spain spoke about equal pay in her country. Temporary agencies had started recently in Spain. In the 1990s, social dialogue and negotiations between agencies and trade union federations resulted in better regulation of the sector. In 1999, Spain achieved equal pay and treatment by ratifying Convention No. 181. The EU Directive on temporary work reiterated the principle of equal pay for equal work, and equal working conditions for agency and permanent workers. Agencies and unions also participated in collective bargaining to expand vocational training and occupational health and safety training. She emphasized that Spanish temporary workers had equal treatment and salary as regular workers.
- 51.** An Employer participant from Germany noted that the German federation (BAP) had around 2,000 agencies, from small-medium enterprises to global players. The German labour market was performing very well with an unemployment rate of 7 per cent and a working population of 40 million people. This German success story started in 2003–04 when important labour market reforms came into force and the agency work industry was liberalized, thus contributing to this success. Based on the new regulations, the German federation had concluded collective labour agreements with seven trade unions in Germany, two of them being among the most powerful trade unions in the world. Workers were covered by all labour laws and social security regulations, and agencies had to guarantee this to their workers. According to the collective labour agreements, agencies provided 24–30 days’ paid annual holiday (as opposed to the 20 statutory days), plus sick pay and other benefits. He noted that in various cases, working conditions for agency workers ranged above those of permanent staff at user enterprises. This was particularly true in the slaughterhouse industry, where he reported that agency workers hired directly by the user enterprise preferred to resign and return to work for the agencies, where working conditions were better.
- 52.** An Employer participant from CIETT explained that in countries with appropriate regulation, temporary and permanent workers had equal access to benefits. In many countries, there were complementary social protection systems in place. Agencies would ensure fair treatment in all cases.
- 53.** An Employer participant from the Netherlands offered more information about how agencies provided workers with additional vocational training. In several European countries, low-skilled workers needed training to qualify for new job opportunities; 70 per cent of such workers participating in vocational training were under 25.
- 54.** The Worker spokesperson requested real world examples from trade unionists in countries outside Europe and non-CIETT members. The development of the private employment agency industry itself undermined freedom of association and collective bargaining, and replaced direct, open-ended jobs by precarious contracts. Agency workers were more vulnerable, and they could not exercise their rights as workers, whereas people with direct and open-ended contracts could. She stressed the importance of equal treatment, which represented considerably more than fair treatment. The Workers thus proposed that:
- a direct, open-ended contract should be the standard form of labour contract;
 - agencies should not charge workers any fees;

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- workers must be given written contracts including the terms and conditions of employment;
 - temporary workers must be guaranteed information on occupational health and safety and free access to protective equipment; and
 - equal treatment for temporary and permanent workers including freedom of association and collective bargaining rights.
- 55.** A Worker participant from Germany responded to the description of working conditions offered by the German Employer participant. The collective agreement for regular workers in the slaughterhouse provided a better deal than the contract offered by the temporary agency. The user enterprise had threatened workers that if they asked for higher salaries their work could be outsourced to agencies that paid lower salaries. The 24 days annual leave provided to agency workers was statutory, so it was not “provided by the agency”, and collective bargaining aimed at 36 days annual leave.
- 56.** A Worker participant from France was concerned that agency employees in private services sectors and elsewhere in the economy were simply fulfilling user enterprises’ need for labour. The realities of temporary agency work in most countries had nothing to do with collective labour agreements and equal treatment, and little to do with seasonal variations and peaks in demand; they were much better characterized by social dumping and weakening of collective bargaining in user enterprises. Agency workers were unfamiliar with policies and processes of companies when they changed assignments frequently, and their access to training, safety and health information and overtime in user enterprises should be examined.
- 57.** A Worker participant from the International Federation of Chemical, Energy, Mine and General Workers’ Unions (ICEM) noted that there had been more heat than light when they had been discussing collective bargaining. He stated that even though Conventions Nos 87 and 98 are connected, they secure different types of rights that are not identical. Both Conventions defined rights for employers’ associations and workers’ trade unions, as the Committee on Freedom of Association had acknowledged. Freedom of association meant that the employers should not interfere with workers’ rights to form and join a union, and the governments should not interfere if employers wished to organize themselves in associations. The right to collective bargaining was not a unilateral right, and the workers could not unilaterally exercise this right – this right required a response from the employers’ side. Governments should promote collective bargaining rights. He continued that workers tended to be organized on a sectoral basis, but they could not claim that they had the right to organize and bargain on a sectoral basis. Convention No. 181 required consultations with the most representative organizations of employers and workers to ensure collective bargaining. The Convention did not prescribe how to arrange collective bargaining or who would negotiate. Thus, he asked for clarification – the ILO’s supervisory mechanisms would recognize the problems in determining who was the legitimate employer in triangular (and often disguised) employment relationships. It was important to address such issues at the national level and to ensure that in collective bargaining the real decision-makers were involved.
- 58.** The Government representative of Switzerland observed that, according to Swiss law, workers hired through private employment agencies had the same rights as permanent workers concerning, for example, social security, pensions and holidays. However, agency workers were given shorter notice periods: two days’ notice if they had been working for up to three months; seven days’ notice when they had been working four to six months. Contracts should be in writing and contain all key terms and conditions of employment. If an agency did not follow the legal requirements, it would lose its authorization to operate; this helped to ensure respect for legal standards and for collective agreements. When some

infringements in agency contracts had been observed, the agencies were obliged to remedy such cases rapidly. Switzerland regulated agency work, but did not aim to encourage agencies as such; it linked agencies' development with protection of agency workers and improvement of their working conditions. The ILO should reinforce its technical advice to member States and carry out research on countries that had ratified Convention No. 181 and those that had not, differentiating between countries opposing the Convention and others (like Switzerland) not ratifying for reasons inherent to their national systems.

- 59.** The Government representative of Austria explained that in her country too, workers hired through private employment agencies had the same rights as permanent workers, under the Temporary Agency Work Act of 1988, and collective agreements covering user enterprises also covered agency workers. Thus, it was forbidden to use agency work in order to weaken workers' collective bargaining positions.
- 60.** An observer from the European Commission thanked the Office for organizing this Forum and for the highly informative Issues paper. The October 2009 Workshop had allowed fruitful discussions and the time was ripe to take stock of developments since then. Ratifying Convention No. 181 was important, the European Commission also promoted it – and 12 EU Member States had ratified. Private employment agencies had been recovering since the economic crisis of 2009, and private services sectors had been among the sectors where the growth potential of temporary agency work was highest. In June, the Domestic Workers Convention, 2011 (No. 189), had been adopted and provided protection against abusive practices of those recruited or placed by employment agencies. In 1991, the EU addressed private employment agencies in a directive aimed at improving occupational safety and health of workers with fixed-term or temporary contracts. In 2002, a proposal for a directive on temporary agency work was drafted, leading to the adoption of the Directive in 2008. All EU Member States were reviewing their national legislation and adopting provisions to comply with the Directive by December 2011. The Directive ensured equal treatment for agency workers starting from the first day of assignment – they should enjoy the same basic working and employment conditions as direct employees (notably on pay, working time, holidays and non-discrimination measures). Derogations from that principle were possible under strict conditions and the social partners had to be consulted or actively involved in their implementation. Rules prohibiting or restricting the use of temporary agency work were likewise reviewed and could only remain justified on grounds of general interest – especially to protect the workers concerned, uphold safety and health requirements, or ensure that labour markets functioned properly and that abuses were prevented. Agency workers should not be charged fees, and should have access to the same collective facilities as permanent workers. Agency workers must be taken into account by bodies representing workers in agencies or user enterprises. Member States should provide appropriate measures in the event of non-compliance with the Directive by agencies or user enterprises and apply penalties in case of infringements of national implementing provisions. There had been ten years of fruitful discussion in the EU's temporary agency work social dialogue committee. The Directive should contribute to more favourable conditions for developing and improving temporary agency work in the European Union.
- 61.** The Employer spokesperson stressed that 80 per cent of agencies' revenues came from Europe and the United States and 20 per cent from other countries. CIETT accounted for 90 per cent of the global agency labour market, according to independent research, and represented 44 countries. Ratifying Convention No. 181 provided the appropriate framework to foster decent work. "Fair" was different to "equal" treatment and Convention No. 181 addressed that issue. Remuneration issues should be decided at the national level. The Forum should discuss "fair" (rather than "equal") pay and treatment.
- 62.** The Secretary of the Workers' group responded by emphasizing that remuneration was a question of rights. Would wages be determined by what employers thought was fair or

through collective bargaining? Research on agency work should be studied at the global level – the discussion so far had been limited. There were countries where unionized jobs in the sectors covered by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) had been destroyed. In the United States for example the expansion of agency work had led to deteriorating working conditions and reduced benefits. He cited other examples such as Pakistan, India and South Africa where unionized jobs had decreased as agencies grew. He urged governments, unions and employers' organizations to work together and identify the real obstacles to the Decent Work Agenda thrown up by the expansion of agency work.

63. An Employer participant from the United States noted that the proportion of temporary workers in the United States had fallen from 2 per cent to 1.7 per cent of the workforce in the past three years. The high replacement of permanent by temporary work – that the Workers had claimed – was not apparent there.

64. The Chairperson summarized the consensus as follows:

- Appropriate regulation is necessary to ensure respect for fundamental principles and rights at work supplemented by special protection measures negotiated by the social partners in a spirit of mutual respect and recognition. Regulation should take into account the ILO core labour standards, including on freedom of association and collective bargaining.
- Equal treatment for agency workers is essential, for example on pay, occupational safety and health, vocational training, hiring and dismissal and information on, and access to, vacancies in user enterprises.
- Sector-level collective agreements covering unions, private employment agencies and user enterprises are part of the process of regulation of these agencies. Governments, workers and employers should be equal partners in monitoring such regulatory systems and their implementation.
- Governments have a responsibility to promote conditions and frameworks for collective bargaining to ensure good working relations across sectors.
- Agency employment should be decent, safe and legal, and should foster direct, open-ended and permanent employment to the extent possible. No fees should be charged to workers. Written contracts should be provided, specifying workers' rights, terms and conditions, and information to enable them to exercise their right to equal treatment in the workplace.
- Tripartite dialogue is imperative to identify decent work challenges so as to ensure proper implementation of the provisions of Convention No. 181.

Point 4: Promoting social dialogue at enterprise–sectoral–national levels regarding agency work

65. An Employer participant from Switzerland felt that it was important to determine what should be done to promote social dialogue at enterprise, sectoral and national levels for agency workers. At national level, any action on social dialogue should be linked to the governments' stance, since in many countries freedom of association was not guaranteed – the ILO and the social partners could facilitate social dialogue in countries where freedom of association was problematic. At enterprise level, there were hundreds of thousands of

agency employers, most of whom were adamant about the rights and benefits of workers and their access to social dialogue. At sectoral level, she found the current Forum important as one form of social dialogue, and participants should not leave the Forum feeling unhappy. Agencies took social dialogue at sectoral level very seriously in countries like Belgium, Finland, France, Switzerland, Sweden and Norway, but social dialogue should reach out to other countries as well. The issue of representation of workers in the agency industry depended on well-organized workers and encouraged workers to organize themselves. She called on workers to refuse to work for rogue agencies and to bring exploited workers into a safe and secure environment.

- 66.** An Employer participant from Germany drew attention to the work on collective labour agreements in Germany in 2003–04 and indicated that these agreements had been revised several times since then. According to him, issues including pay scales and annual leave had been revised in favour of agency workers.
- 67.** An Employer participant from Peru quoted the Termination of Employment Convention, 1982 (No. 158), which referred to “workers engaged under contracts of employment for a specified period of time or a specified task, or on a casual basis for a short period”. Although Peru had not ratified the Convention, his organization had been in favour of it and found it important to promote its application and ratification. Everybody wanted to have permanent contracts, but the realities of the twenty-first century labour market did not permit it. The Safety and Health in Mines Convention, 1995 (No. 176), indicated that “the term employer means any physical or legal person who employs one or more workers in a mine and, as the context requires, the operator, the principal contractor, contractor or subcontractor”. The Forum could similarly recognize private employment agencies as dialogue partners and ensure their workers’ right to organize. Articles 1, 11 and 12 of Convention No. 181 already guaranteed workers the possibility for collective bargaining and social dialogue. Peruvian legislation demanded that enterprises be legal and provide access to collective bargaining to workers. The Forum should promote ratification of Convention No. 181, which guaranteed that agency workers could join unions.
- 68.** An Employer participant from South Africa noted that in his country, collective bargaining on tripartite and bipartite levels took place widely, and the outcomes of these agreements established conditions to address issues including freedom of association, dispute management, health and safety, benefits, retirement, training and skills upgrading. Such agreements applied to enterprise, sectoral and regional levels and to permanent and agency workers alike.
- 69.** An Employer participant from Japan stated that the staffing services association he represented had signed a joint declaration with a Japanese union confederation on how to improve the treatment of agency workers and promote fair practices within the industry. It had been difficult to reach agreement but an understanding with the unions had been reached and they were continuing to promote and extend social dialogue.
- 70.** An Employer participant from Brazil stated that one could not regulate all countries in the same way. Brazil had fairly good social dialogue with sectoral unions and there had been problems among unions who wanted to represent different groups of workers. There were more than 2,000 workers’ unions; his federation negotiated with 200, and progress was being made.
- 71.** An Employer participant from India stated that they had created a private employment agencies federation in June 2011, but recognized the need for change in Indian legislation, with 56 labour laws that she considered outdated and that lacked enforcement. They had been invited to work with the Government to recommend how to move jobs from the informal to the formal economy. They were cooperating with the Government and as there were over 50,000 trade unions in India, they were seeking better organization of the

unions. The agencies were working to promote vocational training, apprenticeships and higher learning and were creating jobs through their skills development efforts.

72. The Worker spokesperson acknowledged that the Employers had chosen examples worldwide and thanked them for that. She stated she was somewhat confused by the contrast between what the Employers had been saying in the discussion, and the conditions her group was facing in the real world, but she would try to address them. The differences between countries were huge. The Employers had mentioned that they represented more than 26 different sectors, and that the triangular relationship was an essential element of the agencies' business. Real collective bargaining was needed, and a complete picture of what was happening in the agencies was also required. Meaningful collective bargaining was needed in the agency industry. The basic idea of trade unions and collective bargaining was to bring workers together, but the principal characteristic of employment relationships of agency workers was fragmentation. It was extremely difficult to organize workers in trade unions when there were several different agency employers and a user enterprise at one workplace, and when relationships between employers and agency workers could easily be terminated from one day to the next. Even in the Netherlands, agency workers were fired because they tried to organize collectively, and this happened all around the world. The real bargaining concerning agency work now took place between the user company and the private employment agency. In future, all the social partners should be involved in collective bargaining, including user-enterprise unions and employers' representatives. She compared the employers' "fair treatment" and the ILO's equal treatment concepts, and suggested that the Forum should prefer "equal treatment". It was important to guarantee that agency workers had full access to pensions systems, social security, training and safety.
73. A Worker participant from Turkey observed that Turkish trade unions were critical about agency work, and that two of them had tried to start collective bargaining with agencies. The Union of Retail Commerce Workers launched a campaign in 2009 to recruit part-time workers, workers on call and temporary agency workers in order to negotiate collective agreements, but their activities around agencies were stopped by violence and the courts. Another union had recruited the vast majority of young agency workers distributing two newspapers in Istanbul from 6 a.m. to 10 p.m.; and wanted to negotiate on wages, working conditions, annual leave, safety and health and so on, but both the newspaper and the agency refused bargaining rights, took no responsibility for any labour problems and dismissed 250 workers. While the Turkish CIETT affiliate ÖİBD (Association of Private Employment Agencies) represented 16 private employment agencies, it was impossible to find even 16 agency workers in Turkey who were allowed to join a trade union because they were prevented from organizing. He highlighted that there were problems with talking of ratifying ILO Conventions. Turkey had ratified Conventions Nos 87 and 98, but he argued that these were not implemented effectively and therefore workers could not enjoy fundamental trade union rights. Joining a union, collective action or just asking for one's rights led to dismissal from employment. He concluded that the Workers did not want to start discussing ratification of Convention No. 181 until they had finished ensuring the application of Conventions Nos 87 and 98.
74. A Worker participant from the ICEM suggested that Convention No. 158 be added to the conclusions or points of consensus as well. He recalled that a representative of RENGO in Japan had mentioned, a few weeks previously, how they had reached tripartite agreement to remove private employment agencies from manufacturing. He highlighted problems of precarious and unregulated agency work. He confirmed that the ILO did not determine bargaining structures, which varied greatly around the world. It was presumptuous to say that the ILO had determined that the private employment agencies industry was a sector, and that therefore it needed its own collective bargaining system. Bargaining structures should not be unilaterally determined by one party, but developed through consultation with employers and trade unions. There was an enormous difference between ratification

of, and respect for, a Convention, and that many Conventions were ratified by ILO member States but then violated every day. Ratification did not mean that all problems were thus resolved, as had clearly been brought out in the current discussion. It was essential to recognize that everyone who was relevant to, and was influencing, the collective bargaining process at the workplace should be represented or involved in the bargaining.

- 75.** A Worker participant from France thanked the Employers for the social dialogue, but stated that agencies often abused their position. An agency worker that replaced a regular employee was effectively being employed by the user enterprise. In fact, the Workers' group was involved in this Forum in order to improve working conditions for agency workers and their co-workers. However, if temporary workers were to ask for permanent contracts or about their rights, they risked never again being considered for another agency job – “blacklisting”. For women returning to work, agency employment provided opportunities but they were still precarious. She also mentioned precarious work and posed the following question – when there was a collective agreement in a sector or workplace, who was aware of such agreements? Perhaps the permanent staff, but the temporary agency workers were unlikely to know of them. What should be done about triangular agreements? It was very difficult to act in workplaces where agency workers could be fired at will and where neither regular nor temporary workers were fully informed about the employment situation.
- 76.** A Worker participant from the United Kingdom stated that the fundamental problem with promoting social dialogue at enterprise level regarding agency work was about who held the power to make decisions. The relationship between individual workers and their immediate employer was an unequal one in which the employer held all the cards, as was illustrated by the example of temporary agency workers in the London hotel industry. Social dialogue could be an exchange between equals only after a balance of power was achieved. Therefore, in order to achieve “full” social dialogue in a triangular relationship, access had to be gained to the real power held by the end user. Meaningful dialogue was only achievable with the direct involvement of user enterprises, which would promote social dialogue at enterprise level regarding agency work.
- 77.** The Secretary of the Workers' group told the story of the IUF and Unilever in Pakistan as an example of a positive outcome. Some four years ago, when the IUF began trying to organize precarious workers at Unilever in Pakistan, it was possible to read on the company's website that Unilever provided “direct and indirect” employment to 8,000 people. But of the thousands of workers in Pakistan only about 300 were direct employees while the rest were employed by a multiplicity of private employment agencies. Since overall employment levels had not changed and the jobs were the same, it was clear that the company had been replacing direct workers by agency workers despite the many assertions heard during this Forum that permanent jobs were not being replaced by agency jobs. These workers, who received a fraction of the wages and benefits of permanent workers were not employed by “rogue agencies” but by legally registered labour contractors in full compliance with the regulations. Since they were excluded from membership in a union of permanent workers, they were outside the bargaining unit and therefore effectively unable to exercise their rights. Initially, there was resistance from private employment agencies and from Unilever to assume their responsibilities; the agencies claiming that they could do nothing, and Unilever stating that the agency workers were not their employees and not their problem. The solution was only found after Unilever dropped the fiction that the user enterprise had no influence on agency workers' employment conditions. One could not hope that simply by ratifying Convention No. 181 a country would solve this type of problem. He therefore urged all participants to engage in meaningful dialogue, negotiation and research on temporary agency work and its impact on the wider world of work, where the importance of user enterprises and the impact of agency work on the workforce as a whole would be given much greater attention.

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78. The Government representative of Switzerland noted that the Forum's objective was indeed to discuss and understand the different opinions of social partners. Therefore, she invited the Worker and Employer participants to go beyond presenting their views by engaging in dialogue to find elements of consensus. In May 2008, representatives of Swissstaffing and the trade union Unia had successfully negotiated the collective agreement for temporary workers; its further extension was currently being examined by the competent federal authority. If the conditions were met, it could subsequently become applicable to a wider range of temporary agencies. Regarding workers' protection, the collective agreement included some improvements. It set the minimum wage for agency workers and established additional monitoring of pay, terms and conditions. The ILO should research national systems for promoting social dialogue in the context of agency work.
79. The Government representative of the Netherlands remarked that temporary agency work played an important role in the Dutch economy and provided an essential role in combining flexibility with some security in responding rapidly to changes in personnel demand. Temporary work agencies helped unemployed people to get a job; therefore the agencies could be described as stepping stones. However, he also highlighted problems associated with temporary work agencies. A high level of consensus would be needed from Employers, Workers and Government in order to tackle these problems and improve enforcement of the regulations. There were about 5,000–6,000 fraudulent or illegal temporary agencies in the Netherlands (especially catering for migrant workers), a serious problem that was being tackled in various ways. First, the EU Directive on temporary agencies was currently being implemented in all EU Member States. Secondly, the position of temporary agency workers had to be strengthened, partly by making proposals to hold user enterprises responsible for choosing the wrong agencies and also by obliging user enterprises to work only with temporary work agencies registered with the Chamber of Commerce. Fines for non-compliance were very high, for example if ten infringements were identified in a user enterprise, then there would be a fine of €80,000 and for repeated offences the fines would double. Unregistered temporary agencies also faced very high fines – the goal was to eliminate the 5,000 illegal agencies, which could be achieved only in cooperation with employers and workers.
80. The Government coordinator commented that social dialogue was a process of give and take that streamlined the world of work through constructive and mutually beneficial exchanges. He noted that Government representatives expected that by practicing social dialogue not only at enterprise and national level, but also at global dialogue forums such as this one, governments and the social partners would continue to constructively engage in collaborative problem solving. This had to remain a dialogue, never an imposition of one's own convictions and methods.
81. The Employer spokesperson commented that there was an excessive focus on the bilateral nature of employment relationships in much of the analysis of the world of work, and that there was a need to consider the role of agencies that constituted the triangular relationship. Agencies brought supply and demand together, which was a more balanced way of looking at the world of work these days. He referred to Article 12 of Convention No. 181, highlighting its utmost importance. More ratifications were needed, as this would give countries the possibility to rethink the responsibilities of the parties involved in the triangular relationship. When referring to social dialogue, one needed to recognize diversity at national level. In some countries, workers could be fired from one day to the next; but that was not the case in all countries. He noticed some contradictions in the Workers' statements – while they demanded that more responsibilities should lie with user enterprises, they also claimed that it was not for the participants to this ILO Forum to decide who should negotiate employment conditions. However, it was clear that national law and practice usually determined this issue. He commented that the case at Unilever mentioned by the Secretary of the Workers' group might not have happened had Pakistan

ratified Convention No. 181. The only real point on the agenda was achieving more ratifications of Convention No. 181 and ensuring enforcement of existing regulation based on its provisions.

82. The Worker spokesperson disagreed with the idea that there was only one item on the Forum's agenda: it was necessary to keep a broad focus and consider all countries in order to assess the full impact of agency work, which was the heart of the problem. Ratifying a Convention did not mean that conditions would be improved, citing the examples of Pakistan and Turkey. Ratification of a Convention was a project, which continued after ratification, because implementation was crucial. There was a difference between law and practice, that was why people needed to organize themselves and exercise their rights; even if standards were ratified, much work was still needed to implement and fulfil them.

83. The Chairperson noted that the participants had just witnessed a good example of lively, constructive and interesting social dialogue in action on many sensitive issues. He invited them to continue the dialogue and work started in the Forum by staying in contact with other participants. He summarized the consensus, thus:

- There is broad agreement on the importance of social dialogue and collective bargaining relating to the private employment agency industry on the part of governments, private employment agencies, user enterprises and trade unions. It should involve all social partners in the triangular relationship.
- Collective agreements are a key outcome of social dialogue and should cover the whole range of terms and conditions of employment, social protection, training, dispute resolution and other areas. These agreements can be reached at national, sectoral and at the enterprise level (private employment agencies and user enterprises). Some of these levels may overlap.
- While ratification of Convention No. 181 and other relevant international labour standards is desirable and should be widely promoted, there is a great need to ensure effective implementation and enforcement of standards and principles and rights at work. Practical solutions based on social dialogue and tripartism imply by definition the need to recognize all social partners.

84. He summarized the points on which consensus was not reached, thus:

- The private employment agency industry should be considered as a sector, and as such it should have sectoral social dialogue and collective bargaining, without restrictions on the agency employers' right to bargain.
- Triangular employment relationships cannot ensure social dialogue on an equal footing. Fragmenting bargaining units can jeopardize effective social dialogue.

85. He summarized the points for ILO action, thus:

- The ILO should contribute to an increase in the knowledge base through research on regulation and monitoring of agencies in developed and developing country workplaces. This should include research on good practices and lessons learned, and should serve to promote Convention No. 181 with reference to varied national employment conditions and different kinds of private employment agencies. This research should also cover the impact of temporary agency work on national labour markets. Greater understanding is needed on the role of private employment agencies in the observance of fundamental principles and rights at work and in triangular employment relationships in general.

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- Further dialogue at the ILO about the impact of temporary agency work should be based on reliable research and data in countries around the world. Such dialogue should aim at reconciling views of stakeholders on temporary agency work and triangular relationships. The ILO should commit itself to rigorously promote the ratification and application of relevant international labour standards, including Conventions Nos 87 and 98 as well as Convention No. 181 and others. The ILO should engage in institutional capacity building of workers' and employers' organizations at the national level to guarantee effective social dialogue.

Closing session to discuss draft points of consensus—suggestions for ILO action

86. The Chairperson noted that a document containing Draft points of consensus and points on which no consensus could be reached (GDFPSS/2011/7) had been distributed to the groups earlier. However, owing to difficulties for the Employers' group to analyse all 28 paragraphs they had proposed and the Workers' group had agreed – during an informal meeting of the Officers of the Forum – to the suggestion that the Chairperson prepare shorter conclusions, focusing on five topics (plus an introductory⁶ paragraph) as a basis for discussion in the plenary. However, the Government group had commented that they would have preferred to keep to the 28 paragraphs which they had found useful. The 28 paragraphs were based on the points of consensus and non-consensus as formulated at the end of each session. The five points were:

- (1) The points of consensus of the Workshop to Promote Ratification of the Private Employment Agencies Convention, 1997 (No. 181), which was held in October 2009, are confirmed.
- (2) In so far as private employment agencies are employers, they should be recognized as such and as legitimate social partners in social dialogue. User enterprises could be included as social partners according to national law and practice. Meaningful social dialogue on issues related to agency work should strengthen the exercise of freedom of association and collective bargaining.
- (3) Ratification and effective implementation of Conventions Nos 87, 98 and 181 should be promoted as well as implementation of Recommendations Nos 188 and 198. Convention No. 181 and Recommendation No. 188 provided a framework for regulation and monitoring at the national and sectoral levels. Consequently, regulation had a promotional role which had to allow efficient application involving government and social partners on an equal footing. All of this should be put in place through social dialogue.
- (4) The ILO should expand the knowledge base through research on regulation and monitoring of agencies in developed and developing country workplaces. This should include research on good practices and lessons learned, and should serve to promote Convention No. 181 with reference to varied national employment conditions and

⁶ “Government, Employer and Worker representatives participated in the Global Dialogue Forum on the Role of Private Employment Agencies in Promoting Decent Work and Improving the Functioning of Labour Markets in Private Services Sectors, held at the ILO, Geneva, 18–19 October 2011. The Forum was called to develop consensus-based recommendations on the role of private employment agencies, specifically in private services sectors, in improving the functioning of labour markets and in promoting decent work through the expansion of protection for temporary workers. The Forum developed consensus on the following:”.

different kinds of private employment agencies. This research should also cover the impact of temporary agency work on national labour markets. Greater understanding was needed on the role of private employment agencies in the observance of fundamental principles and rights at work and in triangular employment relationships in general. Further dialogue at the ILO on the impact of agency work should be based on reliable data throughout the world. The research should contribute to ensuring that the dialogue should reconcile the views of stakeholders on temporary agency work and triangular relationships. The ILO should commit itself also to rigorously promote the ratification and implementation of relevant labour standards, including Conventions Nos 87, 98 and 181 and others. The ILO should strengthen the institutional capacity of the social partners at the national level to guarantee effective social dialogue.

- (5) The Forum recommends that the ILO organize a meeting of experts on the role of private employment agencies in promoting decent work within three years. In this context, the Forum recognizes the importance of social dialogue and collective bargaining on the private employment agency industry. Such dialogue should bring together governments, private employment agencies, user enterprises and trade unions. It should involve *all* social partners in the triangular relationship.

87. The Worker spokesperson stated that the Workers' group was fully prepared to discuss the 28 points. However, the group could not accept the proposed wording in a number of areas because the language was significantly different from what had been agreed regarding the five points during the discussion in the Officers' meeting. Regarding the draft point 2, for example, the proposed first sentence had been "In so far as private employment agencies are employers, they should be recognized as legitimate partners in the social dialogue." In the version just presented, "should" had been replaced by "have to". In the second sentence, the following had been proposed as a basis for discussion: "User enterprises should be included as social partners" – but the word "should" had been replaced by "could". This sentence, which had been agreed to as the basis for a discussion on consensus, had subsequently had the phrase "according to national laws and practice" added to it. This had never been discussed and the additional wording presented problems because it significantly altered the meaning. The Workers' group had stressed the importance of including user enterprises and trade unions of workers in those enterprises in the social dialogue. She proposed the following additional sentence after "... strengthen the exercise of freedom of association and collective bargaining." at the end of the second paragraph: "It must include user enterprises and trade unions representing workers at user enterprises". That amendment needed to be included; otherwise, it would be difficult for the Workers' group to accept the proposals made by the Chair. That sentence and the previous one beginning with "Meaningful social dialogue" had been understood to be a separate point, after the first two sentences of that point. Concerning the proposal for research (point 5), the Workers' group had proposed including research on the meaning, application, scope and impact of Convention No. 181. That was not in the current draft point 5, and should be restored. They were disappointed to end up with only five points, but thought that the Employers' proposals should be seriously considered if discussions could lead to any consensus.

88. The Government coordinator considered that his group had long been neglected in the Forum's social dialogue process. They should be on equal footing with Workers and Employers. While his group had been putting the finishing touches to the 28-point document, they were offended that they had not been included in the informal discussions between Workers and Employers. Governments had an important role in registration, regulation, monitoring and control of private employment agencies and had the obligation to report on those issues to the ILO; and Governments would be the ones called to account if they did not fulfil their obligations. The least that Governments should expect from the social partners in the Forum was that they would be accorded equal treatment.

Governments would be very disappointed if the Forum were to end with nothing in terms of conclusions. He hoped that the Forum could still provide at least a roadmap for ILO action on temporary agency work for the next three years.

89. The Employer spokesperson noted that they had discussed, together with the workers, how to draw five points from the original 28-point text. Both groups still had concerns about some details, but the Workers' proposed change was – in their view – unacceptable, as it hampered the right of collective bargaining of the agency work sector.
90. The Worker spokesperson noted that in the bipartite informal meeting of the officers of the Forum that had just taken place, the Worker and Employer groups had concluded that they could agree to discuss the five-point document as it had been formulated in the officers' meeting and as a package deal. The text currently presented to the Forum was however different from what had been discussed in the officers' meeting. They needed to check it carefully against what had been agreed, since it constituted a package deal in which the Workers' group required agreement on the recognition of the role of user enterprises and trade unions of workers in those user enterprises in social dialogue on agency work.
91. The Chairperson noted that the social partners and the colleagues from the Governments appeared to be prepared to discuss the five proposed paragraphs so that after copies of the written text had been distributed to all participants the plenary discussion could resume. However, he announced that as the Forum had overrun its schedule, there would no longer be any interpreters available, so the debate would have to continue in English only, and would revise the English text.
92. Following resumption of the plenary, the Worker spokesperson thanked the Office for their quick work. However, the Workers rejected the phrase regarding "confirmation" of the October 2009 Workshop points of consensus – they could not be "confirmed" by her group or included, since the Forum had not discussed them. Regarding the second paragraph, she suggested inserting a full stop after "as social partners", thereby deleting the phrase "according to national laws and practice" because it had not been discussed at the officers' meeting and would significantly constrain the involvement of user enterprises and unions.
93. The Government coordinator thanked the Chairperson and the Office for their efforts. He added that according to the mandate given to the participants by the Governing Body, the Forum could also provide consensual guidance. The preamble stated that "The Forum was called to develop consensus-based recommendations.", but the Forum's mandate also included providing guidance for action at the enterprise, sectoral, national and international levels and by the ILO.
94. The Employer spokesperson said that if there was no recognition of the previous achievements embodied in the 2009 Workshop points of consensus, then from the Employers' side the discussion on point 2 was meaningless.
95. The Chairperson noted that the Forum had tried to reach consensus on point 1 and if there was none, he suggested changing the text to read "considered" in place of "confirmed". He had already advised the Government and social partners' group Chairpersons that the Forum's participants ought not to go home empty-handed – if this happened, this would have dire repercussions for sectoral activities. He cautioned that as a Government representative he had spent the taxpayers' hard-earned money and thought that all governments expected a fruitful consensus. This was not the end of the discussion. If a report were given to the Governing Body that stated that this Forum had produced no outcome, there would be a financial impact on SECTOR.
96. The Worker spokesperson suggested that the 2009 Workshop conclusions could be referred to in the preamble.

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97. The Chairperson proposed changing the last sentence of the preamble, to read: “The Forum took note of the points of consensus of the Workshop to promote ratification of the Private Employment Agencies Convention, 1997 (No.181), held in October 2009, and developed consensus on the following:”.
98. The Employer spokesperson suggested amending the second paragraph to insert “on both sides” after “collective bargaining”, to read: “Meaningful social dialogue on issues related to agency work should strengthen the exercise of freedom of association and collective bargaining *on both sides*.”
99. The Worker spokesperson requested clarification as she did not understand what the employers meant by the addition of “on both sides”.
100. The Employer spokesperson clarified that this addition could strengthen right to freedom of association for the employers. In some countries, they were not allowed to establish employers’ organizations and that they wanted to strengthen their capacity to negotiate and engage in collective bargaining.
101. The Worker spokesperson suggested an explicit reference to Conventions Nos 87 and 98 there.
102. The Chairperson repeated the proposal regarding the second paragraph – to delete “according to national law and practice” and the last sentence, while adding “on both sides” to the end of the second sentence.
103. The Worker spokesperson stated that the Workers’ group fully accepted the proposals of the Chairperson concerning the preamble and deleting the phrase “according to national law and practice”. She considered that the amendment “on both sides” was unnecessary – freedom of association and collective bargaining already had two sides.
104. An Employer participant from CIETT proposed that the words “on both sides” be placed after the word “strengthen”, to read “Meaningful social dialogue on issues related to agency work should strengthen *on both sides* the exercise of freedom of association and collective bargaining”.
105. The Worker spokesperson remarked that the amendment was superfluous and repeated that two parties were obviously necessary for collective bargaining.
106. The Employer spokesperson commented that, if consensus could not be reached on the point of strengthening the exercise of freedom of association and collective bargaining for both workers and employers, it would be perceived from the Employers’ side as a lack of recognition of the rights of private employment agencies, as employers, to negotiate the working conditions of their own employees – the agency workers. Without the acknowledgement of this right, it would be meaningless to continue discussion on the remaining paragraphs.
107. The Government coordinator commented on the Employers’ wish to be recognized as a sector, saying that this Forum – and the 2009 Workshop – already did this.
108. An Employer participant from CIETT responded that at the ILO, private employment agencies had indeed already been recognized as a sector, but such recognition was not accepted in most countries. That was why they wished to keep the sentence “In so far as private employment agencies are employers, they should be recognized as such and as legitimate social partners in social dialogue.” He suggested deleting the sentence “It must include user enterprises and trade unions representing workers at user enterprises”.

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- 109.** The Worker spokesperson responded that the inclusion of user enterprises and user enterprise trade unions in social dialogue on agency work was of fundamental importance. The Workers had accepted the Employer proposal to limit the possible consensus text to five points, had agreed to include a reference to the 2009 consensus points (despite the fact that they had not even been discussed), and had accepted the Employers' points on collective bargaining. They had accepted these as being of fundamental importance to the employers, but the Employers were not willing to accept the Workers' fundamental concern on the role of user enterprises and their trade unions. She asked the Employers to retain the reference to user enterprises and trade unions, thereby recognizing their viewpoint as well.
- 110.** The Employer spokesperson responded that such reference could be maintained in the text if the words "must include" were to be changed into "could be included as social partners according to national law and practice".
- 111.** The Worker spokesperson stated that her group was very disappointed with the Employers' statement that no consensus could be reached, since the Workers' group had accepted several proposals from the Employers in order to reach consensus, all of which were of fundamental importance to employers; but the Employers were, however, not willing to accept the fundamental concerns of the Workers' group.
- 112.** The Secretary of the Workers' group commented on the substantial progress made at this Forum, and the excellent work of the Chairperson in capturing, with the 28 points, the essentials of the discussion. He stressed that in most countries there were no "national laws and practices" on agency work, so the phrase "User enterprises could be included as social partners according to national law and practice" made little sense. This was precisely the reason why the Workers considered that it was important to discuss the issue at the international level. It was for this reason that the Workers would not accept the Employers' suggested formulation.
- 113.** The Chairperson confirmed that no consensus had been reached on these texts, nor had the Forum opted to agree to consider them as "points on which no consensus had been reached". Because of the failure to reach consensus, there would not be any discussion on the further points. Document GDFPSS/2011/7 could be submitted (in its short or long version), as an informal document, because the Forum had concluded with no consensus.
- 114.** The Secretary of the Employers' group expressed his concern regarding the way the final report of the Forum might be drafted, stating that the five-point document should not appear as draft consensus in that final report of the discussion.
- 115.** The Executive Secretary responded that it would be problematic for the Office to report on detailed discussions currently taking place about specific wordings without making detailed reference to (or directly quoting) the five-point document being discussed.
- 116.** The Secretary-General explained that it would be possible to record in the report the debate without publishing the five-point draft consensus points as a separate annex, and to refer to various points that had been made, but without going into unnecessary details.
- 117.** The Government coordinator felt that the Worker and Employer participants had brought very little to the attempt to develop a consensus. He asked if the ILO would arrange a meeting of experts on the role of private employment agencies in promoting decent work within the following three years, as mentioned previously, or the present Forum would be the end of such discussions. He felt like the participants were shooting themselves in the foot.

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- 118.** The Chairperson explained that it was for the Governing Body to decide whether such a meeting would be arranged, but he could anticipate that decision, as no output would be delivered from the present Forum. He called on the parties to consider expressing their views in the forthcoming Governing Body session. The proposal would be reflected in the final report of the discussion of the Forum, and would illustrate that the participants had done everything to reach a consensus.
- 119.** The Secretary of the Workers' group stated that his group did not feel that the Forum had been a waste of time. Real issues had been debated in a frank and open way among the three groups, and the discussions had been rich. He again thanked the Chairperson for his excellent work in accurately identifying the key issues at the heart of the debates. His group would be extremely disappointed if the suggested points did not appear in the report, and explained that even though the parties had not agreed with everything, it should be indicated where consensus had been reached and where it had not. It would be a harmful precedent for the ILO if the five points of proposed consensus, as discussed, were to be thrown down a memory hole.
- 120.** The Government coordinator stated that the Governments' suggestions had not been taken on board at all. He requested that the record reflect his opinion that the participants had broke nothing but the silence, that they had taken nothing but photographs, and that they had left nothing but their fingerprints. He believed that the failure to reach any conclusions would mean that there would be no future sectoral meetings on private employment agencies. The Governing Body would certainly not look favourably on the fact that the Forum had produced no output.
- 121.** The Secretary of the Employers' group wished to clarify that the Employers were willing to continue discussions, even though agreement had not been reached in the present Forum.
- 122.** The Worker spokesperson noted that the Workers were also willing to continue discussions – their group was very disappointed that the participants could not find a consensus, as much work had been invested in the Forum by all sides.
- 123.** The Employer spokesperson remarked that the Employers were also disappointed that no agreement could be reached. The atmosphere had changed since the 2009 Workshop. The Employers had come to the Forum in a spirit of cooperation, the Workers had not. He thanked the Chairperson, and declared that even though no consensus had been found, the Chairperson had been excellent.
- 124.** The Chairperson thanked everyone and agreed that the Forum had not been easy. However, it had provided a very good opportunity to foster a broader understanding of how agency work was perceived in different countries and within the Employers', Workers' and Government groups, and the reflections over the two days of the Forum could help guide future work, even if no consensus had been reached.

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Miembros representantes de los trabajadores

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