



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

Report of the Committee on the Application of Standards

PART ONE

GENERAL REPORT

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A. Introduction

1. In accordance with article 7 of the Standing Orders, the Conference set up a Committee to consider and report on item III on the agenda: “Information and reports on the application of Conventions and Recommendations”. The Committee was composed of 218 members (118 Government members, four Employer members and 96 Worker members). It also included 14 Government deputy members, 81 Employer deputy members and 128 Worker deputy members. In addition, 33 international non-governmental organizations were represented by observers.¹

2. The Committee elected its Officers as follows:

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

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

Reporter: Mr Christiaan Horn (Government member, Namibia)

3. The Committee held 17 sittings.

4. In accordance with its terms of reference, the Committee considered the following: (i) information supplied under article 19 of the Constitution on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference; (ii) reports supplied under articles 22 and 35 of the Constitution on the application of ratified Conventions; and (iii) reports requested by the Governing Body under article 19 of the Constitution on the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), the Income Security Recommendation, 1944 (No. 67), and the Medical Care Recommendation, 1944 (No. 69).² The Committee was also called on by the Governing Body to hold a special sitting concerning the application by Myanmar of the Forced Labour Convention, 1930 (No. 29), in application of the resolution adopted by the Conference in 2000.³

Work of the Committee

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

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

² Report III to the International Labour Conference – Part 1A: Report of the Committee of Experts on the Application of Conventions and Recommendations; Part (2): Information document on ratifications and standards-related activities; Part 1B: General Survey concerning Social Security and the Rule of Law.

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

Experts on the Application of Conventions and Recommendations and to the information document on ratifications and standards-related activities. During the first part of the general discussion, the Committee also considered its working methods with reference being made to a document submitted to the Committee for this purpose.⁴ A summary of this part of the general discussion is found under relevant headings in sections A and B of Part One of this report.

6. The second part of the general discussion dealt with the General Survey concerning social security and the rule of law carried out by the Committee of Experts. It is summarized in section C of Part One of this report.
7. Following the general discussion, the Committee considered various cases concerning compliance with obligations to submit Conventions and Recommendations to the competent national authorities and to supply reports on the application of ratified Conventions. Details on these cases are contained in section D of Part One of this report. The adoption of the report and closing remarks are contained in section E of Part One of this report.
8. The Committee held a special sitting to consider the application of the Forced Labour Convention, 1930 (No. 29), by Myanmar. A summary of the information submitted by the Government, the discussion and conclusion is contained in Part Three of this report.
9. During its second week the Committee considered 25 individual cases relating to the application of various Conventions. The examination of the individual cases was based principally on the observations contained in the Committee of Experts' report and the oral and written explanations provided by the governments concerned. As usual, the Committee also referred to its discussions in previous years, comments received from employers' and workers' organizations and, where appropriate, reports of other supervisory bodies of the ILO and other international organizations. Time restrictions once again required the Committee to select a limited number of individual cases among the Committee of Experts' observations. With reference to its examination of these cases, the Committee reiterated the importance it placed on the role of the tripartite dialogue in its work and trusted that the governments of all those countries selected would make every effort to take the measures necessary to fulfil the obligations they had undertaken by ratifying Conventions. A summary of the information submitted by governments, the discussions, and conclusions of the examination of individual cases was contained in Part Two of this report.
10. With regard to the adoption of the list of individual cases to be discussed by the Committee in the second week, the Chairperson of the Committee announced that a provisional final list of individual cases, in relation to which the Committee of Experts had placed a double footnote, was now available.⁵ He stressed that the Officers of the Committee expected to complement this list subsequently with additional cases. As in previous years, the Committee intended to examine the cases of 25 member States, in addition to the Special Sitting concerning Myanmar (Convention No. 29).
11. Following the adoption of the final list of individual cases⁶ by the Committee, the Worker members emphasized that, although it had always been difficult to draw up the list of

⁴ Work of the Committee on the Application of Standards, ILC, 100th Session, C. App/D.1 (see Annex 1).

⁵ ILC, 100th Session, Committee on the Application of Standards, C. App./D.4/Add.1.

⁶ ILC, 100th Session, Committee on the Application of Standards, C. App./D.4/Add.1(Rev.) (see Annex 2).

individual cases, the experience this year had proved to be exceptionally difficult. The preliminary list of cases communicated to governments in May 2011 had been the product of a compromise between the concerns “of” and “within” the Workers’ group and the Employers’ group. However, a change had been seen over recent years in the approach adopted by the Employer members to the work of the Committee. In 2010, they had challenged a large number of commonly accepted principles recognized as safeguards for the Committee’s work, and they had indicated that tripartite governance in supervising the application of standards was jeopardized. Indeed, in that process, a significant amount of responsibility was incumbent on the social partners entrusted with the practical operation of the Committee, including drawing up the list of individual cases. The list had to be established jointly and the rule that held sway could not be that one of the parties always had to give way to the other. And yet it was becoming ever more difficult to reach consensus. The Worker members wanted priority to be given to the most serious cases and the most flagrant violations of workers’ rights. The Committee’s mission was to participate in supervising the application of ratified Conventions free from any pressure of an ideological nature or related to internal politics in the countries concerned. Very careful preparatory work had been carried out within the group with a view to submitting the most balanced possible list. Out of respect for that work, the Worker members wished to provide certain explanations concerning the two major absentees from the list of individual cases, namely Japan and Colombia.

12. The inclusion of a case on the list constituted a clear signal to the government concerned that the situation in relation to compliance with ILO Conventions could not continue on its territory. It provided an indication that the international community was aware of a situation of disregard for workers’ rights. However, even though the case of Japan was not on the list in relation to the Forced Labour Convention, 1930 (No. 29), the Government’s representatives could not return home with a feeling of impunity. Already in 2009 and 2010, it had not been possible to include the case on the list, despite the efforts made by the Worker members to propose a compromise. There still remained in Korea today 74 survivors over 85 years of age. The respect due to those women and to those still living in Japan, made it necessary to seek an alternative solution with the collaboration of the Government, employers and the Office, for purely humanitarian reasons.
13. Furthermore, Colombia had been on the preliminary list for the Labour Inspection Convention, 1947 (No. 81), which was a governance Convention that was essential for the application of other Conventions. However, the Employer members had refused the inclusion of the case on the list. For many years, there had been serious problems in Colombia of non-compliance with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but the last report of the Committee of Experts did not contain an observation on the application of that Convention in Colombia. In its General Report, the Committee of Experts indicated that it preferred to make a full evaluation of the application of the Convention when it had available to it the report of the high-level tripartite mission that was due to visit the country in February 2011 and when it had received the Government’s detailed report on the application of Convention No. 87, which was due in 2011. The Worker members expressed disagreement with the approach adopted by the Committee of Experts and emphasized that trade unionists continued to be murdered and that impunity persisted in the country. The Worker members, whose spokesperson had participated in the high-level tripartite mission, fully supported the conclusions contained in the mission report. They approved the draft list of individual cases and called for the conclusions of the high-level tripartite mission to be read out to the Committee, as they constituted an important tool for its role of supervising the application of standards.
14. The Employer members agreed with the Worker members that the adoption of the list of individual cases had been particularly difficult this year. In recent years, the adoption of this list had become more difficult partly because of the introduction of the preliminary long list

of individual observations. Instead of being put together from the bottom up, the list needed to be reduced by up to 20 cases which was harder to do. In this regard, it had to be noted that 25 observations had to be selected from the over 800 observations made by the Committee of Experts, half of which related to the application of Conventions Nos 87 and 98. The Employer members would have liked to see more cases relating to the application of technical Conventions and of the fundamental Conventions related to forced labour, discrimination and child labour. Moreover, while recognizing the importance of fundamental Conventions for workers' rights, the Employer members observed that 80 per cent of the cases on the list related to fundamental workers' rights to the exclusion of other important technical ILO standards such as those relating to the protection of wages and hours of work.

15. Each member of the Committee had different priorities. A case could not be discussed without there being a specific observation in the report of the Committee of Experts. This year, there was no observation on Colombia with respect to the application of Convention No. 87. Therefore, the Committee could not discuss this case. The proposal to discuss Colombia with respect to the application of Convention No. 81 was simply a pretext to discuss Convention No. 87. Colombia was a country that, especially since 2005, had done everything the ILO and ILO tripartite missions had asked of it, and addressed additional freedom of association issues that were part of a Free Trade Agreement. Moreover, with respect to labour inspection, the Government was in the process of greatly expanding the number of inspectors. No country was perfect but it was an abuse of the supervisory process and of this Committee to insist continually on the discussion of a case with respect to which the Government was moving positively and rapidly in response to the ILO supervisory process.
16. A similar logic applied to the case of Japan, for which, notwithstanding the continued observations by the Committee of Experts, it had been recognized that everything that could be done had been done. There were no current violations regarding "comfort women", which had been recognized by suggestions made last year and this year that there would be a first, last and final discussion of this case in this Committee. The Government had fulfilled all its obligations following the end of the Second World War and this had been recognized by the Committee of Experts in its 2001 observation. The Government had apologized with sincerity and remorse several times over the years. It had provided almost 946 billion yen to several Asian countries during the 1950s and the 1960s as reparations, and an Asian Women's Fund had been established in July 1995 to provide support to former "comfort women". The Government had made significant efforts to support the fund with 4.8 billion yen until the dissolution of the fund in March 2007. This year the Government had taken further steps by meeting with the "comfort women" directly.
17. Further to the request of the Worker members for the conclusions of the high-level tripartite mission that had visited her country in February 2011 to be read out to the Committee, the Government member of Colombia sought clarification regarding the Committee's procedures. She recalled that the work of the Committee was based on the report of the Committee of Experts, which intended to assess the progress made and examine the report of the mission, together with the Government's submission, at its next meeting in November 2011. She therefore wondered how the conclusions of the mission report could be read out five months before they were to be examined and noted by the Committee of Experts. She reaffirmed the commitment of the Government of Colombia to pursue the recommendations made in connection with the mission.
18. The Deputy Legal Adviser to the Conference replied to the point raised by the Government member of Colombia as to the legal basis for providing information to the Committee on the conclusions of the high-level tripartite mission to Colombia. She recalled that, procedurally, the Committee was still engaged in the discussion of the General Report of the Committee of Experts. The Worker members had requested to hear the conclusions of the high-level

tripartite mission mentioned in paragraph 80 of the General Report of the Committee of Experts to which the Employer members had no objection so long as the substance of the conclusions were not discussed in the Committee. Since the mission took place in February 2011, the information could not have been included in the General Report itself. The reading of the conclusions would thus supplement the report and serve as a point of information to assist the Committee in the discharge of its mandate under article 7 of the Standing Orders of the Conference.

19. The representative of the Secretary-General read out the text of the conclusions of the high-level tripartite mission to Colombia.
20. Following the adoption of the final list of individual cases to be discussed by the Committee, the Employer and Worker spokespersons conducted an informal briefing for Government representatives. Following the working methods enumerated in Document D.1 (see Annex 1), the cases included in the final list were automatically registered. This year, the registration began with countries with the letter “F”.

Working methods of the Committee

21. The Chairperson announced, in accordance with Part V(E) of document D.1, the time limits for speeches made before the Committee. These time limits were established in consultation with the Vice-Chairpersons and it was the Chairperson’s intention to strictly enforce them in the interest of the work of the Committee. The Chairperson also called on the members of the Committee to make every effort so that sessions started on time and the working schedule was respected. Finally, the Chairperson recalled that all delegates were under the obligation to abide by parliamentary language. Interventions should be relevant to the subject under discussion and be within the boundaries of respect and decorum.
22. The Worker members welcomed the fact that the problems posed by the presentation of the list of 25 individual cases and by the lack of restraint of certain speakers had for the most part been resolved by the strict measures proposed with regard to time management. The Worker members were committed to respecting the new rules in that regard without, however, excluding the possibility of working on the Saturday of the second week. They nonetheless regretted that the limited time frame meant that it was impossible to discuss cases where progress had been recorded. The Committee of Experts’ ability to highlight instances of progress was the most effective way of focusing on the Committee’s work and analyzing its impact. It might be possible to arrange for those cases to be discussed separately under a new procedure, even if it meant an extra item on the agenda. The Employer and Worker members could then discuss cases that they found interesting independently of one another – though they could of course choose the same case if they wished. Proceeding along those lines would do justice to the work of the Committee of Experts, which once again at the present session had outlined in detail the general approach it had followed in identifying instances of progress and of good practice.
23. In their view, another important question was how, within a short time frame, to transmit a set of conclusions that were as substantial as possible to the Committee responsible for the recurrent item discussion. New avenues needed to be explored, and the Governing Body was to be congratulated on its decision in future to schedule the discussion of the General Surveys one year before that of the recurrent item on the same subject. The intention behind the change was for the General Survey discussion to be taken better into account in preparing the discussion on the recurrent item; it was a perfect illustration of how the ILO’s tripartite constituents sought to ensure the proper implementation of the 2008 ILO Declaration on Social Justice for a Fair Globalization, which was a forward-looking document in terms of the commitments and political choices of member States, their concerns about the

diminishing rights of workers and the desire to breathe new life into the ILO's standard-setting activities by introducing a mechanism for revising standards that was closely linked to the conclusions arrived at in discussing the General Surveys as well as to the 2008 Declaration.

24. The Government member of Austria, speaking on behalf of the group of the Government members of the Industrialized Market Economy Countries (IMEC), recalled that in 2010, the new phase of the Social Justice Declaration implementation process led the Conference Committee to synchronize the instruments to be studied under the General Survey with the yearly recurrent item. While appreciating the Office's efforts in elaborating improved questionnaires which resulted in an increased response rate and their better quality, IMEC suggested that in order to improve readability, it would be useful to strive for a shorter report and provide an executive summary. IMEC looked forward to the realignment of the reporting cycle in future years when General Surveys would be examined by the Conference Committee one year before the respective recurrent discussion, which would allow the Conference Committee's messages to receive better attention. IMEC hoped that this new approach would increase the impact of the standards system.

Homage to Mr Kurshid Ahmed

25. The Worker members wished to thank Mr Ahmed, the Worker member of Pakistan, for his significant contributions to the Committee as a long-standing member. Mr Ahmed deserved the respect of this tripartite Committee for his hard work in favour of decent work and for his commitment to workers' rights on this Committee, throughout the previous 39 years. The Chairperson joined the Worker members in thanking Mr Ahmed, a friend and colleague with whom he had worked within the framework of the Governing Body. The Employer members recalled Mr Ahmed's long-serving membership of the Committee, and expressed appreciation for his contributions, not only with regard to his own country, but to the discussion of all cases. His presence had been a constant force on the Committee and would be missed. Mr Ahmed thanked the speakers for the words of encouragement. He recalled that this Committee was a pillar of the supervisory system, and was essential to the respect of fundamental rights and the promotion of social justice. He underlined that the strengthening of the Committee must be continued, and that he looked forward to the good work of the Committee in the future.

B. General questions relating to international labour standards

General aspects of the supervisory procedure

26. First of all, the representative of the Secretary-General indicated that it was her privilege to bring to the Committee's attention important developments relevant to its discussion. She highlighted that this year marked the 100th Session of the Conference as well as the 85th anniversary of both this Committee and the Committee of Experts. The International Labour Standards Department had issued a publication, *The Committee on the Application of Standards of the International Labour Conference: A dynamic and impact built on decades of dialogue and persuasion*, to emphasize the significance of this Committee's work as an essential component of the ILO supervisory mechanism. She recalled that the supervision of standards, as well as their adoption, lay with the International Labour Conference and that this Committee was the supervisory body set up to fulfil a primary duty of the Conference. This Committee's role was unique in the overall architecture of the ILO supervisory system, vested with both the authority of the highest ILO tripartite body and the credibility of its

members who were actors in the real economy. Referring to the 1926 Conference resolution, which created this Committee and the Committee of Experts, she recalled that the complementarity between the work of both Committees was a core feature of the ILO supervisory system. It embodied the primary unique advantage of the ILO, its tripartite structure and its standards system, as recalled by the ILO Declaration on Social Justice for a Fair Globalization (2008). The preliminary legal examination of reports by an independent body prior to this Committee's tripartite examination was key to any serious effort at supervision.

27. The speaker indicated that the Committee of Experts had paid close attention to its relationship with this Committee and, in its General Report, had proposed reinforcing this relationship, through more in-depth exchanges of views on matters of common interest. This issue had been discussed during the special sitting with the Vice-Chairpersons of this Committee, and the Office would explore the possibilities for this purpose, taking into account the views of this Committee.
28. Turning to this Committee's working methods, the representative of the Secretary-General highlighted that, in the interest of an efficient, objective and transparent conduct of its work, this Committee had adapted its methods of work on the basis of tripartite dialogue and consensus. The achievements of the Tripartite Working Group on the Working Methods of the Conference Committee, which were reflected in document D.1, were the result of this process. In particular, it was proposed to continue the automatic registration of cases, as well as the new arrangements on time management. The Tripartite Working Group had also discussed the question of countries who registered after the adoption of the final list of cases, as well as further improvements in the adoption of this list to ensure a better balance between types of Conventions and among regions.
29. Regarding the General Survey, the speaker underlined that the current General Survey of the Committee of Experts on social security represented the second of the new generation of General Surveys under the Social Justice Declaration, aimed at ensuring the concrete impact of the regular supervisory bodies on the achievement of ILO objectives. The outcome of this Committee's discussion would be presented to the Committee for the Recurrent Discussion on Social Protection and the Tripartite Working Group had proposed changes to the working schedule of this Committee to allow for a genuine exchange in this regard. Concerning the substance of the General Survey, the speaker highlighted that it was the first time that the Committee of Experts had provided such a comprehensive survey on social security. One of the main added values of this General Survey was that it gave more legal precision and space to the definitions of some key principles of international social security law.
30. On the coordination of the subjects of General Surveys with those of the recurrent discussions, the representative of the Secretary-General recalled the decision of the Governing Body to have the General Survey discussed by the Conference Committee a year ahead of the recurrent discussion, to allow more time for the integration of the results of the discussion of the General Survey in the preparation of the recurrent discussion. She underlined that such changes were an exemplary case of the ILO tripartite constituency making adjustments to safeguard the implementation of the Social Justice Declaration.
31. Turning to the issue of supervision and technical cooperation, the representative of the Secretary-General highlighted the important actions that had been taken to ensure a more systematic integration between the work of the supervisory bodies and technical cooperation. This Committee had made more systematic references to technical assistance in its conclusions and where the Office had been able to provide sustained assistance, important progress had been made. However, this Committee and the Committee of Experts had emphasized that this integrated assistance needed to be stepped up. The Office had been invited by the Committee of Experts to examine ways of helping countries through technical

cooperation programmes aimed at strengthening the reporting capacities of labour ministries, and to focus more on the durability and quality of reporting. This past year, the Committee of Experts had highlighted the need for technical assistance in the case of 60 countries.

32. In this connection, the speaker announced that the Governing Body had approved, in March 2011, the allocation of US\$2 million to enable the International Labour Standards Department, in close collaboration with the other units concerned and the field offices, to put in place a follow-up to the comments of the supervisory system, regarding both reporting obligations and implementation of ratified Conventions. She indicated that this one-time allocation (for the 2012–13 biennium) would enable the Office to assist 20 member States to address their reporting backlog, and enable another 20 countries to begin to address some of the long-standing gaps in law and practice. This Committee, with the Committee of Experts, would play a major role in the design and review of the results of this initiative and the selection of countries, which should be mainly based on criteria such as regional balance and political commitment, would be informed by this Committee's work.
33. With a view to highlighting the important role of the supervisory bodies in informing the Office of the priorities for technical assistance, the representative of the Secretary-General referred to the follow-up to the report of the Commission of Inquiry established to examine the complaints concerning the observance by the Government of Zimbabwe of Convention No. 87, and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), made by delegates to the 97th Session (2008) of the International Labour Conference. The Office was assisting the Government of Zimbabwe in implementing the recommendations through a technical assistance package developed by the ILO, the Government and social partners which was launched in Harare in August 2010.
34. She then explained that the Standards Department was aggregating the information from its four databases, in the context of the NORMLEX project, with a view to providing simplified access to international labour standards and related information. The NORMLEX information systems, and the upcoming online reporting system, represented an opportunity to improve and streamline certain processes in the management of the activities of the Standards Department, which should translate into cost savings. She stressed that, in the past ten years, the number of reports handled by the Department had increased by 19.6 per cent and the number of communications submitted by workers' or employers' organizations by 174.3 per cent.
35. The representative of the Secretary-General then emphasized that recent events, such as the economic and financial crisis or the uprisings in the Arab world, exemplified the need for the ILO to provide integrated assistance to countries in need to foster more balanced economic and social development. In this context, international labour standards provided the indispensable normative and rights-based foundation of the Decent Work Agenda and constituted an important component of a rights-based approach to development.
36. The speaker then highlighted the major challenge of the growing informal economy, which had been reinforced by the economic crisis. Amongst the numerous obstacles in the application of international labour standards to workers in this sector, she pointed out weak labour inspection. Within the framework of a general discussion, the Conference would consider the question of labour administration and labour inspection, two important subjects for the effective implementation of international labour standards.
37. The representative of the Secretary-General then recalled that this year marked the second normative discussion on decent work for domestic workers with a view to the adoption of a new standard, which would mark an important step towards the recognition and inclusion of domestic workers in national employment laws and social protection schemes. Moreover, she identified rural workers as a significant category of workers to which attention should be

paid, as more than 75 per cent of the world's poor belonged to this category, lacking effective protection, due to significant gaps in coverage and barriers to ratification and implementation. The ILO could make an important contribution to addressing the persistent decent work deficits in rural areas.

38. Referring to the increased reference to international labour standards in free trade agreements and corporate social responsibility initiatives, and to the launch of the United Nations Indigenous People's Partnership signed by the ILO, OHCHR, UNDP and UNICEF to promote dialogue and build partnerships on indigenous peoples' issues on the basis of ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples, the speaker expressed the view that these examples pointed towards the necessity of keeping a robust body of international labour standards which responded to the changing needs of the world of work, which could be accomplished through standards policy, as mandated by the Social Justice Declaration.
39. In this regard, consultations on standards policy, ongoing since 2005, had received new impetus during the last two sessions of the Governing Body. The standards-related aspects of the conclusions of recurrent discussions and discussions of General Surveys could potentially provide a new framework for reviewing the status of ILO standards and identifying new standard-setting items. Since General Surveys and recurrent reports could not cover all standards relating to a strategic objective, it was necessary to complement these reports and their discussions in order to get a comprehensive picture of all standards relating to a strategic objective. She referred to the emerging consensus with respect to the setting-up of a standards review mechanism which would consist of tripartite working groups operating under the auspices of the International Labour Standards Segment of the LILS Section of the newly reformed Governing Body. The speaker mentioned the Tripartite Meeting of Experts, held in April 2011, which examined the Termination of Employment Convention, 1982 (No. 158), and the Termination of Employment Recommendation, 1982 (No. 166), as a possible modality for the tripartite working groups envisaged under the standards review mechanism. The Governing Body would further discuss the establishment of a standards review mechanism in November 2011 on the basis of concrete proposals prepared by the Office.
40. In conclusion, the representative of the Secretary-General emphasized that the highlighted developments would guide the work of the Office for the next year; the supervisory bodies would continue the examination of cases of non-compliance and reinforce their mutual dialogue; technical assistance efforts under the ILO time-bound initiative to reduce the standards gap would be strengthened; and the Governing Body would further discuss the establishment of a standards review mechanism. All dimensions of the ILO standards system were operating at full capacity, reaffirming the importance of international labour standards in dealing with today's internationalized world of work.
41. The Committee welcomed Mr Yozo Yokota, Chairperson of the Committee of Experts. He welcomed the opportunity to speak as evidence of the good working relationship between the two Committees which carried out a supervisory function. These two Committees, one with a tripartite composition and the other with the composition of independent experts, had been working together to promote, protect and enhance the rights and quality of life of all the workers in the world.
42. The speaker then turned to the meeting of the last session of the Committee of Experts, indicating that the workload had been heavy. The Committee of Experts had welcomed four new members, three of whom took full part in the work of the Committee. Moreover, the Committee of Experts had enjoyed the opportunity to exchange opinions with the Vice-Chairpersons of this Committee over the Internet. This meeting had been very useful, but the

Committee of Experts hoped that a personal meeting would be possible during its next session.

43. Referring to collaboration with other international organizations, the speaker indicated that the Committee of Experts had held an annual meeting with members of the United Nations Committee on Economic, Social and Cultural Rights in November 2010 on the theme “the realization of social rights in light of current austerity measures”. Moreover, in accordance with the arrangements made between the ILO and the Council of Europe, the Committee of Experts had examined 21 reports on the application of the European Code of Social Security, and as appropriate, its Protocol.
44. Turning to the methods of work of the Committee of Experts, the speaker indicated that since 2001, this subject had been discussed in the “Subcommittee on Working Methods”, to rationalize and streamline the functioning of the Committee of Experts. During the last session, the Subcommittee had undertaken a close examination of the comments made by the members of this Committee and from the informal tripartite consultation that had been held in 2010 on the question of the interpretation of ILO Conventions. The Committee of Experts had reached an agreement on a number of points, on the basis of the conclusions of the Subcommittee. Firstly, the Committee of Experts had noted that general observations were valuable tools to be used occasionally to draw attention to matters that were of broad application across a number of countries and to understand general trends in the application of a particular Convention. Secondly, the Committee of Experts had confirmed the criteria for cases of “progress” particularly, when a State had taken some measures in response to the request made by the Committee of Experts but it did not reflect a situation of overall compliance and it was limited to a specific issue in question. Thirdly, it was agreed that the Committee of Experts would express “satisfaction” to acknowledge that a government had taken positive measures to implement the provisions of a Convention through, for instance, the adoption of new legislation or an amendment to existing legislation. Fourthly, the Committee of Experts had held that, while its mandate did not require giving definitive interpretations of the provisions of Conventions, there were occasions when it had to consider and express its views on the legal scope and meaning of certain provisions of Conventions, where appropriate, in order to supervise the application of Conventions. Lastly, the Committee of Experts had followed the previously established criteria for “cases of good practice”, meaning that a government had taken innovative or creative measures to enhance the objectives of a Convention, or to resolve difficulties in the application of a Convention, beyond simple compliance with its provisions. The speaker indicated that the Committee of Experts had not identified any specific cases of good practice at its last session.
45. The speaker then addressed the issue of reporting obligations. At the last session, 2,990 reports under articles 22 and 35 of the ILO Constitution had been requested, and by the end of the session, 2,002 reports (67 per cent) had been received by the Office. The late submission of reports due had been a problem, and the Committee of Experts hoped that, for its next session, a larger number of reports would be submitted within the time limits and would contain the required information.
46. Turning to the General Survey, the speaker highlighted that its theme was “Social security and the rule of law”. The speaker then recalled that the Report of the Director-General for 1999, entitled “Decent work” had challenged the ILO “to find solutions that increase protection and embrace respect for basic principles of social security”. Moreover, under the Decent Work Agenda, member States had been called upon to set a national strategy for “social security for all” and in 2003, the ILO had launched the Global Campaign on Social Security and Coverage for All. In 2008, the Declaration on Social Justice for a Fair Globalization had given the phenomenon of globalization a social dimension and had reorganized the ILO’s mandate under the four strategic objectives, the second of which was social protection.

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47. The speaker underlined that the General Survey looked back through the history of the Organization's standard-setting activity, which comprised three generations: "social insurance", "social security" and "social protection". The first of these covered the years 1919 to 1939, during which Conventions had been adopted to address the risks of maternity, employment injury, occupational disease, sickness, old age, invalidity, survivors and unemployment. The second such generation covered the years 1944 to 1964, during which Conventions had been adopted related to income security, armed forces, medical care, minimum standards, maternity, and equality of treatment. The third of these generations covered the years 1965 to 1988, during which Conventions had been adopted related to employment injury benefit, pension system, health system and maintenance of rights. It was against this background of the ILO's activities in the field of social security that the Committee of Experts had analysed the most up-to-date Conventions. The Committee of Experts noted with satisfaction that, despite the complex and technical nature of the chosen social security instruments, 116 governments had submitted a total of 424 reports. The Committee of Experts had also made full use of reports submitted under articles 22 and 35 of the Constitution by those member States that had ratified Conventions Nos 102 and 168.
48. The speaker indicated that the four surveyed instruments totalled more than 700 paragraphs, containing separate provisions. As it had not been practical to analyse these provisions article by article, the approach contained in the report form analysed the instruments by major issues, grouping the legal provisions in order to circumscribe the regulatory space. In accordance with this approach, the analysis of national legislations led the Committee of Experts to make a number of observations on relevant legal developments. This included the identification of the main types of mechanisms in member States for settling individual claims regarding the right of the beneficiary to complain and appeal in social security. The speaker emphasized the importance of this finding, as it detailed the mechanisms through which the provisions of the surveyed instruments could be properly applied. More particularly, the speaker pointed out that Convention No. 168 provided that the available complaint and appeal procedures should be simple and rapid. The Committee of Experts had noted that the Social Security Act in the *United States* required that notices about programme benefits be written in simple and clear language, and this legislation had led to the reflection on the expression "simple and clear language". In this regard, the Committee of Experts had stressed that decisions by the relevant administrative body should be explained to individual claimants in writing in simple and easy to understand terms.
49. In conclusion, the speaker underlined the unanimous view of the members of the Committee of Experts that the two Committees were the core of the ILO's supervisory mechanism and that many persons' right to life, health, safety and personal aspirations depended on this joint work.
50. The Employer members and the Worker members, as well as all Government members who spoke, welcomed the presence of the Chairperson of the Committee of Experts in the general discussion of the Conference Committee.
51. At the outset, the Employer members welcomed the publication by the Office of the study on the impact of the Committee on the Application of Standards over the last 85 years. This publication also highlighted the impact of close collaboration of this Committee, the Committee of Experts and the Office. The Employer members once again expressed appreciation of the experts' invitation to exchange views with them during the December 2010 session of the Committee of Experts, as well as of the continued use of the format of dialogue on issues that began in 2006 rather than statements of position.
52. However, in the context of an expert's question during the December 2010 exchange of views concerning where she could find the Employer members' position on the right to strike, the Employer members wished to raise the following questions with regard to the

attention and awareness of the members of the Committee of Experts to the work of the Committee on the Application of Standards. These questions were driven in part by the fact that, although each of the experts was very accomplished in his or her own right, relatively few were labour and employment law experts, economists, experts on human resources or human rights. Moreover, the Employer members wondered about the individual orientation given to new experts when they joined the Committee of Experts on the supervisory machinery and the roles of the two Committees. They also requested information on whether the experts were given an in-depth briefing on this Committee's work of the preceding June when they met in November–December each year and whether the expert responsible for particular Conventions read in their entirety all of the country cases concerning the Conventions for which he or she was responsible. Finally, when an expert was assigned a particular category of Conventions, they queried whether he or she was given the most recent General Survey and whether a new expert would know where to look to find the comments of the Employer and Worker members on a particular Convention.

53. The Employer members then addressed the need for greater transparency and integration between the Committee of Experts, the Conference Committee on the Application of Standards, the Governing Body's LILS Section, and the Governing Body itself. This was significant because the ultimate responsibility for ILO standards supervision lay with the ILO's tripartite constituency. Yet, the reality was that the Conference's tripartite constituents and the Governing Body had very little say in the day-to-day supervisory process. At present, the report of the Committee of Experts was submitted to the Governing Body for information but was never discussed in the LILS Committee or the Governing Body. On the other hand, the Conference Committee would only be able to address just 3 per cent of the more than 800 observations of the Committee of Experts this year. The Employer members considered that tripartite governance needed to be restored to the application of standards. They expressed the view that the Committee of Experts' report should become a document that had full tripartite ownership and reflected tripartite views. This document would give the possibility for tripartite constituents to set out their views on standards supervision-related issues and would strengthen the credibility and acceptance of ILO standards supervision.
54. With regard to cases of progress, the Employer members noted that a pilot project had been undertaken by the Office to construct a methodology for the measurement of progress specifically towards the application of Convention No. 87 and Convention No. 98. In order to develop this methodology, they suggested that statistics be kept of cases of progress *by Convention* and compared with cases of non-compliance and that the measurement of progress be further refined by developing *qualitative criteria*. The Employer members requested that this exercise be undertaken with extreme care and that ACT/EMP and ACTRAV be fully involved in the development of this methodology which they expected would eventually be used to develop parameters to measure progress in the application of other ratified Conventions.
55. Turning to the question concerning specific Conventions, the Employer members pointed out that their position on the issue of the right to strike had been stated on many occasions in this Committee in the context of the 1983 and 1994 General Surveys on Convention No. 87 and Convention No. 98, as well as in the context of many discussions on individual cases concerning Convention No. 87, in the plenary when this Committee's report was adopted and in the *International Labour Review*, Volume 144, Number 3, pp. 253–289 (2005). Although the Employer members had raised concerns for several decades over the experts' observations on the right to strike and the definition of essential services, the experts had not taken into account these views or responded to the analysis by the Employer members of the preparatory and negotiating history of Convention No. 87. If the experts did such a review, they would easily conclude that their observations on the right to strike and essential services were not in line with the text and the preparatory and negotiating history of Convention No. 87. In the context of the experts' proposal to create additional opportunities of direct

exchange of views between the two Committees in paragraphs 13 and 17 of the General Report, the Employer members requested the opportunity to discuss the right to strike at the earliest opportunity.

- 56.** With specific reference to the Indigenous and Tribal Peoples Convention, 1989 (No. 169), the Employer members were pleased to note that the general observation on Convention No. 169 in the experts' report followed the Vienna Convention on the Law of Treaties in taking into account the preparatory and negotiation history in its general observation. They recalled that the previous year they had not questioned that several articles of Convention No. 169 required consultation with indigenous and tribal peoples. Rather, they had complained about the corrective action requested by the Committee of Experts, according to which certain governments were asked, pursuant to *Article 15(2)* of Convention No. 169, to suspend the implementation of existing projects, the exploitation or exploration of activities, the implementation of infrastructure projects and the exploration and exploitation of natural resources. With respect to the consultation requirements, the Employer members recognized the essential importance of consultations by governments with indigenous and tribal peoples *before* undertaking any programmes for the exploration and exploitation of such resources. Where consultations had not been conducted, the Employer members were of the view that the government concerned should take immediate steps to correct this failure with urgency. They were pleased to see that the experts had confirmed the Employer members' views that consultations did not require agreement or consensus with the people consulted. Moreover, the Committee of Experts had stated that it was not a court of law and as a result could not issue injunctions or provisional measures, and the Employer members thanked the experts for taking into account tripartite constituent views.
- 57.** With regard to the Labour Clauses (Public Contracts) Convention, 1949 (No. 94), the Employer members noted that out of the eight observations on this Convention this year, six expressed regret that no government report had been received. Two other observations noted that the governments concerned had not provided any clear or new information to the issues raised by the Committee of Experts. The conclusion to be drawn was that ratifying countries, including developed ones, either did not see the need to report on the Convention or did not find it necessary to make efforts to implement it. The Employer members were of the view that the Convention had lost its relevance and recalled that the next denunciation period for this Convention was September 2012–13.
- 58.** Turning to Convention No. 158, the Employer members recalled that it was one of the most contentious ILO Conventions. The Employer experts from the Tripartite Meeting of Experts held in April 2011 pointed out that the Convention did not represent a universal model of employment protection. Many countries, such as Switzerland, Austria or Singapore, followed a different approach whereby they put the emphasis on enabling workers to find a new job as soon as possible, although these countries did provide for a certain legal protection against abusive dismissal. Thirty years after its adoption, only 36 countries had ratified Convention No. 158. While the flexibility provided for in the Convention was very limited, the Committee of Experts had further limited flexibility through its narrow interpretation of the Convention's provisions. For example, in the observation on Turkey concerning the application of adequate compensation in *Article 10*, the experts had concluded that "a penalty of three times the notice pay ... might be considered inadequate compensation for the purposes of *Article 10* of the Convention". Interpretations of this kind created additional uncertainty and made ratification of the Convention an incalculable risk. In these circumstances, ILO member States would be well advised not to ratify the Convention or to denounce it in the next denunciation period in November 2015–16.
- 59.** The Worker members highlighted that this year marked the 100th Session of the Conference as well as the 85th anniversary of this Committee. They welcomed the recent publication by the Office of a study on the Committee entitled *Dynamic and impact built on decades of*

dialogue and persuasion. Thanks to its close collaboration with the Committee of Experts and with the Office, the Committee contributed to a more balanced world economy by promoting social justice. The study drew attention to the ILO's unique role in defending the notion that economic development must go hand in hand with social development and that today more than ever its mission was to improve the lot of workers everywhere. It gave reason to hope that the ILO would develop innovative projects with concrete objectives under binding conditions so as to reassert the primacy of law in the observance of democratic principles.

60. Regarding the interaction between the General Survey and the recurrent items, the Worker members observed that in 2010 a first major modification was made to the format of the General Surveys, which now included an analysis of several instruments in the light of the Social Justice Declaration. The Committee would in future have to deal more rapidly with General Surveys that were larger than before and seek a consensus on the matter. The Committee of Experts' task, too, was even more complex than in 2010, in that the four instruments selected – Conventions Nos 102 and 168 and Recommendations Nos 67 and 69 – contained technical provisions and derived from different generations of social security standards. It was encouraging to note that the Committee of Experts had largely succeeded in its role and had overcome any obstacles and fears that might have arisen by presenting a document that, in its new composition, was still a legal survey. The General Surveys would thus retain their pedagogical value undiminished, thanks to their conformity with the goals of the Social Justice Declaration. The Worker members recognized therein the skill with which the Committee of Experts had embarked upon its task, and they preferred not to comment on the attempts to challenge the competency of its experts.
61. Regarding the tripartite meeting that was set up to consider Convention No. 158, the Worker members expressed their reservations with its outcome and follow-up, given that they would be unable to support a process of revision that systematically led to unilateral requests for Conventions to be repealed. Ultimately, the objective should be to take a very careful look at a number of complex issues surrounding the General Surveys and the Social Justice Declaration so as to arrive at jointly agreed conclusions that were conducive to social progress, within the framework of a globalization that was based both on a form of economic growth and on the promotion of workers' rights. If that was to happen, then all future discussions concerning the General Surveys needed to be reflected in detail and in a properly documented manner in the *Provisional Record* so that appropriate lessons could be drawn from the machinery set in motion by the Social Justice Declaration.
62. It was the understanding of the Worker members that according to the criteria of the Committee of Experts, cases where it expressed its "satisfaction" or "interest" did not in any way imply that the countries concerned were in full compliance with the ILO's standards. There were instances where international labour standards might be applied only partially or posed certain problems, and the countries concerned could not use their presence on the list of interesting cases to try and avoid their own case from being examined by the Committee. It was therefore important that more time be devoted to cases where progress had been recorded, so that the Committee could hear what the workers of the countries concerned felt about the situation.
63. Finally, it was their view that the report of the Committee of Experts should contain a specific chapter on governments' follow-up to the conclusions reached at the preceding session, without its entailing any modification to the regular submission of national reports. It would also be most useful if a section of the General Report could be devoted to a summary of that information, some of which already appeared in the report, especially with respect to the findings of the various high-level missions.

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64. A Worker member from Colombia requested that the Committee observe a minute of silence to mourn the assassination of two trade union leaders in Colombia. The Chairperson granted this minute of silence to respect workers from all over the world who had died at the workplace or for having exercised their fundamental rights at work.
65. The Government member of Austria, speaking on behalf of IMEC, highlighted that the ILO supervisory system was unique in the international framework of human rights procedures. The Committee had the responsibility to help ensure that the capacity, visibility and impact of the ILO supervisory system continued to evolve positively despite the inherent challenges. He observed that the ILO's response to the employment and social policy consequences of the economic and financial crisis continued to be a major part of its activities since the last Conference. He stated that to prevent a downward spiral in labour conditions, the Committee had to place special emphasis on fundamental principles and rights at work and their implementation through effective governance mechanisms. Not ensuring fundamental principles and rights at work at such a critical time would represent not only a moral failure to uphold universally recognized rights, but would also represent a failure of economic policy to ensure growth and recovery.
66. IMEC welcomed the Committee of Experts' continuous efforts to enhance the quality of reporting and it encouraged the Committee of Experts to continue with the current format of the report developed in the recent years. IMEC appreciated the clarifications on the criteria for identification of "cases of good practice" and "cases of progress" and the highlighting of cases where practical guidance to member States through technical cooperation was needed. Regarding the idea of creating additional opportunities for the direct exchange between the two Committees, in addition to the two Vice-Chairpersons of the Conference Committee, the Chairperson of the previous session of the Conference Committee should also be invited to participate in such meetings. IMEC hoped for quick replacement of leaving experts within the Committee of Experts.
67. Finally, IMEC was pleased to note that the Office continued good cooperation with international treaty bodies and the Human Rights Council, including in the framework of the Universal Periodic Review Process. It also appreciated the Office's efforts to support the ILO supervisory bodies and called upon the Director-General to ensure that the essential work of the Standards Department was among his top priorities.
68. The Employer member of Ecuador observed that the Committee of Experts needed to take fully into account the comments of the social partners, as a way of strengthening social dialogue and guaranteeing that tripartism, which was the basis of the ILO, was respected. He regretted that in one particular case the Committee had failed to take into consideration the comments of an employers' organization regarding the application of the Convention.
69. The Employer members thanked the Worker members for putting forward ideas with regard to the discussion of cases in the Conference Committee, particularly that relating to the follow-up to conclusions by governments, which deserved further consideration by both the Employer and Worker members.

Fulfilment of standards-related obligations

70. The Employer members pointed out that even though many changes had been made in reporting requirements in recent years to reduce the burden of member States, failure to meet constitutionally mandated reporting requirements continued to be a serious problem that undermined the supervisory system. It was particularly notable that there were 669 cases involving 51 countries where no replies had been received to comments made by the experts. This was regrettable and undermined the supervisory system as well as the credibility of the

government concerned. Until such reporting failures improved, the Employer members believed that it was in this Committee's interest to place on the list of individual cases each year at least one of the cases where the experts had provided an observation in Part II of Report III (Part 1A). They requested that the experts specifically footnote, in the General Report, cases where they have formulated an observation for the failure to respond to comments to help this Committee find them more easily, or alternatively, somehow highlight these cases in the footnote where all failure to respond to comments could be found, and put them in the table of contents.

71. The Worker members observed that there had been little improvement in the enforcement of obligations related to ratified Conventions, in terms either of the proportion of replies or of the observance of deadlines. The failure of certain member countries of the European Union (EU) to meet the deadlines contrasted with the encouraging information noted by the Committee of Experts with regard to the contributions of the workers' organizations. The Worker members emphasized the importance of technical assistance, as a means of helping countries both to fulfil their reporting obligations and to implement the Conventions. The Committee now systematically suggested technical assistance for all countries that were prepared to demonstrate their good will. The one-time supplementary budget allocation of US\$2 million for the year 2012–13 was very much to be welcomed in this connection, inasmuch as the choice of countries that were offered such technical assistance would be determined in part by the discussion of the individual cases.
72. IMEC shared the deep concern of the Committee of Experts that the number of comments to which replies had not been received had significantly increased over the past two years. As comments were becoming more comprehensive and complex, it could be helpful to highlight the essential questions to which the governments were requested to reply. In this regard, IMEC believed that technical cooperation was the key for an enhanced follow-up of cases of serious failure and the Committee of Experts' indications were helpful for the Conference Committee to continue with more systematic references to technical assistance in its conclusions.

The reply of the Chairperson of the Committee of Experts

73. With respect to the point raised by the Employer members on various Conventions, the speaker indicated that he had taken due note of the issues raised, and would bring these matters to the attention of the Committee of Experts at its forthcoming session in November–December 2011. Concerning the issue of tripartite governance and ILO standards supervision, he underlined that the Committee of Experts was a neutral and impartial body in an organization with a tripartite governance system.

The reply of the representative of the Secretary-General

74. At the very outset, the representative of the Secretary-General wished to thank all those who had participated in this discussion. The Chairperson of the Committee of Experts had already responded to certain matters raised concerning the report of the Committee of Experts and its General Survey. Turning to the matters falling within the Office's responsibility, she wished to address the queries raised by the Employer members regarding the expertise of the members of the Committee of Experts. First of all, she pointed out that members of the Committee of Experts were appointed by the tripartite Governing Body, on the basis of a recommendation of the Officers of the Governing Body. The expertise of the members of the Committee of Experts respected a number of criteria agreed to by the Officers of the

Governing Body. Moreover, the majority of the members of the Committee of Experts were labour law experts, whilst the others were experts in public, international or human rights law. With regard to the orientation that the Office provided to new experts, she emphasized that every new expert was given a thorough briefing upon their arrival in Geneva. Prior to their arrival in Geneva, they were provided with a wide range of documentation which they were expected to read, and which included the following: (i) the ILO Constitution; (ii) Parts I, II and III of the *Record of Proceedings* of this Committee; (iii) an internal handbook for members of the Committee of Experts developed by the Office; (iv) a handbook on procedures entitled “Handbook of procedures relating to international labour Conventions and Recommendations”; (v) a complete set of Conventions and Recommendations; (vi) a copy of the Global Jobs Pact and of the 2008 Social Justice Declaration; (vii) a copy of the *Rules of the game*; (viii) a copy of the *Digest of decisions and principles of the Freedom of Association Committee*; (ix) copies of preceding General Surveys with attention drawn to the most recent General Survey; and (x) information on ratifications and standards-related activities as well as technical assistance provided by the Office between two sessions of the Committee of Experts.

75. In addition, she personally provided a briefing to every new expert on the functioning of the Committee of Experts as well its interaction with this Committee. She pointed out that no new expert examined a set of Conventions assigned to him or her alone; he or she examined these Conventions along with another longer-standing member of the Committee of Experts. The Office provided all experts with the best possible support.
76. Finally, she reaffirmed the commitment of the Department to upscale technical assistance to ILO member States and social partners on their standards-related obligations. In particular, the Office would provide a lot of training to the tripartite constituents on the specific areas of standards-related activities which were more challenging. The Office would be as responsive as it could since member States needed not only to ratify but also to implement the ratified Conventions.

C. Reports requested under article 19 of the Constitution

General Survey on social security and the rule of law

77. The Committee held a discussion on the General Survey concerning social security instruments in the light of the 2008 Declaration on Social Justice for a Fair Globalization⁷ of the Committee of Experts on the Application of Conventions and Recommendations. In an effort to align the General Surveys with the recurrent item reports, the Governing Body decided that the General Survey would cover two Conventions – the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), and two Recommendations – the Income Security Recommendation, 1944 (No. 67), and the Medical Care Recommendation, 1944 (No. 69).
78. The General Survey took into account information in the reports communicated by 116 member States (424 reports in total) under article 19 of the ILO Constitution. According to its usual practice, the Committee of Experts had also made full use of the reports

⁷ ILC, *General Survey concerning social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization*, Report III (Part 1B), 100th Session, Geneva, 2011.

submitted under articles 22 and 35 of the ILO Constitution by those member States that have ratified Conventions Nos 102 and 168. Observations and comments received from 47 organizations of employers (six reports) and workers (41 reports) from 32 countries were also reflected.

Recurrent discussion and purpose of General Surveys

- 79.** The Employer members stated that this was a General Survey with a determined focus, as it indicated that there was now a clear need for the adoption of new complementary approaches to help guide future policy choices of ILO constituents, thus undermining the bona fides and relevance of the Conventions Nos 102 and 168, which had been determined to be up to date by the Governing Body. Such proposals were beyond the mandate of the Committee of Experts, as ILO standards policy and the proposal of new standards were the prerogative of ILO tripartite bodies. The Conference Committee on the Application of Standards was not a policy committee, and there was nothing in the Social Justice Declaration, 2008, or the recurrent review process requiring the Committee, or the Committee of Experts, to address policy issues. Furthermore, by mainly laying the groundwork for a number of proposals to further develop ILO standards in the field of social security, the General Survey did not provide an in-depth analysis of the existing standards. The purpose of the General Surveys was to help the tripartite constituents to better understand how to be in compliance, and the value of the classical General Survey was that the majority of the text is devoted to clarifying what the instruments require; indicating the variety of ways countries have implemented the provisions; emphasizing the inherent flexibility of most standards; and indicating where implementation falls short of the requirements of the standard. Having a copy of the relevant ILO standards appended to the Survey also facilitated constituents' understanding of the instruments. It was extremely useful for the Committee to receive a holistic picture from the Committee of Experts of what full implementation of the ILO instruments means in law and practice.
- 80.** The General Survey on social security had limited value to the central supervisory purpose of the Committee, namely compliance of full implementation of voluntarily ratified Conventions, as it did not provide information on the technical challenges that ratifying States have had or how they have addressed them to the satisfaction of the Committee of Experts. Most of the General Survey was about the evolution and trends in social security, and the relationship between social security and the ILO strategic framework, and it was difficult to discern what either of the Conventions required. Social security standards were complicated and presented challenges to implementation which it would have been helpful to explain in the Survey. The Employer members stressed that the Committee of Experts are to be neutral fact finders to facilitate the work of this Committee, and not the work of the recurrent review committee. This kind of General Survey, going beyond the classical General Survey, was not relevant to the Committee, and there was no purpose in discussing such a survey. In this context, they made reference to article 7 of the Standing Orders of the Conference.
- 81.** The Worker members welcomed the way the Committee of Experts had addressed the challenges of social security. Overall, the General Survey gave extremely good direction both for national policy and for the policies of the international community in the area of social security for the future and for the work of the Committee. In this regard, they particularly emphasized the sections dedicated to the manner in which the standards on social security were linked to other ILO standards. For example, a link was made between social security, on the one hand, and the right to freedom of association, collective bargaining and collective action, on the other. Indeed, in many countries, the first forms of social security were born out of the right of workers to organize and to assist each other financially. In addition, the right to collective bargaining and the right of collective action

were not restricted to labour issues in the strict sense, but touched equally on the field of social security. Social security was also important in the fight against poverty and child labour. Tripartite dialogue was equally relevant because it was necessary to actively involve the social partners in social security policy.

- 82.** The Government members of Argentina, France and Spain expressed their Governments' keen interest in the General Survey, which offered a sweeping array of information and proposals. The Government member of Austria also indicated that the General Survey was very comprehensive and informative and appreciated the many good practice examples from the various countries. The record number of replies to the questionnaire clearly highlighted the importance given to the subject.
- 83.** The Government member of Canada stated that the alignment of the theme of the General Survey with this year's recurrent discussion on social security was useful and timely and that the readjustment of the article 19 reporting cycle would serve to maximize the input of the Committee on the Application of Standards into such discussions. Future reports should be more focused in order to address the application of ILO instruments in accordance with the mandate of the Committee of Experts and not venture into broader policy analysis and recommendations. While welcoming the enhancements which facilitated the reading of the report, like the bolding of certain parts and the "story lines" on good practice provided in a number of sections, she indicated that an executive summary would have been appreciated, given the length of the report.
- 84.** The Worker member of Spain welcomed the General Survey, which reminded the Committee of the shared principles behind social security instruments, notably the overall responsibility of the State, social solidarity, compulsory coverage, collective financing, and participation of the social partners, and was critical of privatization and of consequent failures to comply with basic principles. The General Survey advocated social protection based on rights, not on charity, and reiterated the need to strengthen the legal framework established by current social security standards. There was a certain disparity between the General Survey by the Committee of Experts and the report of the Office on the recurrent discussion. The speaker stated that he did not share the pragmatic approach taken by the recurrent discussion report when it indicated that results mattered most and, therefore, it was not necessary to maintain standards on which the structure of social security systems should be based, which to a certain extent justified the privatization of social security. No social policy should leave the welfare of those it covered to the whim of the markets.

Support for the basic principles of social security

- 85.** Recalling Article 22 of the UN Declaration on Human Rights, the Employer members stated that the right to social security was a qualified right, dependent on the organization and resources of each state. The principle of social protection through social security should be supported, provided that it was well managed, was responsive to the national circumstances and was flexible. If these factors were taken into account, social security could play an important role in ensuring a balanced labour market, maintaining and improving levels of employment, improving skills, productivity and competitiveness. Significant changes in the labour market had occurred since the adoption of the existing social security instruments, associated with globalization, changes in production systems, changing demographics, labour mobility, and advancements in gender equality. While sustainable social security systems were a precondition for the functioning of modern economies and societies, the ideal of full horizontal and vertical social security coverage was not achievable in the foreseeable future. Sustainable enterprises that provided full productive employment were not only the basis of decent work and wealth creation, but also for social security. The emphasis of the

Committee of Experts on a rights-based approach therefore diverted attention from the fact that social security was dependent on the economic means and development of a state.

- 86.** The Employer members did not consider it credible, in the light that few developing countries had ratified the Conventions, to state that “social security has evolved into an instrument for promoting economic development ...”, predicated on the view that the “ILO mandate in social security ... has largely outgrown the standards with which it has to be implemented”. ILO standards were minimum standards and not the ceiling or the objective. By suggesting unachievable, unsustainable standards, the Committee of Experts had gone well beyond its mandate. In the current economic environment and the overall level of development worldwide, the Income Security Recommendation, 1944 (No. 67), and the Medical Care Recommendation, 1944 (No. 69), were unattainable. The main contribution of the General Survey to the recurrent review on social security was to establish that social security frameworks were expensive, were not within the means and capacity of the majority of countries as the classic system did not extend to the informal, rural and subsistence sectors which comprised the bulk of the economies in these countries, and could jeopardize the financial stability of national economies and the global economy.
- 87.** The Worker members recalled that attempts to reduce the level of social protection, or to oppose the strengthening of social security, had occurred several times in the past since the first oil crisis of 1973 in the name of rebalancing public finances. In the early 1980s, social security had suffered a wave of blind neo-liberalism that had shrunk public powers. More recently, the ideology of the active welfare state had hardly recognized social security as an objective in itself, threatening to reduce it to a simple lever of employment policy. At the turn of the twenty-first century, concerns were expressed about the rising costs of aging and the inability to maintain social security without drastic intervention. It had been workers in developing countries who had suffered most from this situation, with the delayed introduction of social security systems or, in cases where such systems existed, had suffered the effects of structural adjustment programmes imposed by the IMF and World Bank. The situation had been exacerbated because the development cooperation programmes and the fight against poverty had mistakenly overlooked the need for a strong social security system. Thus, the Millennium Development Goals had long paid little attention to the importance of social security in meeting the goal of halving extreme poverty. It had been a great achievement by the ILO to succeed in making decent work a top priority. The Worker members welcomed the fact that, in line with that objective, the theme of a decent life had attracted much attention in recent years. Those two concepts were indeed inextricably linked as reflected in the Social Protection Floor Initiative.
- 88.** Only since the beginning of the global financial and economic crisis at the end of 2008 had the ILO’s approach to social security received support and many observers had begun to understand the importance of social security as an automatic stabilizer and how its strengthening could contribute towards averting the risk of a deep economic depression, concerning not only unemployment, but also pensions, health care and family support. The most striking examples in that regard were the advances reported in the United States on health care and the beginnings of a real social security system in China. Great advances had been made in the context of the Global Jobs Pact, adopted by the Conference in June 2009, which explicitly called on countries to strengthen their social security, and notably to extend the duration and coverage of unemployment benefits. Two years later, what remained of those commitments? It appeared to have been a return to “business as usual”. Worse, in many countries, social security had become the main target of consolidation programmes in public finance, and welfare recipients were the main victims of strategies to exit a crisis that they had not caused. The phenomenon was particularly marked in European countries which, under pressure from the EU and the IMF, had had to adopt stringent consolidation programmes, which neglected not only the ILO’s principles of social security but also the requirements for social dialogue and tripartism. Other countries faced the negative effects of

international free trade agreements on their social security systems, with the risk of privatization of pension systems and health care. Pressure was also exerted by multinational companies on the social protection systems of some countries.

- 89.** The Worker members expressed full support for a rights-based approach to social security since social security was not a favour granted but a human right, with the obligation for the State to guarantee this right and for the social partners to cooperate fully in it. That presupposed doing everything to protect insured persons against arbitrary factors, to protect the funding of social security against upheaval in the financial markets and budget cuts, to ensure access to social entitlements and to safeguard their binding nature. An example had been set by States, which had incorporated the right to social security in their Constitution. The Worker members had also supported the explicit choice – based precisely on the rights-based approach – in favour of a public, collective and jointly funded social security system, which would not be abandoned to free market forces or to the willingness or unwillingness of employers to fund it. That choice was based on the observation that it was precisely in the countries that had opted for private, market-driven models, especially for pensions, that the financial crisis had been disastrous. The case of Chile, which had been the subject of a discussion by the Committee in 2009, was one regrettable example amongst those of many other countries, particularly in Latin America. As the Committee of Experts had emphasized, collective funding and social solidarity were inextricably linked and “the way to progressive development of social security lies in strengthening and extending social solidarity as the manifestation of the collective values of social cohesion, mutual assistance, ... compassion and care for the weak”.
- 90.** Social security was a necessary lever for economic development and should not be regarded as an obstruction to economic growth or a public expense, but as an investment. It could therefore become a component of job recovery strategies. As stressed by HE Ms Tarja Halonen, President of the Republic of Finland, during her address at the opening of the Conference, Finland and other Nordic countries had based their systems on the welfare society model, while remaining among the most competitive countries in the world. It was to be hoped that the ILO would manage to convince financial institutions, such as the IMF and the World Bank, of this logic. On the other hand, the specific objectives of social security could not be neglected. In that regard, a worrying trend was emerging, consisting of reducing social security to a mere instrument of economic and employment policy. In national and international political debates, heavy emphasis was being placed on the need to reform social security in order to increase the rate of employment. As the Committee of Experts had rightly emphasized, social security could not be a substitute for an active employment promotion policy. Social security was currently experiencing modernization and adaptation to the new problems of society and to political challenges. The latter included: the substantial share constituted by the informal economy, which often escaped social security coverage; the increasingly precarious nature of jobs and careers, which also gave rise to a social protection deficit, especially for young people; and the question of equality between men and women and its consequences in terms of family benefit rights, the pension age and survivors’ benefits (on the last point, the anachronistic nature of certain provisions of Convention No. 102, which refers only to widows and not to widowers, should be noted).
- 91.** Finally, the Worker members observed that the General Survey could have devoted greater importance to the issue of migration as a social security challenge for policy-makers. The General Survey skirted over the issue, dealing with it only briefly in relation to equality of treatment for migrants and minimum rights for undocumented migrants. However, the issue deserved more sustained attention, especially from the ILO, because of the greater intensity of migratory flows and the problems it posed, in particular for the portability of rights, and because of the methods by which certain countries tried to discourage immigration by making access to national social security rights more complex.

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92. The Government member of France indicated that strengthening social protection was one of the four priorities of the French presidency of the G20, which could play a very useful role in that area. Since the Pittsburgh and Washington Summits, and the adoption by the ILO, in 2008, of the Declaration on Social Justice for a Fair Globalization and, in 2009, of the Global Jobs Pact, a certain momentum was clearly building up. France had always attached special importance to social protection as being conducive not just to social justice and labour stability but also to economic growth. The speaker congratulated the ILO on the efforts it had been deploying for almost a decade in favour of social coverage for all. That did not mean promoting a single social model, but rather encouraging all countries to adopt a basic social security standard that was adapted to their particular economic and social circumstances. It was possible to make progress in that area while respecting the sovereignty of each State. Ratifying ILO Conventions was of course important, but it was equally important to contribute to the effective implementation of the fundamental principles and rights of social security everywhere.
93. The Government member of the United Kingdom also recognized the critical role of social protection in poverty reduction, particularly in helping persons enter or return to the labour market. He welcomed the expansion of social protection systems in middle-income countries in the last decade, but noted that coverage remained scarce in low-income countries, where the challenge of sustainable domestic financing was qualitatively different.
94. The Government member of Morocco recalled that the right to social security was a specific social and economic right of constitutional rank in various countries, and that it was therefore naturally the subject of international instruments. Establishing and ensuring the effectiveness of a social security system required provisions that were capable of responding to the different risks to which individuals were exposed.
95. The Employer member of Spain referred to the observations in the General Survey concerning the “retreat of the welfare state in the 1990s”. While in agreement with the General Survey’s findings on the odd effects of unemployment, he could not endorse the statement that “emphasis on competition [hampered] fair and human treatment of workers”, or the statement that “deregulation of the labour market [threatened] social cohesion”. On the contrary, healthy competition contributed to social cohesion.

Convention No. 102

96. The Employer members stated that the General Survey demonstrated that ILO social security standards were more relevant and achievable in developed countries. They objected to an interpretative declarative statement on the adaptation of certain provisions of the Convention as this could have the same result as revising the standard, which was beyond the authority of the Committee of Experts. A review of the report forms was also of concern, as the changes might deviate from the text of the Convention.
97. The Worker members expressed the view that the implementation of Conventions Nos 102 and 168 should be examined so as to widen their application from the point of view of increasing the number of ratifications of these Conventions and increasing social security coverage in every country. Expressing strong support for the specific recommendations made by the Committee of Experts for future work on social security standards, the Worker members stressed that the efforts to encourage as many countries as possible to ratify Convention No. 102 should not be undermined. It was to be hoped that certain big countries would take this step, as Brazil had done in 2009, and Argentina was planning to do. In this respect, if removing various anachronisms from the text of Convention No. 102 would help, without weakening the level of protection, it should be done without hesitation.

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- 98.** The Government member of France stressed that Convention No. 102 was a highly valued instrument in terms both of its overall conception and of the level of the standards it promoted and that it was still altogether relevant for a number of countries. If the obsolete terminology and the definition of the standard beneficiary posed an obstacle to its ratification, any simple and rapid solution that might be proposed to resolve the difficulty would be supported in order to promote equal treatment of men and women. The most efficient solution would seem to be to devise an interpretative statement of principle, combined, if necessary, with an adaptation of the report forms.
- 99.** The Government member of Austria indicated that the status of Convention No. 102 should not be questioned nor diminished and cautioned that, in future, even industrialized countries which have ratified the Convention could take a defensive line on this Convention in the context of pension reforms and continuing deterioration of pensions. A time could come when the Convention may actually help avoiding further deterioration of the situation. A discussion on a revision or adaptation of Convention No. 102 would only lead to greater flexibility and lack of commitment regarding its substantive provisions. Under the present circumstances, a far-reaching instrument like Convention No. 102 could no longer be negotiated.
- 100.** The Government member of the United Kingdom also indicated that existing ILO social security Conventions, including Convention No. 102, should not be changed, as modification would carry the risk of the loss of the benefits it provided. However, the speaker expressed tentative support for the development of interpretative guidance on the provisions of Convention No. 102, or the review of the report forms of the social security Conventions, provided that these actions would not extend the scope of the existing Conventions and that new initiatives would not cut across matters of national competence.
- 101.** The Government member of Morocco reported that Morocco had begun the procedure for ratifying Convention No. 102. The social security system in Morocco had developed significantly since it was established in 1972 and today provided all the benefits set out in Convention No. 102, except unemployment benefits, on which tripartite talks had resulted in the preparation of a draft unemployment benefit scheme to be adopted in the near future. Social protection was also one of the priority areas discussed in the context of the national tripartite agreements concluded since 1996. In that regard, the last agreement, signed in April 2011, provided for the expansion and strengthening of the social protection system.
- 102.** The Government member of Argentina informed the Committee that her Government had just ratified Convention No. 102 and that the instrument of ratification would be deposited in the coming days. Social security was indispensable to guarantee access to fundamental rights for those most in need. The improvement of the living conditions of the population required a social policy and constituted an investment because increases in the minimum income had an impact on the internal market and on consumption. The privatization of the pension system implemented in the 1990s, which had led to unacceptable and insufficient minimum benefits, had been resolved through nationalization. This made it possible to guarantee a higher minimum income and upward mobility for retired persons through sustained increases based on rises in contributions and subsidies from public finances. A universal allowance had been established for children below the age of 18 whose parents were unemployed. This extension had been fundamental for the eradication of child labour by giving incentives to ensure the integration of children in schools and access to permanent medical controls. Argentina had also introduced the possibility for the social partners to reach agreements in the framework of collective bargaining, in order to provide social protection to temporary rural workers.
- 103.** The Government member of Canada stressed that ILO standards, such as Convention No. 102, could play an important role in promoting the extension of social security for all.

Canada's social security system covered all nine contingencies addressed in the Convention. The discriminatory and overly detailed provisions of Convention No. 102 pose serious barriers to its wide ratification, not only in Canada but in many parts of the world. The Convention was the product of post-war industrial society and reflected the labour market and family structure existing in the 1950s and 1960s. It did not reflect societal evolution, including the high level of female labour market participation. Even though the Committee of Experts had identified some possible ways of addressing these issues, rigid positions, including those of the Committee of Experts, with respect to maintaining existing levels of benefits, made necessary changes unlikely.

- 104.** The Employer member of Uruguay considered that, despite the fact that Convention No. 102 set minimum standards that some countries could not attain, calls were made for the promotion of the Convention and for the strengthening of the legal framework. These calls did not correspond to the new realities. While the gender language could be clarified through an interpretative declaration, the speaker did not agree with the adoption of a Protocol or a new Convention and considered that solutions would not be found to the problem of the informal economy through a new Convention.
- 105.** The Worker member of Spain considered that the Committee on the Application of Standards should request the ILO to make greater efforts to promote Convention No. 102. With regard to adapting Convention No. 102, there were three options: (1) to make limited revisions to the Convention; (2) to adopt a Protocol integrating gender-neutral language; or (3) for the Committee of Experts to prepare an interpretation of certain provisions of the Convention. The second and third options would strengthen the foundations of Convention No. 102.

Convention No. 168

- 106.** The Employer members considered that the low level of ratification of Convention No. 168 highlighted the flaw of establishing an advanced set of standards for industrialized countries which were not ratified by them and were ignored by developing countries. With such low levels of ratification, they did not consider it sensible to promote more and higher and more comprehensive social security standards. The low levels of ratification of these standards highlighted the lack of economic means to support existing frameworks or to support their expansion. It was not evident that equipping this Convention with a flexibility clause would improve its acceptance. While some ILO social security standards continued to be valid, there were also provisions that were outdated or not applicable in less-developed countries.
- 107.** The Worker members raised the question of how to facilitate ratifications of Convention No. 168 since, with only seven ratifications, it had certainly not met expectations. They further referred to the manner in which social security resources were more and more frequently used to finance employment policy and stressed that if the returns were lower than the mobilized resources, social protection would bear the cost. The fundamental principles of social protection were sometimes ignored within the framework of policies developed to get unemployed people into work. In particular, pressure was brought to bear on unemployed people, but also increasingly on people with illnesses or disabilities, to accept any job at all. Such practices ran completely contrary to the notion of suitable employment that protected unemployed people from workfare-type approaches. Going beyond social security standards, this also constituted a negation of the fundamental principle enshrined in the Declaration of Philadelphia that labour was not a commodity.
- 108.** The Government member of Canada stated that the fact that Convention No. 168 had been ratified by only seven countries spoke of its lack of universality. The Committee of Experts acknowledged that poor ratification of this Convention might be explained by the fact that its

standards of protection against unemployment were relevant only to countries with developed formal economies and labour market policies.

- 109.** The Government member of the United Kingdom indicated that the low rate of ratification of the Convention indicated that the introduction of a flexibility clause, to promote ratification, might be worth pursuit.
- 110.** The Employer member of Spain considered that a more detailed analysis should have been included in the General Survey on the real reasons behind the low number of ratifications of Conventions Nos 102 and, especially, 168. More explanations were therefore needed on the link between systems to protect against unemployment and the effectiveness of active labour market policies and, in particular, on integration and coherence between the provisions of Conventions Nos 168 and 102 with a focus on “flexicurity”, which, in his opinion, was necessary in order to modernize social protection systems. It was doubtful that Convention No. 168 could be considered as a reference in the current debate on the Social Protection Floor. Increasing the length and coverage of benefits was not in itself always positive, but needed to be seen in the context of promoting employment.

Guidelines on the sound governance of social security

- 111.** The Employer members indicated that the economic crisis had made clear that guidelines on sound governance were needed and that the social security systems in many countries were not sufficiently crisis resistant due to a lack of prudent finance prior to the crisis. Social security systems should be well administered, sustainable, and the State should assume responsibility through the creation of reserve funds. Employment and social security policies should be coordinated and aligned with fiscal policies. The adoption of a new ILO social security instrument focusing on undeclared work, social security evasion and fraud, while relevant appeared, however, premature.
- 112.** The Worker members considered that guidelines should be drawn up on “good governance” and challenges linked to fighting social fraud should be identified. They underlined that there was a growing need to put an end to social fraud, which undermined the financial basis of social security and the whole society. This aspect fell within the broader framework of “good governance” of social security, which was not yet sufficiently well covered by ILO standards. As to the challenge of monitoring the management of private funds, the financial crisis had demonstrated the vulnerability of such funds and therefore the vulnerability of those who believed that they were covered by them. The Committee of Experts had drawn a particularly hard conclusion, noting that “such notions as accountability, transparency, solidarity, participatory management, prevention, etc., [were] absent from the vocabulary of many private social security schemes”. They recalled that some countries were now establishing a link between social benefits and economic and budgetary means and not respecting the provisions of Convention No. 102 requiring that the amount of benefits should increase at the same rate as the cost of living. Referring to the pressure exerted, particularly at European level, against automatic adjustment mechanisms and the need to ensure that the income of unemployed people increased at least at the same rate as that of salaried workers in general, the Worker members appreciated the fact that the Committee of Experts considered automatic adjustment of benefits to be the most advanced practice in this respect.
- 113.** Several Government members expressed their support to the proposals made by the General Survey with regard to the need for sound governance and protection of social security funds and for the development of guidelines or codes of practice that would provide more technical advice. They stressed that the ILO should act as a clearing house of best practices and focus on information gathering, research and analysis and the dissemination of good practice. The ILO should also support information exchanges and collaboration between governments and

the social partners, as well as other international organizations working in the field of social security, in order to avoid duplication of efforts.

Social security coverage

- 114.** The Government member of India indicated that in recent years the social protection policy was shifting from a scheme-based approach to a rights-based approach for all workers, including unorganized workers who constituted 93 per cent of the workforce. The flagship Mahatma Gandhi National Rural Employment Guarantee Act was probably the best example. Under this scheme, rights to work were given to 23 million beneficiaries. The Right to Education Act provided a guarantee to free and compulsory education to all children below 14 years of age. The National Health Insurance Scheme guaranteed the right to health to 54 million beneficiaries. The Government was also contemplating the Right to Food Security Act. There was a clear need for adoption of new complementary approaches to ensure that the social protection system was in tune with the changing demands of the international environment in the light of political, economic and social developments. Social protection should be implemented depending on the social and economic circumstances in member States. While there could be no uniform social security model, each country had to determine a national strategy for working towards social security for all. This should be closely linked to its financial resources, employment strategy and other social policies. An endeavour of this magnitude would require a multi-dimensional, well-integrated and efficiently delivered structural response that would include legislation, suitably tailored welfare schemes, enhancement of social awareness, involvement of stakeholders and committed social partners, especially employers. Proper emphasis should also be placed on better supervision through an efficient enforcement machinery and sustainability of the social assistance schemes. Though the State had a priority role in the facilitation, promotion and extension of social security coverage, it should largely also be a shared responsibility of the social partners through public/private partnerships and corporate social responsibility initiatives.
- 115.** The Government member of Senegal indicated that social security increasingly appeared to be the way ahead for finding acceptable and effective solutions to problems caused by the growth in poverty. Hence, decent work could only be properly promoted by a realistic strengthening of social security at national level. Although the General Survey focused on a rights-based approach to social security, the goal of halving poverty by 2015 should also lead to redefining the concept of social security and going beyond the unjust models of growth which had been implemented so far. Even though Senegal had made progress in the field of social security, as noted in the General Survey, it was still facing problems related to the performance of existing formal and alternative social security systems, which showed the limitations in their capacity to respond to various needs and manage all risks. Hence, Senegal had launched a number of initiatives at sector level and had undertaken to harmonize them by placing the preparation of an integrated, multi-sector national social protection strategy on the agenda of the Poverty Reduction Support Credit which it was negotiating with the World Bank. Real promotion of decent work should involve vigorous advocacy vis-à-vis all stakeholders to defend the establishment of a social protection floor, which had now been accepted by everyone. In that regard, technical cooperation had a major role to play.
- 116.** The Government member of Ethiopia indicated that his country had placed great emphasis on the expansion of social security coverage as part of the fight against poverty. The Government had set the goal of transforming the country into a middle-income one by the year 2020 and had launched a five-year Growth and Transformation Plan (GTP), the main objective of which was to transform the economy from agriculture-led to industry-led. Important measures were taken in 2011 to expand social security: the Health Insurance Proclamation has been enacted; the Social Security Proclamation for civil servants was

amended; a new proclamation on social security for the private sector is expected to be adopted by the Parliament very soon; the amendment of the developmental social welfare policy, which had served since 1989, was well under way; finally, the national employment and national occupational safety and health policies were being drafted and consultations with stakeholders were under way.

- 117.** The Government member of Oman, speaking on behalf of the countries forming part of the Council of Ministers of Labour of the Gulf Cooperation Council (GCC), which include Bahrain, Kuwait, Oman, Saudi Arabia, Qatar, United Arab Emirates and Yemen, indicated that the GCC countries had progressive legislation on social security providing effective social protection to workers through a social protection network. The GCC went even further by expanding the scope of that protection to include all GCC citizens when they are employed in any member State of the Gulf Council.
- 118.** The Employer member of Ecuador stated that the General Survey indicated that the Constitution of Ecuador was one of the most advanced, giving details of social security benefits which, in reality, did not exist in his country. In the same paragraph, it was stated that the social security system in Ecuador was based on redistribution, supplemented by a system based on private initiative and individual contributions. Although this was laid down in the Constitution, there were no private contributions owing to a 2002 decision of the Supreme Court of Justice that had suspended the relevant provision. Furthermore, of an economically active population of more than 5 million, only 2 million were covered by social security. The debts accumulated by the State were unknown, the last actuarial study having been carried out by the Ecuadorian Social Security Institute in 2004. Ecuador was therefore not the best example for other countries.
- 119.** The Worker member of Kenya stated that the longstanding contributory social security scheme was in the process of being transformed into a provident scheme. Informal workers could now voluntarily join the scheme and pay contributions depending on their wishes and abilities. All employers, including those with a single employee, including domestic employees, were under an obligation to contribute to this scheme. Under the Bill of Rights Chapter every person had the right to social security and the State was obligated to provide appropriate social security to persons who were unable to support themselves. However, the Government was faced with dwindling economic growth due to high oil prices and other economic factors. The governments of developing countries needed assistance in order to put in place universal social security schemes covering all citizens.
- 120.** The Worker member of Pakistan referred to the impact of the financial crisis resulting in increased income gaps and poverty, and urged ILO constituents to take measures to extend their social security schemes to all workers, including workers in the informal economy and migrant workers. There was a need to promote gender parity and well-designed and managed social security systems based on transparency and sound governance. While Pakistan was the sixth largest country in terms of labour force, the Government had, in spite of this challenge, taken measures to ensure the extension of social security protection to all workers. These measures included the entitlement to old-age and survivor benefits, the entitlement to medical care, disability and sickness benefits, and the establishment of a welfare fund providing, inter alia, for scholarships. Finally, there was a need for political will to assist countries in their efforts to extend social protection, in particular, through measures to ensure fair trade, the transfer of technology, debt relief and assistance in democracy building.
- 121.** The Worker member of Senegal emphasized that in developing countries the key issue remained that of the eligibility of the informal sector for social protection. The problems also included coverage for the risk of illness in the private sector in cases where employers, faced with cash-flow problems, failed to pay their contributions to the system, thereby depriving workers of protection. In the public sector, the insured person's share often had to be paid in

cash and many workers did without medical care because of the reduction in their purchasing power. Difficulties also remained with regard to retirement and surviving spouse's benefits, the amounts of which were very small. The lists of occupational diseases had not been updated for a very long time and so they did not take account of any new risks. The situation was no better with regard to maternity protection, benefits for industrial accidents and family allowances, because of the transition from public establishments to private institutions.

A global social protection floor

- 122.** The Employer members stated that they had always expressed support for initiatives that could extend social security coverage, including the ILO Global Campaign and the ILO Global Jobs Pact. A realistic social security floor should be based on ramped-up ILO technical assistance and advice. The affordability of a social protection floor was an important policy principle. Each country had very particular characteristics that required a specific national approach, and many positive and different social security practices already existed. A progressive approach should be taken towards the implementation of any of the components of the Social Protection Floor, within the economic means and capacity of each member State. Such schemes required transparent implementation to avoid corruption and good governance to ensure efficiency. A floor should be funded nationally in the context of national priorities and budgets to ensure long-term stability. Any new fiscal burdens on businesses would jeopardize their sustainability in an already challenging global economic context. A social protection floor should not create incentives to remain inactive but should encourage the formalization of the informal economy, making a distinction between the poorest in need of assistance and those who could financially contribute. Additionally, the social partners should be involved in national task forces to consider and support the implementation of components of the Social Protection Floor appropriate at the national level. As regards the proposal of the Committee of Experts that the existing body of standards should be complemented with a new high-impact instrument sensitive to the realities of less-developed countries, the Employer members stressed that it was not acceptable to establish standards only relevant to developed countries and to have another set of standards that specifically addressed less-developed countries' needs.
- 123.** The Worker members expressed strong support for the specific recommendations made by the Committee of Experts for future work on social security standards and, in particular, to the need for a new instrument as part of the "social security staircase" approach, with a view to adopting a global social security floor. Although certain countries were linking the provision of social benefits, such as the right to family benefit, to ever stricter conditions relating to resources, or even a change of behaviour, the advantages of paying benefits using the logic of universality and unconditionality should be taken into account in the implementation of the Social Protection Floor. They approved the approach aimed at strengthening social security in breadth as well as in depth. The concept of the Social Protection Floor also contained the risk, in the context of major budgetary challenges facing many countries, of being perceived as an end in itself. On the contrary, the General Survey considered the Social Protection Floor as a launch pad for strengthening social security according to the guidelines of Conventions Nos 102 and 168, in order to move higher up the "social security staircase". The Workers and the ILO had never wanted to reduce social security to a mere instrument for fighting poverty. It constituted an insurance which protected workers against the loss of their purchasing power and against the additional costs arising from sickness and family expenses.
- 124.** The Government member of France indicated that her Government firmly endorsed the Committee of Experts' proposal to supplement the existing body of standards by a new high-impact instrument that could be adapted to the particular structural characteristics of the least developed countries, while being designed in such a way that it could be accepted by

virtually all ILO member States. She trusted that the current session of the Conference would take a decisive step towards the adoption, in 2012, of such an instrument in the form of a Recommendation.

- 125.** The Government member of Austria concurred indicating that the goal of a “global social security floor” should be given full support as it allows for the horizontal extension and vertical deepening of social security.
- 126.** The Government member of the United Kingdom expressed agreement with the assessment that, while the existing ILO Conventions were relevant and important, a new set of initiatives could accelerate or deepen the expansion of social security. As highlighted by the Committee of Experts, new instruments must be sensitive to the structural realities of developing countries and designed to be acceptable by all ILO member States. If there was widespread support for a new instrument for social security for all, then a stand-alone instrument, such as a Recommendation, providing universal coverage of a basic benefit package and allowing for a country-led approach, would be preferable.
- 127.** The Government member of Canada, pointing to the lack of credible and universal social security instruments, stated that, subject to tripartite consensus, Canada would support the future development of a new overarching and promotional instrument on a social protection floor which would be gender inclusive and allow for flexible implementation by all governments using different methods and according to their own needs and timetables.
- 128.** The Government member of India stated that the ILO should work for an instrument in the form of a new non-binding Recommendation, which would provide for progressive extension of social security protection to make it practically feasible for implementation by member States. A separate instrument providing for basic benefits might be more appealing to constituents and would also facilitate ratification of Convention No. 102 in the long run. Each country should decide the level of its own social security floor and there should be no prescription of a uniform floor for all countries. The level of the floor should not be invoked for restrictive trade practices.
- 129.** The Worker member of the Bolivarian Republic of Venezuela stated that there was a need to adopt new approaches because of the changing realities of the world of work, but the substantial protection of the instruments covered by the General Survey should not be modified. Harsh austerity measures for tackling the economic crisis, which had not been created by the workers, intensified concerns regarding the sustainability of funding for social security schemes. In countries, such as Greece and Spain, the workers had risen in order to defend the right to a decent life and social protection.
- 130.** The Worker member of Brazil stated that the minimum wage and universal public social security were a good solution for developing countries as they allowed the development of the domestic market, stimulated production and consumption and promoted development. Social security did not constitute a problem for any poor country. The real problems lay with multinational companies which left peoples in poverty and refused to comply with international labour standards. The neoliberal model had given rise to the mechanism of cutting social expenditure and reducing the role of the State with a view to being able to exploit peoples, pillage natural resources and evade any control. That model had now entered into crisis, but major corporations that had introduced it wanted to continue doing more of the same. To prevent the reduction of social security rights, the workers movement could not accept anything less than Convention No. 102. The proposal to extend social coverage through the introduction of a social floor, although it was claimed to be in support of poor countries, was in reality a new mechanism for transnational enterprises and the major powers to lower social protection standards. This supposedly generous concept had been proposed at

the G20 by colonial powers, which had exploited those outside their countries and reduced the rights of workers in their own countries.

- 131.** The Worker member of Spain stated that the idea of a “floor” could be dangerous, since it could become the main instrument for extending social security, to the detriment of Convention No. 102, and the minimum standard replacing Convention No. 102. The social protection for the poor would be poor social protection. For 75 to 80 per cent of the world’s population, the problem was not lack of standards but lack of political will to extend protection. A floor, by its very nature, could become not the first step towards building a social security system but, for many countries, the only step, while for others it would be a minimum, on which a system of individual contributions could be built, rather than a public social protection system based on ILO principles. Social protection floor, if not accompanied by the promotion of Convention No. 102, would be the most convenient option for private social protection, because those minimum provisions would serve as the mask that hid the failings of the private system.

Final remarks

- 132.** Following the discussion on the General Survey, the Worker members welcomed the fact that Government members shared their viewpoint on the quality of the General Survey. They did not agree with the criticism that the Committee of Experts had exceeded its mandate or that another approach should have been followed by the General Survey. The General Survey covered the manner in which ILO social security standards were or were not applied, as well as the principles identified by the supervisory bodies. The recommendations put forward by the Committee of Experts deserved attention.
- 133.** The need for a “high impact” instrument, as stressed by the Committee of Experts, through which the right to social security could be extended to all and which would make the Social Protection Floor a reality, did not mean that the new instrument would take the place of Conventions Nos 102 and 168. The new instrument must not be interpreted as reducing the objectives of social security merely to combating poverty, but rather as providing a basis for progress towards comprehensive social security, based on the idea of the social security stairway. In that regard, as Recommendations Nos 67 and 69 had lost their power of motivation for such an approach, as indicated in the General Survey, there was a need to adopt a new and more effective instrument that was sufficiently precise and explicit and set out clear minimum standards. The Worker members were in favour of the adoption of a new instrument setting out a social security floor as well as of the approach of the social security staircase to encouraging as many countries as possible to ratify Convention No. 102 and implement it effectively.
- 134.** The Worker members considered it necessary to promote the more widespread ratification of the surveyed instruments and particularly to promote complete, rather than partial ratifications. The General Survey indicated that several countries were in a position to ratify the Conventions on the basis of the legislation in force. Every effort needed to be made to ensure that the ratification campaign was accompanied by effective implementation. The General Survey rightly emphasized that it was not only important to ensure the implementation of the social security Conventions, but also those on freedom of association, collective bargaining and the promotion of tripartism. The Conference Committee would also have to be more attentive in future to issues of compliance with the social security instruments. Although certain provisions and concepts in Convention No. 102 would need to be updated, a revision of the Convention should not be considered, but rather the adoption of a Protocol, which was one of the options proposed in the General Survey. In the meantime, use should be made of the resolution concerning gender equality and the use of language in legal texts of the ILO. The Worker members indicated that they were open to the idea of

allowing the ratification of Convention No. 168 on the basis of acceptance of certain of its obligations, but not all of them. However, that option would need to be discussed in greater depth.

- 135.** The Worker members supported the proposal for the guidelines on good governance for social security systems, as it was the responsibility of the public authorities, in collaboration with the social partners, to ensure the proper utilization of funds and access to entitlements. That approach should include issues relating to the evasion of contributions and fraud, and should place as much emphasis on the violations noted as on the good practices observed. The Worker members were also in favour of the extension of social security to categories of workers engaged under atypical forms of contract who did not fit into the traditional model of the male worker with a relatively stable full-time contract. That reflection should be pursued, possibly with a view to the development of new instruments. Thought also needed to be given to the social protection of self-employed workers, subject to the principle of equality of treatment between employed persons and the self-employed, in order to avoid any abusive transfer from one system to another. Finally, the issue of the coverage of migrant workers should not be overlooked with a view to combating the trend for them to be excluded from certain policies, and even from basic protection, as well as to cover the question of the portability of rights from one country to another.
- 136.** The Employer members indicated that discussion on the policy issue of social security extension had detracted from the main work of this Committee, which was to review the implementation of voluntarily ratified standards. The Committee of Experts had a role to play, through the Conference Committee, in relation to the recurrent review; that role was to conduct a “classical” General Survey which would pinpoint practices leading to effective implementation as well as obstacles to implementation and ratification of standards. Fact finding by the Committee of Experts was essential to help this Committee understand the scope and terms of international labour standards and obstacles to full implementation of ratified Conventions. The workload of the Committee of Experts was already very heavy and there should be no further dilution of its effectiveness or the effectiveness of the Conference Committee. The Employer members concluded that in their view, the General Survey did not answer the basic question of non-ratifying countries, i.e., whether they were able to ratify the Conventions under examination and comply with them. Thus, something very fundamental had been lost.

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- 137.** In his reply to the discussion on the General Survey, the Chairperson of the Committee of Experts on the Application of Conventions and Recommendations thanked the ILO constituents for their valuable contributions, advocating various approaches, which would certainly help the Committee of Experts’ future work. Reacting to the criticism that the Committee of Experts might have exceeded its mandate by delivering a broad policy guidance document, but without enough legal analysis, he indicated that the work of the Committee of Experts was based on the questionnaire devised by the Governing Body. Taking into account the broad scope of the Committee of Experts’ mission, a traditional paragraph-by-paragraph analysis of the four surveyed instruments would not have been possible, the surveyed instruments encompassing over 700 paragraphs of legal provisions. These instruments covered a wide range of social security issues, some of them dealing with very specific branches and expanding on the pivotal Convention No. 102. With this General Survey, the CEACR had tried to help countries better understand the ideas underpinning the key principles and notions that were at the core of the ILO up-to-date social security standards and explaining in clear terms their sometimes very technical provisions. The survey aimed at identifying these principles and analyses the manner in which they were implemented worldwide, particularly with respect to the majority of countries which had not ratified the two Conventions. The General Survey contained numerous jurisprudential

findings but it also, based on the information available to the experts, examined the gaps and deficits in social security regulation based on the instruments, namely to better enforce social security legislation including through complaint and appeal procedures; to strengthen the protection of social security funds; to ensure coordination between employment policy and social security; to advance social security through social dialogue; and the need to extend coverage. In drawing the conclusions from the information available, the Committee of Experts did not intend to suggest policy guidance, but rather to present different options emerging from such information. It was reassuring that practically all Governments, as well as the Worker members concurred with the approach of the Committee of Experts.

- 138.** Referring to the protection of migrant workers, the speaker stressed that the General Survey did not deal with this issue in detail, because the rights of migrant workers were the subject of a specific set of standards, namely Conventions Nos 118 and 157, which were not selected for the General Survey. Recognizing the importance of guaranteeing the social security rights of migrant workers, the General Survey stressed that “a key principle on which the right to social security is premised is non-discrimination. It pertains to all persons, irrespective of status and origin. With regard to the non-citizens, even where they are in an irregular status on the territory of another State, such as undocumented workers, they should have access to basic benefits and particularly to emergency medical care”.
- 139.** As to the concern raised by a Worker member that the General Survey did not address in sufficient detail the challenges faced by the developing world, he indicated that, in fact, one of the main conclusions of the Survey was that, especially because of the specific needs of developing countries from the point of view of social security, the ILO should complement existing standards by a “new high-impact instrument sensitive to the distinctive structural realities of less-developed economies, but designed so as to be accepted by virtually all ILO member States, without regard to their level of economic development”. The informal economy present in many developing countries had challenged governments to extend social security protection on the basis of the core principles contained in ILO social security instruments, e.g. responsibility of the State, good governance and sustainability of social security institutions, which also applied to social security schemes in developing countries.
- 140.** Turning to the need to ensure effective coordination between social security and employment policy raised by an Employer member who indicated that he would have liked to see this developed in further detail in the Survey, the Chairperson of the Committee of Experts pointed out that this concern had, indeed, been addressed in an entire chapter of the Survey which stressed that “no durable progress could be achieved at the present time without meeting the challenge of integrating employment and social policies”. At the same time, the Survey also stated “that effective realization of the Social Justice Declaration and the Global Jobs Pact would very much depend on the extent to which the deficit of integrated policies could be made up through practical guidelines and policy recommendations”. Referring to the many other points raised by the members of the Committee, he regretted not to be able to touch on all of them due to time constraints.

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- 141.** A brief summary and the outcome of the discussion on the General Survey concerning social security instruments was presented by the Officers of the Committee on the Application of Standards to the Committee for the Recurrent Discussion on Social Protection (Social Security) on the afternoon of 4 June 2011. The text of the outcome is set out below.

Outcome of the discussion on the General Survey on social security

142. Upon consideration of the General Survey concerning social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization⁸ prepared by the Committee of Experts on the Application of Conventions and Recommendations, the Committee on the Application of Standards has agreed on the following outcome of its discussion, which it would like to bring to the attention of the Committee for the Recurrent Discussion on Social Protection (social security):

The Committee on the Application of Standards considers that up-to-date ILO standards on social security could provide a comprehensive legal framework that needs ramped up ILO technical assistance and advice. Taking into account the complexity of the social security standards, the ILO should provide information on the implementation of the instruments and devote special efforts to capacity building and the training of the social partners, and to strengthening social dialogue.

Recognizing however that certain provisions of Convention No. 102 are gender biased and reflect an obsolete model of the male breadwinner, the Committee on the Application of Standards considers that it is for the International Labour Standards Segment of the LILS Section of the Governing Body to identify the provisions in question with a view to determining the most appropriate means of interpreting gender-sensitive language in the light of the draft resolution concerning gender equality and the use of language in legal texts of the ILO, submitted to the current session of the International Labour Conference.

In light of the discussion of the General Survey, the Committee considers that the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), should be referred to the International Labour Standards Segment of the LILS Section of the Governing Body.

The global economic crisis has highlighted the urgent need for sound governance of social security systems, based on principles of prudent finance, creation of reserve funds, best actuarial practices and tripartite involvement. The lack of sufficient protection of social security funds has had the effect that the social security systems in many countries are not sufficiently crisis-resistant. Social security systems should be well administered and well equipped to combat undeclared work, social security evasion, fraud, corruption and misuse. They should concretize the general responsibility of the State for the sustainability of social security systems and their financial and administrative management. Social security and employment policies should be coordinated and aligned with economic and developmental policies.

The Committee on the Application of Standards further recognizes the consistent tripartite support for the ILO Global Campaign on Social Security and Coverage for All, which was launched in 2003 to implement the principles of social inclusion and universal coverage. Considering that there is no single model, the Committee supports a social protection floor, provided that a time-bound progressive approach is adopted, combining the adequacy and sustainability of social security systems. Social protection should be designed to achieve the transition to formal employment.

Finally, taking into account that the volume of the detailed information supplied by the governments in their article 19 reports concerning the application of the technical provisions of the surveyed instruments in each of the nine branches of social security has largely surpassed even the extended limits set for this General Survey, the Committee on the Application of Standards recommends that the Committee of Experts compile this information in due course so as to make it available to the constituents in a form that highlights the variety of ways of ensuring compliance with the provisions of these instruments and the limits to their flexibility.

⁸ ILC, *General survey concerning social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization*, Report III (Part 1B), 100th Session, Geneva, 2011.

D. Compliance with specific obligations

- 143.** The Employer members emphasized that failure to comply with the obligation to send reports hindered the functioning of the supervisory system, which was based precisely on the information contained in those reports. They recalled that the Committee had referred in 2010 to the need to intensify technical assistance activities in order to lighten the workload of governments with regard to the sending of reports. They drew attention to the fact that governments could use the technical assistance provided by the Office to ensure that all their reports arrived within the deadline so as to facilitate the important work of the Committee of Experts. The reports had to contain high-quality information, respond effectively to the Committee's comments, and be sent regularly. Despite the 39 specific communications sent to governments which had not met their obligations relating to the sending of reports, only five governments had responded by sending reports. The Committee of Experts also noted with concern the increase in the number of comments to which no reply had been received. This year, 66.95 per cent of reports requested had been received (2,002 received out of 2,990 requested). Moreover, it was concerned that 12 countries had not sent such reports for two years or more. As of 1 September 2010, the deadline for submitting reports, only 31.4 per cent of reports had been received, which disrupted the functioning of the Committee of Experts. It was also a matter of concern that this year, no reply had been received to 669 comments relating to 51 countries. The Conventions had been grouped together on the basis of the four strategic objectives of the ILO, with a view to easing the governments' administrative burden. That should facilitate the selection of instruments to be examined in General Surveys and the recurrent discussion. Finally, they reiterated their position as to why reports were presented late, one reason being that countries needed to consider carefully the advisability of ratifying a Convention prior to doing so, from the standpoint not just of the ability to implement it, but also from that of their responsibility to report on its application. It was also necessary to streamline and simplify international labour standards so as to arrive at a basic set of regulations.
- 144.** The Worker members noted with regret that the proportion of reports received had decreased again this year, down to 66.95 per cent compared with 68 per cent in 2010 and 70 per cent in 2009. The efforts made in that area needed to be continued. In addition, too many reports were received late (although a slight improvement should be noted) or did not include a reply to the comments of the Committee of Experts. Those delays affected the work of the Committee of Experts and paralysed the supervisory system. Emphasizing that the obligation to send reports constituted the key element on which the ILO supervisory system was based, the Worker members encouraged governments to meet their obligations fully and diligently in this field. The information contained in the reports had to be of high quality and as detailed as possible for each of the cases of serious failure which had just been examined. Governments which failed to meet their obligations had an unfair advantage in so far as, in the absence of any report, the Committee of Experts could not examine their national law in practice. The Conference Committee therefore had to insist that member States take the necessary steps in the future to meet their obligations.
- 145.** In examining individual cases relating to compliance by States with their obligations under or relating to international labour standards, the Committee applied the same working methods and criteria as last year.
- 146.** In applying those methods, the Committee decided to invite all governments concerned by the comments in paragraphs 36 (failure to supply reports for the past two years or more on the application of ratified Conventions), 42 (failure to supply first reports on the application of ratified Conventions), 45 (failure to supply information in reply to comments made by the Committee of Experts), 94 (failure to submit instruments to the competent authorities), and 103 (failure to supply reports for the past five years on unratified Conventions and

Recommendations) of the Committee of Experts' report to supply information to the Committee in a sitting devoted to those cases.

Submission of Conventions, Protocols and Recommendations to the competent authorities

- 147.** In accordance with its terms of reference, the Committee considered the manner in which effect was given to article 19, paragraphs 5–7, of the ILO Constitution. These provisions required member States within 12, or exceptionally 18 months of the closing of each session of the Conference to submit the instruments adopted at that session to the authority or authorities within whose competence the matter lay, for the enactment of legislation or other action, and to inform the Director-General of the ILO of the measures taken to that end, with particulars of the authority or authorities regarded as competent.
- 148.** The Committee noted from the report of the Committee of Experts (paragraph 92) that considerable efforts to fulfil the obligation to submit had been made in certain States, namely: Bosnia and Herzegovina, Gambia, Kenya, Lao People's Democratic Republic, Nepal, Paraguay, Bolivarian Republic of Venezuela and Zambia. In addition, the Conference Committee received information about the submission to parliaments from many governments and in particular from the Central African Republic, as well as the ratification of Convention No. 187 by Chile.

Failure to submit

- 149.** The Committee noted that in order to facilitate its discussions, the report of the Committee of Experts mentioned only the governments which had not provided any information on the submission to the competent authorities of instruments adopted by the Conference for seven sessions at least (from the 89th Session in June 2001 to the 96th Session in June 2007). This time frame was deemed long enough to warrant inviting Government delegations to the special sitting of the Conference Committee so that they may explain the delays in submission.
- 150.** The Committee noted the regret expressed by seven delegations at the delay in providing full information on the submission of the instruments adopted by the Conference to parliaments. Some governments had requested the assistance of the ILO to clarify how to proceed and to complete the process of submission to national parliaments in consultation with the social partners.
- 151.** The Committee expressed concern at the failure to respect the obligation to submit Conventions, Recommendations and Protocols to national parliaments. It also recalled that the Office could provide technical assistance to facilitate compliance with this constitutional obligation.
- 152.** The Committee noted that 34 countries were still concerned with this serious failure to submit the instruments adopted by the Conference to the competent authorities, that is, **Antigua and Barbuda, Bahrain, Bangladesh, Belize, Cambodia, Cape Verde, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Georgia, Guinea, Haiti, Ireland, Kiribati, Libyan Arab Jamahiriya, Mozambique, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Seychelles, Sierra Leone, Solomon Islands, Somalia, Sudan, Tajikistan, The former Yugoslav Republic of Macedonia, Turkmenistan, Uganda and Uzbekistan.** The Committee hoped that appropriate measures would be taken by the governments and the

social partners concerned so that they could bring themselves up to date, and avoid being invited to provide information to the next session of this Committee.

Supply of reports on ratified Conventions

- 153.** In Part II of its report (Compliance with obligations), the Committee had considered the fulfilment by States of their obligation to report on the application of ratified Conventions. By the date of the 2010 meeting of the Committee of Experts, the percentage of reports received was 67.9 per cent, compared with 67.8 per cent for the 2009 meeting. Since then, further reports had been received, bringing the figure to 77.3 per cent (as compared with 77.6 per cent in June 2010, and 78.0 per cent in June 2009).

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

- 154.** The Committee noted with regret that no reports on ratified Conventions had been supplied for the past two years or more by the following States: **Djibouti, Equatorial Guinea, Guinea, Guinea-Bissau, Guyana, Sierra Leone, Solomon Islands, Somalia, United Kingdom** (British Virgin Islands, Falkland Islands (Malvinas)) and **Vanuatu**.
- 155.** The Committee also noted with regret that no first reports due on ratified Conventions had been supplied by the following countries:

Dominica

- since 2006: Convention No 147;

Equatorial Guinea

- since 1998: Conventions Nos 68, 92;

Kyrgyzstan

- since 1994: Convention No 111;
- since 2006: Conventions Nos 17, 184;
- since 2009: Conventions Nos 131, 144;

Sao Tome and Principe

- since 2007: Convention No 184;

Seychelles

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

Thailand

- since 2009: Convention No 159;

Vanuatu

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

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

- 156.** In this year's report, the Committee of Experts noted **51** governments had not communicated replies to most or any of the observations and direct requests relating to Conventions on which reports were due for examination this year, involving a total of **669** cases (compared with 695 cases in December 2009). The Committee was informed that, since the meeting of the Committee of Experts, 16 of the governments concerned had sent replies, which would be examined by the Committee of Experts at its next session.
- 157.** The Committee noted with regret that no information had yet been received regarding any or most of the observations and direct requests of the Committee of Experts to which replies were requested for the period ending 2010 from the following countries: **Bahamas, Burkina Faso, Burundi, Chad, Comoros, Djibouti, Dominica, Equatorial Guinea, Gambia, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, Ireland, Kazakhstan, Kyrgyzstan, Liberia, Luxembourg, Netherlands (Aruba), Nigeria, Rwanda, San Marino, Sao Tome and Principe, Seychelles, Sierra Leone, Singapore, Solomon Islands, Togo, Trinidad and Tobago, Uganda, United Kingdom (British Virgin Islands, Falkland Islands (Malvinas), St Helena), Yemen and Zambia.**
- 158.** The Committee noted the explanations provided by the Governments of the following countries concerning difficulties encountered in discharging their obligations: **Burkina Faso, Cambodia, Cape Verde, Luxembourg, Papua New Guinea, Seychelles, Somalia, Thailand, Trinidad and Tobago, United Kingdom (British Virgin Islands, Falkland Islands (Malvinas), St Helena), Uganda, Yemen and Zambia.**

Supply of reports on unratified Conventions and Recommendations

- 159.** The Committee noted that **424** of the **681** article 19 reports requested on social security instruments, had been received at the time of the Committee of Experts' meeting, and a further 18 since, making 64.9 per cent in all.
- 160.** The Committee noted with regret that over the past five years none of the reports on unratified Conventions and Recommendations, requested under article 19 of the Constitution, had been supplied by: **Cambodia, Cape Verde, Democratic Republic of the Congo, Equatorial Guinea, Guinea, Guinea-Bissau, Ireland, Libyan Arab Jamahiriya, Luxembourg, Malta, Saint Kitts and Nevis, Samoa, Sao Tome and Principe, Sierra Leone, Somalia, Tajikistan, Togo, Turkmenistan, Uzbekistan and Vanuatu.**

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

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

Application of ratified Conventions

- 162.** The Committee noted with particular interest the steps taken by a number of governments to ensure compliance with ratified Conventions. The Committee of Experts listed in paragraph 64 of its report, new cases in which governments had made changes to their law and practice following comments it had made as to the degree of conformity of national legislation or practice with the provisions of a ratified Convention. There were 63 such cases, relating to 40 countries; 2,803 cases where the Committee of Experts was led to express its satisfaction with progress achieved since it began listing them in 1964. These results were tangible proof of the effectiveness of the supervisory system.
- 163.** This year, the Committee of Experts listed in paragraph 67 of its report, cases in which measures ensuring better application of ratified Conventions had been noted with interest. It noted 341 such instances in 122 countries.
- 164.** At its present session, the Conference Committee was informed of other instances in which measures had recently been or were about to be taken by governments with a view to ensuring the implementation of ratified Conventions. While it was for the Committee of Experts to examine these measures, the present Committee welcomed them as fresh evidence of the efforts made by governments to comply with their international obligations and to act upon the comments of the supervisory bodies.

Specific indications

- 165.** The Government members of **Bahrain, Burkina Faso, Cambodia, Cape Verde, Congo, Luxembourg, Malta, Pakistan, Papua New Guinea, Seychelles, Somalia, Thailand, Trinidad and Tobago, Uganda, United Kingdom** (British Virgin Islands, Falkland Islands (Malvinas), St Helena), **Uzbekistan, Yemen, Zambia** had promised to fulfil their reporting obligations as soon as possible.

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

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

Special cases

- 167.** The Committee considered it appropriate to draw the attention of the Conference to its discussion of the cases mentioned in the following paragraphs, a full record of which appears as Part Two of this report.
- 168.** As regards the application by **Guatemala of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee noted the statements made by the Government representative and a magistrate of the Supreme Court of Justice, as well as the discussion that followed. It also noted the numerous cases examined by the Committee on Freedom of Association and that a high-level mission had visited Guatemala from 9 to 13 May 2011.
- 169.** The Committee noted that the Committee of Experts continued to express deep concern at the following issues: the numerous serious acts of violence, including the murder of trade

unionists and threats against them; legislative provisions and practices incompatible with the rights embodied in the Convention; and problems concerning the composition of the national tripartite commission. The Committee observed that the Committee of Experts had also noted the slowness and ineffectiveness of criminal procedures in relation to acts of violence, the excessive delays in judicial procedures and the lack of independence of the judicial authorities, all of which was giving rise to a serious situation of almost total impunity.

- 170.** The Committee noted that the Government representative had indicated that his Government's attitude was not one of tolerance, that it did not encourage people to threaten or endanger the life and physical integrity of any citizen of Guatemala, that it fulfilled its obligation to investigate acts of violence, and that under Agreement No. 49-2011 of 20 May 2011 it had established a Special Investigation Unit for Crimes against Trade Unionists. He had added that the Constitutional Court of Justice had amended Agreement No. 4-89 to ensure that proceedings relating to constitutional appeals for protection did not hinder the course of ordinary legal procedures. He had further stated that the Inter-Institutional Committee on Labour Relations had examined the country's labour problems and that the efforts made were being reflected in a "road map" setting out dates and specific activities, which the Government of Guatemala was following by strengthening the implementation and enforcement of labour laws, and that there was an agreement by the General Secretariat of the Presidential Office which would appoint a Presidential Committee to study how the labour laws needed to be amended to fulfil the obligations deriving from the ILO Conventions ratified by Guatemala. The Government representative had emphasized that the Government's call for the proposal of representatives of employers and workers for the national tripartite commission, which had been set up at the end of 2010, had been published in a widely read daily newspaper so that all organizations wishing to participate could do so. The Government representative had indicated that, in order to guarantee that the general labour inspectorate could carry out its activities without any hindrance in its access to workplaces, Ministerial Agreement No. 42 2011 set out the procedure to be followed in cases of resistance to labour inspection. He had also referred to the increase in the number of trade unions registered. Finally, the magistrate from the Supreme Court of Justice had provided full information on the measures to facilitate criminal and labour procedures and other measures for the restructuring of the judicial system.
- 171.** The Committee noted that it was dealing with an important case that had been under discussion for many years and that the Government had received numerous technical assistance missions on the various pending issues. The Committee noted with deep concern the persistent climate of violence in the country and the growing degree of impunity. It further noted with deep concern that the climate of violence was generalized, that it affected trade unionists, entrepreneurs (28 murders in 2010, according to sources mentioned by the Employer members) and other categories, and that the figure of 53 trade union leaders and members murdered in recent years showed that they were a particularly vulnerable group.
- 172.** The Committee recalled the importance of guaranteeing as a matter of urgency that trade unions and employers' organizations and their representatives were able to carry out their activities in a climate that was free from fear, threats and violence, and of identifying those cases of violence committed for reasons related to their representative functions. The Committee considered that it was important to improve the climate for investment and economic growth which would also have a positive impact in combating impunity.
- 173.** The Committee emphasized the need for all the necessary measures to be taken without delay so that the corresponding investigations could be conducted to determine those responsible for the acts of violence against trade union leaders and members, bring them to justice and punish them in accordance with the law. The Committee welcomed the recent establishment of the Special Investigation Unit for Crimes against Trade Unionists and trusted that it would be provided with the necessary resources to carry out investigations. It

trusted that the International Commission against Impunity in Guatemala (CICIG) would, as the Government had promised the last mission to visit the country, collaborate with the Attorney-General's Office in investigating and resolving the 53 murders of trade union leaders and members. While noting the Government's indications concerning the reform in the judicial system and of the measures to improve its functioning, the Committee stressed that further steps were needed to strengthen the judicial authorities, the police and the labour inspection services and provide them with greater human and financial resources. The Committee drew attention to the need for a reform with a view to reinforcing the rule of law and the institutions responsible for justice, as well as their independence.

174. The Committee recalled the intrinsic link that existed between freedom of association, democracy and respect for civil liberties, and especially the right to personal safety as a precondition for compliance with the Convention.
175. The Committee regretted to observe that, despite having received specific technical assistance from the ILO, there had been no significant progress in the legislative reforms called for by the Committee of Experts for many years. It trusted that the Government would in the very near future be in a position to provide information on concrete progress in that area. The Committee requested the Government to take steps to strengthen social dialogue and, in accordance with the conclusions of the high-level mission, to ensure the integration of the named representative trade union confederations in the national tripartite commission.
176. The Committee expressed its serious concern at the situation and noted the lack of clear and effective political will of the Government. The Committee considered that all measures needed to be taken on an urgent basis and in tripartite consultation to address all issues of violence and impunity. This should be done in full coordination with the state institutions concerned. ILO technical assistance should continue to be provided to enable the Government to address all legislative problems that were still pending with a view to achieving full conformity with the Convention.
177. The Committee emphasized the need to apply effectively and without delay court orders for the reinstatement of dismissed trade unionists.
178. The Committee requested the Government to send the Committee of Experts a detailed report this year containing information on all the points raised so that a full evaluation of the situation could be undertaken and expressed the firm hope that next year the Committee of Experts would be in a position to note substantial progress in the application of the Convention.
179. As regards the application by **Uzbekistan of the Worst Forms of Child Labour Convention, 1999 (No. 182)**, the Committee took note of the oral information provided by the Government representative and the discussion that followed. The Committee noted that the report of the Committee of Experts referred to allegations from the International Organisation of Employers (IOE), the International Trade Union Confederation (ITUC), and a significant number of other international workers' organizations relating to the systematic and persistent use of forced child labour in the cotton fields of Uzbekistan for up to three months every year, as well as the substantial negative impact of this practice on the health and education of school-aged children obliged to participate in the cotton harvest. The Committee further noted the concerns expressed by the UN Human Rights Committee, the UN Committee for the Elimination of Discrimination Against Women, as well as information in two UNICEF publications with regard to this practice.
180. The Committee noted the information provided by the Government outlining the laws and policies put in place to combat the forced labour of, and hazardous work by, children. The Committee also noted the Government's statement that it had established a tripartite Inter-

ministerial Working Group with a view to developing specific programmes and actions aimed at fulfilling Uzbekistan's obligations under ILO Conventions, as well as to update measures taken within the framework of the National Action Plan for the application of Conventions Nos 138 and 182 to ensure the protection of children's rights. Furthermore, the Committee noted the detailed information provided by the Government on economic reforms undertaken in Uzbekistan, which had improved the level of employment, raised incomes for families and strengthened the banking and financial system. Moreover, the Committee noted the Government's statement that concrete measures were being taken by the labour inspectorate officials to prosecute persons for violations of labour legislation, and that a number of administrative and disciplinary proceedings had been undertaken and fines imposed. The Committee further noted the Government's statement denying the coercion of large numbers of children to participate in agricultural work, and that the use of compulsory labour was punishable with penal and administrative sanctions.

- 181.** The Committee noted once again that, although legal provisions prohibited forced labour and the engagement of children in hazardous work, there was broad consensus among the United Nations bodies, the representative organizations of workers and employers and non-governmental organizations, regarding the continued practice of mobilizing schoolchildren for work during the cotton harvest. In this regard, this Committee was obliged to echo the deep concern expressed by these bodies, as well as several speakers in this Committee, about the systemic and persistent recourse to forced child labour in cotton production, involving an estimated 1 million children. The Committee emphasized the seriousness of such violations of the Convention. Moreover, the Committee noted with regret that, despite the Government's indications that concrete measures had been undertaken by the labour inspectorate regarding violations of labour legislation, no information was provided on the number of persons prosecuted for the mobilization of children in the cotton harvest, despite previous requests by this Committee and the Committee of Experts for this information.
- 182.** While noting the establishment of a tripartite Inter-ministerial Working Group on 25 March 2011, the Committee observed that the Committee of Experts had already noted the establishment of an earlier interdepartmental working group on 7 June 2010, for on-the-ground monitoring to prevent the use of forced labour by schoolchildren during the cotton harvest. It noted with regret the absence of information from the Government on the concrete results of this monitoring, particularly information on the number of children, if any, detected by this interdepartmental working group (or any other national monitoring mechanism) engaged to work during the cotton harvest. In this regard, the Committee regretted to note that the significant progress that had been made regarding economic reform and growth had not been accompanied by corresponding progress with regard to combating the use of children for cotton harvesting.
- 183.** The Committee expressed its serious concern at the insufficient political will and the lack of transparency of the Government to address the issue of forced child labour in cotton harvesting. It reminded the Government that the forced labour of, or hazardous work by, children, constituted the worst forms of child labour and urged the Government to take the necessary measures, as a matter of urgency, to ensure the effective implementation of national legislation prohibiting compulsory labour and hazardous work for children below the age of 18.
- 184.** The Committee once again called on the Government to accept an ILO high-level tripartite observer mission that would have full freedom of movement and timely access to all situations and relevant parties, including in the cotton fields, in order to assess the implementation of the Convention. Observing that the Government had yet to respond positively to such a request, the Committee strongly urged the Government to receive such a mission in time to report back to the forthcoming session of the Committee of Experts. The

Committee expressed the firm hope that, following this mission and the additional steps promised by the Government, it would be in a position to note tangible progress in the application of the Convention in the very near future.

185. The Committee also strongly encouraged the Government to avail itself of ILO technical assistance, and to commit to working with the International Programme on the Elimination of Child Labour (IPEC).
186. Finally, the Committee invited the Government to provide comprehensive information in its next report to the Committee of Experts on the manner in which the Convention was applied in practice, including in particular enhanced statistical data on the number of children working in agriculture, their age, gender, and information on the number and nature of contraventions reported and penalties applied.
187. As regards the application by the **Democratic Republic of the Congo of the Forced Labour Convention, 1930 (No. 29)**, the Committee deeply regretted the fact that no Government representative of the Democratic Republic of the Congo had been present in the Committee to take part in the discussion, even though the Democratic Republic of the Congo was duly accredited and registered at the Conference.
188. The Committee recalled that the Committee of Experts in its observation had expressed its deep concern at the atrocities committed by the state security forces and other armed groups which constituted grave violations of the Convention, and particularly the imposition of forced labour on the civilian population and the sexual slavery of women and girls in mining areas. It also noted that the Committee of Experts had referred to the necessity to include in the penal legislation effective sanctions against persons who exacted forced labour, as well as the need to formally repeal certain old texts which were contrary to the Convention.
189. The Committee noted with concern the information provided which bore witness to the gravity of the situation and the climate of violence, insecurity and the violation of human rights which prevailed in the country, especially in North Kivu. This information confirmed that cases of the abduction of women and children with a view to their use as sexual slaves and the exaction of forced labour, particularly in the form of domestic work, were frequent and continued to occur. Moreover, in mines, the workers were the hostages of conflicts for the exploitation of natural resources and were the victims of exploitation and abusive practices, some of which amounted to forced labour. The Committee observed that failure to comply with the rule of law, legal insecurity, the climate of impunity and the difficulties faced by victims in gaining access to justice favoured all of these practices.
190. The Committee recalled that the atrocities committed, among others by the armed forces, constituted grave violations of the Convention. It appealed to the Government to take urgent and concerted measures to bring such violations to an immediate end, to ensure that both civilians and the military authorities complied with the law and to bring to justice and punish persons exacting forced labour, irrespective of their rank or position. The Committee recalled in that regard the need to amend the penal legislation so as to provide for effective and dissuasive sanctions against those perpetrating such practices. It asks the Government to provide without delay statistical data on the number of violations committed, prosecution proceedings instituted and penal sanctions imposed on perpetrators.
191. The Committee requested the Government to provide for the next session of the Committee of Experts detailed information on the measures taken to bring an immediate end to sexual slavery and the exaction of forced labour from the civilian population in the east of the country and in mining areas and to guarantee a climate of stability and legal security in which recourse to such practices could not be legitimized or go unpunished. The Committee called upon the Government to avail itself of the technical assistance of the Office, which

could help it to combat forced labour and to establish a programme of assistance to and the reintegration of victims.

- 192.** As regards the application by **Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee took note of the statement made by the Government representative and the detailed discussion that followed. The Committee also recalled that it had discussed this serious case on numerous occasions over the last two decades and that its conclusions had been listed in a special paragraph for continuous failure to implement the Convention since 1996.
- 193.** The Committee took note of the commitment made by the Government representative that the Government would provide the draft labour organizations law to the ILO on a confidential basis and once it was finalized. As regards the practical application of the Convention, the Government had repeated its previous statements that people were free to protest without fear and that the detained persons named in the Committee of Experts' comments were not workers and their sentencing was totally unrelated to trade union rights.
- 194.** The Committee observed that once again it had for discussion grave comments from the Committee of Experts who had been obliged to deplore that no progress had been made with respect to any of the outstanding areas of non-compliance with the Convention, nor were there any meaningful replies to the serious allegations of arrest, detention, long prison sentences, torture and denial of workers' basic civil liberties.
- 195.** The Committee deplored the long-standing absence of a legislative framework for the establishment of free and independent trade union organizations and took note of the article 26 complaint brought against the Government in June 2010 for non-observance of this Convention.
- 196.** The Committee regretted that it had no detailed information on the draft legislation referred to by the Government, despite the assurances given last year that progress would be made in this regard following the elections in November 2010. In light of the information available to it, the Committee could only conclude that the Government remains very far away from drafting and enacting legislation in conformity with the Convention, much less implementing it. In addition, the Committee regretted that there were no mechanisms available in the country permitting complaints of serious violations of trade union rights such as those mentioned above.
- 197.** The Committee once again urged the Government in the strongest terms to adopt immediately the necessary measures and mechanisms to ensure all workers and employers the rights provided for under the Convention. In this regard, it once again urged the Government to repeal Orders Nos 2/88 and 6/88, as well as the Unlawful Association Act and to ensure an effective constitutional and legislative framework for the full and effective exercise of trade union rights.
- 198.** The Committee once again highlighted the intrinsic link between freedom of association and democracy and observed with regret that the Government still had not ensured the necessary environment for freedom of association that would give credibility to the stated transition to democracy. It therefore once again called upon the Government to take concrete steps to ensure the full and genuine participation of all sectors of society, regardless of their political views, in the review of the legislative framework and practice so as to bring them fully into line with the Convention without delay. It further recalled the importance for the effective application of the Convention of access to an independent judiciary for enforcement of the legislation.

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199. The Committee emphasized that it was crucial that the Government take all necessary measures immediately to ensure a climate wherein workers and employers can exercise their freedom of association rights without fear, intimidation, threat or violence. The Committee continued to observe with extreme concern that the numerous detained persons referred to in previous discussions remained in prison, despite the calls for their release and without even benefiting from the recent wide amnesty granted by the Government. The Committee was therefore once again obliged to call upon the Government to ensure the immediate release of: Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min, as well as all other persons detained for exercising their basic civil liberties and freedom of association rights. The Committee once again recalled the recommendations made by the Committee of Experts and the Committee on Freedom of Association for the recognition of trade union organizations, including the Federation of Trade Unions of Burma and the Seafarers' Union of Burma, and urged the Government immediately to put an end to the practice of persecuting workers or other persons for having contact with workers' organizations, including those operating in exile.
200. The Committee further recalled the link between freedom of association and forced labour and reiterated its previous request to the Government to accept an extension of the ILO presence to cover the matters relating to the Convention and to establish a complaints mechanism for violation of trade union rights.
201. The Committee urged the Government to transmit to the ILO the draft law referred to as well as a full reply to all matters raised in the article 26 complaint. It expected that the Government would also provide this information and a detailed report on the concrete measures taken and the adoption of a timeline for the enactment of the necessary legislation for examination by the Committee of Experts at its meeting this year. The Committee considered that it had been discussing this grave matter for far too long without any visible, meaningful and concrete progress. In view of its continuing frustration, the Committee urgently called upon the Government to take the steps that would enable the Governing Body to be in a position to observe significant progress on all the above matters at its November session.
202. As regards the application by **Swaziland of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee took note of the written and oral information provided by the Government representative and the discussion which took place thereafter.
203. The Committee took note of the Government representative's statement that, following the high-level tripartite mission which visited the country in October 2010, a number of steps had been taken by the Government. In particular, the Industrial Relations Act was amended in accordance with the requests of the Committee of Experts and came into force on 15 November 2010. The coroner's report into the death of Mr Sipho Jele had been shared with the ILO and the workers' and employers' federations. In addition, the National Social Dialogue structure was now fully functional and has been meeting on a monthly basis. In addition, it was agreed that a prison bill had to be submitted to the Labour Advisory Board for consideration. As regards the outstanding questions in relation to the 2008 Suppression of Terrorism Act and the 1963 Public Order Act, he stated that his Government was awaiting ILO feedback and expert advice on the matters that were affecting the application of the Convention. The 1973 King's Proclamation had been discussed in the Steering Committee on Social Dialogue and the question of the compliance of constitutional provisions with the Convention had been placed on the agenda for the Steering Committee's July meeting. As regards police intervention in protest actions, he stated that while a number of demonstrations over recent months had been peaceful, unfortunately one planned protest coincided with other groups advocating for regime change and the Government was therefore obliged to ensure the safety and security of the nation and its people. The

Committee further noted the detailed written information provided which indicated the status of each of the recommendations of the high-level tripartite mission and the steps taken or envisaged.

204. The Committee recalled that it had discussed the question of the application of the Convention in Swaziland for many years and that it had placed its conclusions in a special paragraph in 2009 and 2010. The Committee welcomed the visit of the high-level tripartite mission to the country in October 2010, as well as the subsequent legislative changes as requested by the Committee of Experts and other plans to address policy concerns and civil liberty issues that had been raised. It deeply regretted, however, that this progress did not appear to be transposed into the practice in the country and that, as long as certain legislative texts restricting freedom of association and basic civil liberties remained in force, compliance with the Convention could not be assured. In particular, the Committee deplored the continuing allegations of arrest and detention following peaceful protest actions and regretted to be obliged once again to recall the importance it attached to the full respect of rights and basic civil liberties such as freedom of expression, of assembly and of the press and the intrinsic link between these freedoms, and freedom of association and democracy. The Committee once again stressed that it was the responsibility of governments to ensure respect for the principle according to which the trade union movement could only develop in a climate free from violence, threats or fear.

205. The Committee firmly called upon the Government to intensify its efforts to institutionalize social dialogue and anchor genuine social dialogue through durable institutions at various levels of the government, which could only be assured in a climate where democracy reigned and fundamental human rights were fully guaranteed. It urged the Government, in full consultation with the social partners and with the ongoing technical assistance of the ILO, to establish time frames for addressing all issues on an expedited basis. In this regard, it requested the Government to elaborate a roadmap for the implementation of the long called for measures:

- to ensure that the 1973 King's Proclamation had no practical effect;
- to amend the 1963 Public Order Act so that legitimate and peaceful trade union activities could take place without interference;
- to avail itself of ILO assistance in training the police and drafting guidelines to ensure that their actions did not violate the fundamental rights consecrated in the Convention;
- to ensure, including through necessary amendment, that the 2008 Suppression of Terrorism Act may not be invoked as a cover-up to suppress trade union activities;
- to place the Public Service Bill before the Social Dialogue Steering Committee to ensure full tripartite debate prior to adoption;
- to consult the Social Dialogue Steering Committee on the proposed amendments to ensure the right to organize to prison officers, as well as the outstanding matters in the Industrial Relations Act;
- to establish an effective system of labour inspection and effective enforcement mechanisms, including an independent judiciary.

206. The Committee expressed the firm hope that significant progress would be made on these matters by the end of the year and that the Committee of Experts and this Committee would be in a position to note significant and sustainable progress in this regard.

Continued failure to implement

207. The Committee recalled that its working methods provide for the listing of cases of continued failure over several years to eliminate serious deficiencies, previously discussed, in the application of ratified Conventions. This year the Committee noted with great concern that there had been continued failure over several years to eliminate serious discrepancies in the application by **Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**.
208. The Government of the country to which reference was made in paragraph 192 was invited to supply the relevant reports and information to enable the Committee to follow-up the abovementioned matter at the next session of the Conference.

Participation in the work of the Committee

209. The Committee wished to express its gratitude to the 39 governments which had collaborated by providing information on the situation in their countries and participating in the discussion of their individual cases.
210. The Committee regretted that, despite the invitations, the Governments of the following States failed to take part in the discussions concerning their countries and the fulfilment of their constitutional obligations to report: **Antigua and Barbuda, Bahamas, Bangladesh, Belize, Burundi, Chad, Comoros, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Gambia, Georgia, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, Ireland, Kazakhstan, Kiribati, Kyrgyzstan, Liberia, Libyan Arab Jamahiriya, Malawi, Mozambique, Netherlands (Aruba), Nigeria, Rwanda, Saint Kitts and Nevis, Saint Lucia, Samoa, San Marino, Sao Tome and Principe, Sierra Leone, Singapore, Solomon Islands, Sudan, Tajikistan, The former Yugoslav Republic of Macedonia, Togo, Turkmenistan and Vanuatu**. The Committee decided to mention the cases of all these States in the appropriate paragraphs of its report and to inform them in accordance with the usual practice.
211. The Committee noted with regret that the Governments of the States which were not represented at the Conference, namely: **Antigua and Barbuda, Belize, Dominica, Grenada, Guyana, Kyrgyzstan, Libyan Arab Jamahiriya, Saint Kitts and Nevis, Saint Lucia, Samoa, Solomon Islands and Vanuatu** were unable to participate in the Committee's examination of the cases relating to them. It decided to mention these countries in the appropriate paragraphs of this report and to inform the governments, in accordance with the usual practice.

E. Adoption of the report and closing remarks

212. The Committee's report was adopted as amended.
213. The Government member of Uzbekistan indicated that he wished to comment on paragraph 179 of the draft General Report, concerning elements that had not been taken into account during the discussion of Uzbekistan's application of the Worst Forms of Child Labour Convention, 1999 (No. 182).
214. The Chairperson recalled that the examination of this case had been concluded and explained that the discussion on matters of substance could not be re-opened.

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- 215.** The Government member of the Democratic Republic of the Congo presented the Committee with her Government's apologies and sincere regrets for not having been present during the discussion of the application by her country of the Forced Labour Convention, 1930 (No. 29). The absence was due to the late arrival in Geneva of the delegation of the Democratic Republic of the Congo. A written reply had immediately been submitted to the Standards Department. She requested the Committee's indulgence and hoped that the Committee of Experts would examine the reply at its next session.
- 216.** The Government member of Sudan queried why Sudan appeared in paragraph 210 of the report, as Sudan had not been included in the list of individual cases.
- 217.** The Chairperson replied that the paragraph in question related to serious failures to fulfil constitutional obligations to report. It was for that reason that Sudan had been mentioned in paragraph 210, along with other countries in the same situation.
- 218.** The Worker members indicated that they wished to address four subjects in the context of the closure of the Committee's work. Firstly, with regard to its methods of work, they indicated that the discussions had proceeded in an appropriate manner, with the exception of the discussion of the case of Fiji. It was unacceptable for the Government representative to have shown a lack of respect towards a Worker member by challenging her objectivity. They also expressed concern at the possible reprisals against a Worker member who had spoken as an observer representing the International Trade Union Confederation (ITUC) during the same discussion. They added that it was to be hoped that the Committee of Experts would devote a special chapter of its report to the information received from governments following the Conference Committee's discussion of the individual cases. Attention should also be drawn in the report of the Committee of Experts to governments that did not reply to the comments of the Committee of Experts over the years, as they were jeopardizing the proper functioning of the supervisory system. This shortcoming henceforth affected all countries and all continents, including Member States of the European Union.
- 219.** With regard to the discussion of the General Survey, the Worker members noted that changes were being examined with regard to the procedure for the transmission of the conclusions of the present Committee to the Committee for the Recurrent Discussion. Despite divergences between the Employer members and the Worker members, the discussion had been of a high quality and had provided an opportunity for the Worker members and a good number of Government members to welcome a General Survey which provided very sound guidance in relation to national and international social security policies. During the discussion, certain Government members had indicated that social security was an indispensable tool for economic development and not an obstacle to growth, and that social security was increasingly a means of finding acceptable and effective solutions to problems relating to the rising levels of poverty. The Worker members considered that this Committee had fulfilled its duty and they recalled the essential points of the discussion which had been submitted to the Committee for the Recurrent Discussion. It was to be hoped that the conclusions would have the effect of increasing the number of ratifications of the social security Conventions.
- 220.** In relation to the list of individual cases, the Worker members emphasized that those countries which were included on the preliminary list of 44 countries, but which were not retained on the final list, should not rejoice. The Worker members would remain particularly vigilant concerning developments in the situations in those countries, with special reference to the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in Egypt and the application by the Netherlands of the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121). They also referred to the application in the Islamic Republic of Iran of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and of the Freedom of

Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), in the Bolivarian Republic of Venezuela. Furthermore, they wished to raise the question of the threats hanging over freedom of association and collective bargaining in the United States, and particularly in the State of Wisconsin. It was regrettable that this situation could not be addressed by the Committee as the United States had not ratified the two relevant fundamental ILO Conventions.

- 221.** With regard to future prospects, they expressed satisfaction at the manner in which the discussions had proceeded and the conclusions and special paragraph had been adopted. The adoption of the list of cases was still a more difficult exercise and, although a creative solution had been found in the case of Colombia, no solution appeared to be in view in the case of Japan regarding “comfort women”. In future, new rules would have to be found for the procedure of drawing up and adopting the list of individual cases. The list needed to be prepared by the Worker members and the Employer members, and they needed to find a compromise together. The mission of the Committee was to supervise the application of ratified Conventions in complete serenity, free from the political and ideological pressures of the country concerned. These were the principles that would have to serve as a basis for seeking a solution rapidly to the problems encountered by the Worker members and the Employer members in that respect. In conclusion, they emphasized that once again this year, the Worker, Employer and Government members had carried out good work in defence of workers’ rights.
- 222.** The Employer members first turned to the subject of the General Survey, highlighting that their comments should be taken into consideration for future General Surveys. Neither this Committee nor the Committee of Experts was a policy committee, and General Surveys were meant to help tripartite constituents understand how to achieve compliance with international labour standards. Regretfully, this year’s General Survey had had limited value with regard to the central supervisory purpose of this Committee on the full implementation of voluntarily ratified Conventions. The Committee of Experts should be foremost a committee of neutral fact finding, whose primary client was this Committee. If the approach taken by the Committee of Experts continued, rather than the classic format of General Surveys, such General Surveys would have little purpose to the mandate of this Committee.
- 223.** The Employer members underlined that in selecting the list of individual cases, long-standing criteria had been used. Selections would always be contentious, but this could not be allowed to delay the adoption of the list in the future. The adoption of the list on Tuesday of the second week of this Committee’s discussion could not be repeated, as the work of the Committee was too important, and the time and resources expended due to this delay were too great. In this regard, change was required and a time limit should be applied for the adoption of the final list. Transparent criteria should be agreed upon for this selection, to improve the work of the Committee and the balance of cases selected. Eighty per cent of the cases discussed at this session of the Committee had related to fundamental workers’ rights, to the exclusion of other important technical Conventions, such as those concerning the protection of wages or hours of work. In addition, the Employer members expressed a desire for more cases related to the fundamental Conventions concerning forced labour, discrimination and child labour, as well as more of a balance in the regions represented in the list.
- 224.** In conclusion, the Employer members recalled that the Committee’s discussion had been a constructive dialogue. They were pleased to have found agreement with the Worker members in the formulation of the conclusions on a number of cases. The Employer members thanked the Chairperson for his superb conduct of the Committee, and thanked the Representative of the Secretary General and their Secretariat for their work. They looked

forward to working towards the improvement of the Committee, particularly with regard to the adoption of the final list of individual cases for discussion.

- 225.** The Government member of Austria speaking on behalf of IMEC, expressed support for the adoption of the Committee's report. The speaker underlined IMEC's support for improvements to the Committee's working methods for the enhancement of the Committee's credibility as a critical component of the ILO supervisory system. IMEC was pleased that the first week of the Committee's work had been conducted with increased efficiency, acknowledging the Office's efforts to improve the discussion of the General Survey and to allow for more consultation by all groups on the output to be presented to the Committee for the Recurrent Discussion. Further improvements to this process should be examined. The established good practice of the distribution of a preliminary list of cases, in combination with the system for the automatic scheduling of individual cases, had helped countries to prepare for their cases in a timely manner. However, time management in the second week of the Committee's discussion had been significantly hindered, as the final list of cases had only been adopted on Tuesday afternoon of the second week. Critical to the Committee's work was the adoption of this list of cases no later than Friday of the first week of the Committee's discussions.
- 226.** Composition of the list of individual cases was a complicated process which required significant compromise. Agreement on the list of cases was essential for the functioning of the Committee, and governments should not be involved in this process. The Worker members and the Employer members were urged to bridge their differences in this regard prior to the next session of the Conference, and to use advanced preparation to ensure that the final list of cases was prepared during the first week of the Committee's discussions. Lack of movement on this very important issue would have a negative impact on the credibility of the ILO supervisory machinery. In this regard, IMEC was confident that the Worker members and Employer members were committed to the working methods of the Committee and that the list of cases would continue to be based on respectful consultations which would result in a balanced list consistently following the criteria of selection agreed to by the social partners. This list of cases was not reserved only for the most serious violations of ratified Conventions and the perception of this list as a "black list" would have ramifications on the ILO supervisory system. Additionally, the Tripartite Working Group on the working methods of this Committee should continue to meet with a view to evaluating this session of the Committee and to discuss further improvements. Lastly, the speaker thanked the Chairperson and the Vice-Chairpersons for their constructive work, in addition to the Office for its efforts towards the smooth functioning of the Committee's work.
- 227.** The Reporter of the Committee thanked the Chairperson for his good work, recalling that this task was not an easy one. He also thanked the Representative of the Secretary-General and the Secretariat for their significant work to ensure that the Committee's proceedings had run smoothly.
- 228.** The Chairperson observed that the Committee's purpose in meeting was to change the world. Over the past two weeks, social protection had been examined and it had been concluded that the ILO guaranteed the welfare of all workers through a basic minimum level of social protection reflected in the instruments adopted. The work of the Committee, in contrast with that of the Conference, would not be finishing at the end of the week. Following the examination of individual cases, many States would be receiving ILO missions or technical assistance as a result of the dialogue within the Committee. The positive results achieved would assuredly be highlighted in the report of the Committee of Experts, with which closer dialogue should be pursued. He gave thanks to the Committee as a whole for its discipline and cooperation in saying the essential in a brief period of time. The experience had been positive and could be repeated during the discussions in the Governing Body. This year, the Committee had celebrated 85 years of hard work which had given rise to achievements and

progress in relation to the conclusions adopted and their follow-up by member States. Certain improvements were necessary, principally in the methods for the adoption of the final list of cases, which should only take a reasonable amount of time. He thanked all the participants and, in conclusion, emphasized that the recompense for work well done was the opportunity to work well again, for which reason the Committee would continue its work on behalf of workers throughout the world.

- 229.** The Worker member of Senegal informed the Committee that the present sitting was particularly important for the Worker members as it was the last that Mr Luc Cortebecq would be attending as the Workers' spokesperson. The Committee would be losing a Vice-Chairperson who was patient, constant and respectful of differences. For 12 years, he had led the Workers' group effectively and stubbornly, playing an essential role in the adoption of the list of individual cases. Mr Luc Cortebecq would remain in the trade union movement and would continue to relay the voice of workers throughout the world. The speaker proposed that the Committee pay tribute to him.

Geneva, 14 June 2011

(Signed) Mr Sérgio Paixão Pardo
Chairperson

Mr Christiaan Horn
Reporter

Annex 1

INTERNATIONAL LABOUR CONFERENCE

C. App./D.1

100th Session, Geneva, June 2011

Committee on the Application of Standards

Work of the Committee

I. Introduction

This document briefly sets out the manner in which the work of the Committee on the Application of Standards is carried out and has evolved over recent years. Since 2002, ongoing discussions and informal consultations have taken place concerning the working methods of the Committee. In particular, following the adoption of a new strategic orientation for the ILO standards system by the Governing Body in November 2005,¹ new consultations were held in March 2006 regarding numerous aspects of the standards system,² starting with the question of the publication of the list of individual cases discussed by the Committee. A Working Group on the Working Methods of the Committee was set up in June 2006 and has met ten times since then. The last meeting took place on 12 March 2011. On the basis of these consultations and of the recommendations of the Working Group, the Committee has made certain adjustments to its working methods.

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

¹ See documents GB.294/LILS/4 and GB.294/9.

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

³ See below, Part V, D, footnote 12 and Part V, F.

In June 2010, important arrangements were implemented to improve time management.⁴ In addition, new modalities for the discussion of the General Survey in the light of the parallel discussion of the recurrent report on the same subject under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization were established.

In November 2010 and March 2011, the agenda of the Working Group included the following items: follow-up to the 99th Session (June 2010) of the International Labour Conference (list of individual cases, respect of rules of decorum, assessment of the changes introduced in the working methods of the Conference Committee); possibility for the Committee to discuss a case of a government which is not accredited or registered to the Conference; balance in the individual cases selected by the Conference Committee; automatic registration of cases: modalities for selecting the starting letter for the registration of individual cases; interaction between the discussion on the General Survey on social security by the Committee on the Application of Standards and the discussion on the recurrent report on social security by the Committee for the Recurrent Discussion; and possible implications of the Governing Body elections on time management.

The Working Party adopted the following main conclusions and proposals in relation to these different questions:

- It was considered that there was no need for any amendment of the rules of decorum.
- No country should use inclusion on the preliminary list of individual cases as a reason for failing to ensure that it was accredited to the Conference. If a country on the preliminary list registered after the final list was approved, it should be asked to provide explanations. This issue should be kept under review and an assessment be made on the number of times such cases occurred over the subsequent Conferences.
- The balance in the individual cases – based both on the type of Conventions and on the regional distribution – selected by the Conference Committee was recognized to be an important question, while it was considered difficult to achieve, in particular with regard to the distribution of cases by type of Conventions. It was noted that the Workers' and Employers' groups would continue to fully take into consideration this need, to the extent feasible.
- The changes in time management that were introduced last year were considered very successful and the automatic registration of cases was welcomed as an improvement in the working methods of the Conference Committee. It was agreed to propose that in 2011, registration of individual cases would start with the letter "F", yet on an experimental basis (see Part V, B – Supply of information and automatic registration). This situation would be reviewed after the Conference this year.
- In light of the experience of last year, changes were proposed in the working schedule for the adoption by the Committee on the Application of Standards of the outcome of its discussion on the General Survey and the presentation of this outcome by the Officers of the latter Committee to the Committee for the Recurrent Discussion on Social Protection, particularly in order to allow for a genuine exchange with this Committee, beyond the oral presentation (see Part V, A and document C.App/D.0 – Provisional Working Schedule).

⁴ See Part V, B – Supply of information and automatic registration – and E.

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- As the Conference Committee would not be able to meet during the afternoon of Monday, 6 June 2011 due to Governing Body elections, it was proposed to schedule an evening session on that same day (see document C.App./D.0).

II. Terms of reference of the Committee

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

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

III. Working documents

A. Report of the Committee of Experts

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

Volume A of this report contains, in Part One, the General Report of the Committee of Experts (pages 5–40), and in Part Two, the observations of the Committee concerning the sending of reports, the application of ratified Conventions and the obligation to submit the Conventions and Recommendations to the competent authorities in member States (pages 41–813). At the beginning of the report there is a list of Conventions by subject (pages v–x), an index of comments by Convention (pages xi–xix), and by country (pages xxi–xxix).

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

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

In addition to the observations contained in its report, the Committee of Experts has, as in previous years, made direct requests which are communicated to governments by the

⁵ See paras 27–32 of the General Report of the Committee of Experts.

⁶ See paras 55–57 of the General Report of the Committee of Experts.

Office on the Committee's behalf.⁷ A list of these direct requests can be found at the end of Volume A (see Appendix VII, pages 858–870).

The Committee of Experts refers in its comments to cases in which it expresses its satisfaction or interest at the progress achieved in the application of the respective Conventions. In 2009 and 2010, the Committee has clarified the general approach in this respect, that has been developed over the years.⁸

In accordance with the decision taken in 2007, the Committee of Experts may also decide to highlight cases of good practices to enable governments to emulate these in advancing social progress and to serve as a model for other countries to assist them in the implementation of ratified Conventions.⁹ At its session of November–December 2009, the Committee of Experts has provided further explanations on the criteria to be followed in identifying cases of good practices by clarifying the distinction between these cases and cases of progress. No specific cases of good practices have been identified by the Committee of Experts this year.

Furthermore, the Committee of Experts has continued to highlight the cases for which, in its view, technical assistance would be particularly useful in helping member States to address gaps in law and in practice in the implementation of ratified Conventions, following-up on the practice established by the Conference Committee in this regard since 2005.¹⁰ The Committee of Experts has also placed emphasis on the priorities to be addressed by the Office respecting compliance with reporting obligations.¹¹

Volume B of the report contains the General Survey by the Committee of Experts, which this year concerns social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization, including the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), the Income Security Recommendation, 1944 (No. 67), and the Medical Care Recommendation, 1944 (No. 69).

B. Summaries of reports

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

- (i) information concerning reports supplied by governments on ratified Conventions (articles 22 and 35 of the Constitution), which now appears in simplified form in two tables annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A) (Appendices I and II, pages 817–833);

⁷ See para. 48 of the General Report of the Committee of Experts.

⁸ See paras 62 and 66 of the Committee of Experts' General Report. See also Appendix II of the present document.

⁹ See paras 68–70 of the Committee of Experts' General Report.

¹⁰ See paras 71–72 of the Committee of Experts' General Report.

¹¹ See paras 22–25 of the Committee of Experts' General Report.

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- (ii) information concerning reports supplied by governments as concerns General Surveys under article 19 of the Constitution (this year concerning social security instruments) appears in simplified form in a table annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B) (Addendum – Appendix VI);
 - (iii) summary of information supplied by governments on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference (article 19 of the Constitution), which now appears as Appendices IV, V and VI to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A) (pages 844–857).

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

C. Other information

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

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

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

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

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

V. Schedule of work

A. General discussion

1. *General Survey.* In accordance with its usual practice, the Committee will discuss the General Survey of the Committee of Experts, Report III (Part 1B). This year, for the second time, the subject of the General Survey has been aligned with the strategic objective that will be discussed in the context of the recurrent report under the follow-up to the 2008 Social Justice Declaration. As a result, the General Survey concerns social security instruments and will be discussed by the Committee on the Application of Standards, while the recurrent report on social security will be discussed by the Committee for the Recurrent Discussion on Social Protection (Social Security). In order to ensure the best interaction between the two discussions, and in the light of the experience of last year, new adjustments are proposed to the working schedule for the discussion of the General

Survey – they are reflected in document C.App/D.0. As in June 2010, the Selection Committee is expected to take a decision to allow the official transmission of the possible output of the discussion of the Committee on the Application of Standards to the Committee for the Recurrent Discussion on Social Protection as a contribution to its work. In addition, the Officers of the Committee on the Application of Standards could present information on the discussion to the Committee for the Recurrent Discussion on Social Protection.

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

B. Discussion of observations

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

Cases of serious failure by member States to respect their reporting and other standards-related obligations¹²

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

Individual cases

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

- the nature of the comments of the Committee of Experts, in particular the existence of a footnote (see Appendix I);
- the quality and scope of responses provided by the government or the absence of a response on its part;
- the seriousness and persistence of shortcomings in the application of the Convention;
- the urgency of a specific situation;

¹² Formerly “automatic” cases (see *Provisional Record* No. 22, International Labour Conference, 93rd Session, June 2005).

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- comments received by employers' and workers' organizations;
 - the nature of a specific situation (if it raises a hitherto undiscussed question, or if the case presents an interesting approach to solving questions of application);
 - the discussions and conclusions of the Conference Committee of previous sessions and, in particular, the existence of a special paragraph;
 - the likelihood that discussing the case would have a tangible impact.

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

Supply of information ¹³ and automatic registration

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

Cases will be divided into two groups: the first group of countries to be registered following the above alphabetical order will consist of those cases in which a double footnote was inserted by the Committee of Experts and are found in paragraph 56 of that Committee's report. The second group of countries will constitute all the other cases on the final list and they will be registered by the Office also following the abovementioned alphabetical order. Representatives of governments *which are not members* of the Committee are kept informed of the agenda of the Committee and of the date on which they may be heard:

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

2. *Written replies.* The written replies of governments – which are submitted to the Office prior to oral replies – are summarized and reproduced in the documents which are distributed to the Committee (see Part III, C and Part V, E). These written replies are to be provided at least two days before the discussion of the case. *They serve to complement the oral reply and any other information already provided by the government, without duplicating them.* The total number of pages is not to exceed five pages.

Adoption of conclusions

The conclusions regarding individual cases are proposed by the Chairperson of the Committee, who should have sufficient time for reflection to draft the conclusions and to hold consultations with the Reporter and the Vice-Chairpersons before proposing the conclusions to the Committee. The conclusions should take due account of the elements raised in the discussion and information provided by the Government in writing. The

¹³ See also section E below on time management.

conclusions should be adopted within a reasonable time limit after the discussion of the case and should be succinct.

C. Minutes of the sittings

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

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

D. Special problems and cases

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

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

- None of the reports on ratified Conventions has been supplied during the past two years or more.
- First reports on ratified Conventions have not been supplied for at least two years.
- None of the reports on unratified Conventions and Recommendations requested under article 19, paragraphs 5, 6 and 7, of the Constitution has been supplied during the past five years.
- No indication is available on whether steps have been taken to submit the Conventions and Recommendations adopted during the last seven sessions of the Conference ¹⁴ to the competent authorities, in accordance with article 19 of the Constitution.
- No information has been received as regards all or most of the observations and direct requests of the Committee of Experts to which a reply was requested for the period under consideration.

¹⁴ This year the sessions involved would be the 89th–96th Sessions (2001–07).

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- The government has failed during the past three years to indicate the representative organizations of employers and workers to which, in accordance with article 23(2) of the Constitution, copies of reports and information supplied to the Office under articles 19 and 22 have been communicated.
 - The government has failed, despite repeated invitations by the Conference Committee, to take part in the discussion concerning its country.¹⁵

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

- cases of progress (see Appendix II), where governments have introduced changes in their law and practice in order to eliminate divergences previously discussed by the Committee;
- discussions it had regarding certain cases, which are mentioned in special paragraphs of the report;
- continued failure over several years to eliminate serious deficiencies in the application of ratified Conventions which it had previously discussed.

¹⁵ In conformity with the decision taken by the Committee at the 73rd Session of the Conference (1987), as amended at the 97th Session of the Conference (2008), for the implementation of this criterion, the following measures will be applied:

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

E. Time management

- Every effort will be made so that sessions start on time and the schedule is respected.
- Maximum speaking time for speakers is as follows:
 - Fifteen minutes for the spokespersons of the Workers’ and the Employers’ groups, as well as the government whose case is being discussed.
 - Ten minutes for the Employer and Worker members, respectively, from the country concerned to be divided between the different speakers of each group.
 - Ten minutes for government groups.
 - Five minutes for the other members.
 - Concluding remarks are limited to 10 minutes for spokespersons of the Workers’ and the Employers’ groups, as well as the Government whose case is being discussed.
- However, the Chairperson, in consultation with the other officers of the Committee, could decide on reduced time limits where the situation of a case would warrant it, for instance, where there was a very long list of speakers.
- These time limits will be announced by the Chairperson at the beginning of each sitting and will be strictly enforced.
- During interventions, a screen located behind the Chairperson and visible by all speakers will indicate the remaining time available to speakers. Once the maximum speaking time has been reached, the speaker will be interrupted.
- In view of the above limits on speaking time, governments whose case is to be discussed are invited to complete the information provided, where appropriate, by a written document, not longer than five pages, to be submitted to the Office at least two days before the discussion of the case (see also section B above).
- Before the discussion of each case, the Chairperson will communicate the list of speakers already registered.
- In the eventuality that discussion on individual cases is not completed by the final Friday, there is a possibility of a Saturday sitting at the discretion of the Officers.

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

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

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

Appendix I

Criteria for footnotes

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

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

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

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

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

Appendix II

Criteria for identifying cases of progress

At its 80th Session (November–December 2009) and at its 81st Session (November–December 2010), the Committee made the following clarifications on the general approach developed over the years for the identification of cases of progress:

- (1) **The expression by the Committee of interest or satisfaction does not mean that it considers that the country in question is in general conformity with the Convention, and in the same comment the Committee may express its satisfaction or interest at a specific issue while also expressing regret concerning other important matters which, in its view, have not been addressed in a satisfactory manner.**
- (2) **The Committee wishes to emphasize that an indication of progress is limited to a specific issue related to the application of the Convention and the nature of the measure adopted by the government concerned.**
- (3) The Committee exercises its discretion in noting progress, taking into account the particular nature of the Convention and the specific circumstances of the country.
- (4) The expression of progress can refer to different kinds of measures relating to national legislation, policy or practice.
- (5) If the satisfaction or interest relates to the adoption of legislation or to a draft legislation, the Committee may also consider appropriate follow-up measures for its practical application.
- (6) In identifying cases of progress, the Committee takes into account both the information provided by governments in their reports and the comments of employers' and workers' organizations.

Within cases of progress, the distinction between cases of **satisfaction** and cases of **interest** was formalized in 1979. In general, cases of interest **cover measures that are sufficiently advanced to justify the expectation that further progress would be achieved in the future and regarding which the Committee would want to continue its dialogue with the government and the social partners.** In comparison to cases of satisfaction, cases of interest relate to progress, which is less significant. The Committee's practice has developed to such an extent that cases in which it expresses interest may encompass a variety of measures. The paramount consideration is that the measures contribute to the overall achievement of the objectives of a particular Convention. This may include:

- draft legislation that is before parliament, or other proposed legislative changes forwarded or available to the Committee;
- consultations within the government and with the social partners;
- new policies;
- the development and implementation of activities within the framework of a technical cooperation project or following technical assistance or advice from the Office;
- judicial decisions, according to the level of the court, the subject matter and the force of such decisions in a particular legal system, would normally be considered as cases of interest unless there is a compelling reason to note a particular judicial decision as a case of satisfaction; or
- the Committee may also note as cases of interest the progress made by a State, province or territory in the framework of a federal system.

Annex 2

INTERNATIONAL LABOUR CONFERENCE

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

100th Session, Geneva, June 2011

Committee on the Application of Standards

Final list

Cases regarding which Governments are invited to supply information to the Committee

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

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

B

Index of observations regarding which Governments are invited to supply information to the Committee

Report of The Committee Of Experts
(Report III (PART 1A), ILC, 100th Session, 2011)

Country	Convention No. (The page numbers in parentheses refer to the English version of the Report of the Committee of Experts)
Azerbaijan*	138 (page 277)
Belarus*	98 (page 56)
Cambodia	87 (page 64)
Canada	162 (page 679)
Democratic Republic of the Congo*	29 (page 225)
Fiji	111 (page 430)
Greece	98 (page 82)
Guatemala*	87 (page 83)
Honduras	122 (page 615)
Malaysia – Peninsular Malaysia*	19 (page 742)
Mexico	155 (page 712)
Myanmar	29 (page 240) – Special sitting 87 (page 118)
Nigeria	87 (page 125)
Pakistan	87 (page 129)
Panama	87 (page 131)
Paraguay	182 (page 376)
Romania	98 (page 148)
Saudi Arabia	81 (page 570)
Serbia	87 (page 156)
Sri Lanka	103 (page 752)
Swaziland	87 (page 165)
Turkey	87 (page 180)
Uruguay	98 (page 193)
Uzbekistan*	182 (page 396)
Zimbabwe	87 (page 213)

* The countries highlighted with an asterix are those in relation to which the Committee of Experts has placed a double footnote.

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