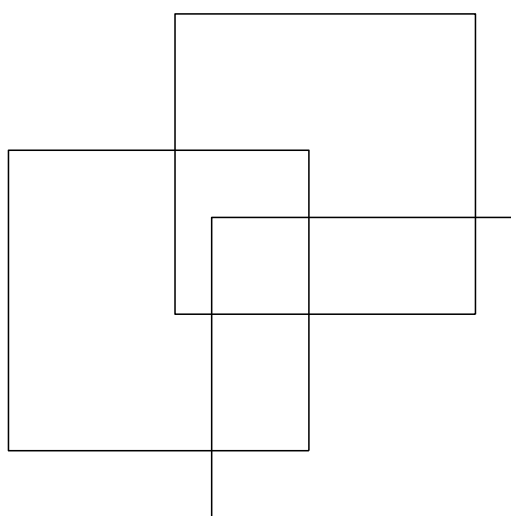




Final report

Meeting of Experts on Cross-border Social Dialogue
(Geneva, 12–15 February 2019)



MECBSD/2019/5

INTERNATIONAL LABOUR ORGANIZATION

Governance and Tripartism Department

Final report

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Geneva, 2019

INTERNATIONAL LABOUR OFFICE, GENEVA

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Introduction

1. The Meeting of Experts on Cross-border Social Dialogue was held in Geneva from 12 to 15 February 2019.
2. The Meeting was convened in the context of a series of decisions taken by the International Labour Conference (ILC) and the Governing Body of the International Labour Office (the Office). In 2013, the ILC called on the Office to “convene a meeting of experts on cross-border social dialogue to analyse contemporary experiences, challenges and trends, as well as the role and value added of the ILO”.¹ Subsequently, an ILC general discussion on decent work in global supply chains in 2016, called on the ILO to “promote effective national and cross-border social dialogue” and to undertake research on its effectiveness and impact.² The Governing Body, in November that same year, specified that a meeting on cross-border social dialogue should “address decent work in global supply chain issues, including human rights due diligence”.³ In 2018, the ILC conclusions concerning the second recurrent discussion on social dialogue and tripartism called on ILO member States to provide “an enabling environment for ... cross-border social dialogue” with emphasis on the needs of vulnerable workers in global supply chains, and on the Office to “play a stronger role in an international context, in particular through cross-border social dialogue based on knowledge and research provided by the ILO”.⁴ Finally, in June 2018, the Governing Body approved the holding of the Meeting in the first quarter of 2019 to “analyse contemporary experiences, challenges and trends characterizing cross-border social dialogue initiatives, as well as the role and added value of the ILO”. It would also “seek guidance from ILO constituents on the future work of the Organization in this area”.⁵
3. The Meeting was attended by eight experts nominated by Governments (accompanied by five advisers), eight experts nominated by the Employers’ group (accompanied by three advisers, and two members of the group’s secretariat) and eight experts nominated by the Workers’ group (accompanied by two advisers and three members of the group’s secretariat). Seventeen Government observers attended the Meeting as well as five representatives of three official international organizations.⁶

¹ ILO: [Resolution concerning the recurrent discussion on social dialogue](#), International Labour Conference, 102nd Session, Geneva, 2013, para. 12(14).

² ILO: [Resolution concerning decent work in global supply chains](#), International Labour Conference, 105th Session, Geneva, 2016, para. 23(c).

³ ILO: [Decision on Follow-up to the resolution concerning decent work in global supply chains](#), Governing Body, 328th Session, Geneva, November 2016, subpara. 7(a)(v).

⁴ ILO: [Resolution concerning the second recurrent discussion on social dialogue and tripartism](#), International Labour Conference, 107th Session, Geneva, 2018, paras 3(o) and 5(h).

⁵ ILO: [Programme, composition and agenda of standing bodies and meetings](#), Governing Body, 333rd Session, Geneva, June 2018, GB.333/INS/9, para. 4.

⁶ The list of participants is available on the [Meeting’s webpage](#).

4. The Officers of the Meeting of Experts were:

<i>Chairperson:</i>	Mr Jean-Jacques ELMIGER, Independent Chairperson, Switzerland
<i>Government Vice-Chairperson:</i>	Ms Anousheh KARVAR, France
<i>Employer Vice-Chairperson:</i>	Ms Renate HORNUNG DRAUS, Confederation of German Employers (BDA), Germany
<i>Worker Vice-Chairperson:</i>	Ms Christy HOFFMAN, UNI Global Union, United States

5. The Secretary-General was Ms Deborah Greenfield, ILO Deputy Director-General for Policy (DDG/P) and the Deputy Secretary-General was Mr Kamran Fannizadeh, Officer-in-Charge, Governance and Tripartism Department (GOVERNANCE).

Opening session

6. The Chairperson stated that social dialogue was an extremely important means to enable ILO member States and the social partners to navigate turbulent times and cope with economic uncertainty. Social dialogue had facilitated the development of measures that reconciled economic and political points of view, and generated solutions that enabled people to adjust to a restructured economy and world of work. The report of the ILO's Global Commission on the Future of Work, launched in January 2019, had highlighted that social dialogue was undergoing a period of major evolution. The Meeting of Experts on cross-border social dialogue would not be a simple undertaking. A number of different viewpoints would need to be reconciled, and it would be necessary to work together in a spirit of consensus and political responsibility. In that way, the ILO and its constituents would be able to adopt high quality conclusions at the close of the Meeting.
7. The Secretary-General provided some specific context for the Meeting. Cross-border social dialogue was nothing new. Indeed, 100 years previously, with the creation of the ILO in 1919, the practice of bringing together representatives of governments, employers and workers at the international level to seek solutions to labour and social issues became a key feature of the multilateral system. To that day, cross-border social dialogue remained a part of much of what the Organization did, and the Office was increasingly called upon to support it in the context of multiplying spaces for such dialogue. The Meeting of Experts was itself an example of cross-border social dialogue and would provide a platform for an informed, frank and open debate with a view to reaching conclusions, in response to the various requests made by ILO constituents since 2013.
8. An ILO official presented an overview of the Office report which served as background for the Meeting,⁷ as well as the three points for discussion which were to be addressed in the interventions of the experts.⁸

⁷ ILO: [Report for discussion at the Meeting of Experts on Cross-border Social Dialogue](#), Geneva, January 2019.

⁸ ILO: [Points for discussion](#), Geneva, January 2019.

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9. The provisional Plan of Work for the Meeting was adopted. It was noted that the Meeting was being held under the Standing Orders for meetings of experts, as adopted by the Governing Body at its 334th Session (October–November 2018).⁹
 10. The Worker Vice-Chairperson welcomed the opportunity to have a tripartite discussion on cross-border social dialogue and the role of the ILO, especially at such a historic moment for the Organization – its Centenary year. She presented the Workers’ group’s perspective on the context in which that discussion was occurring. The post-Second World War social contract was under threat, collective bargaining had retreated across the world and respect for freedom of association was in crisis, as documented in several reports. At the same time, governments sought to attract inward investment by relaxing labour standards and their enforcement. Governance gaps allowed individuals and companies to commit wrongful acts without adequate sanctions or remedies being in place. Access to remedy was a key question that needed to be addressed in that environment.
 11. Recalling that the conclusions of the ILC concerning decent work in global supply chains in 2016 had called on the ILO to promote effective cross-border social dialogue, she noted that such dialogue could take many forms, but transnational company agreements (TCAs), including transnational collective bargaining, were at its core. Those agreements ranged from single-issue agreements, to framework agreements, to full-blown transnational collective agreements such as the one negotiated by the International Transport Workers’ Federation (ITF). TCAs were essential to secure workers’ rights and had been instrumental in addressing governance gaps in global supply chains and for all workers. The practical experience of the Workers’ group would be presented during subsequent sessions.
 12. The Meeting should aim to produce a plan of action for the ILO on promoting the negotiation, implementation and enforcement of those agreements. The 2016 ILC conclusions on decent work in global supply chains had suggested that, when the social partners decided to negotiate international framework agreements (IFAs), the Office could facilitate the process and assist in the follow-up, upon joint request by the social partners.
 13. The ILO should promote cross-border social dialogue in all its work, within an enabling legal framework for transnational bargaining that guaranteed workers’ representatives’ right to information, consultation and bargaining. That was in line with the recommendation of the Global Commission on the Future of Work that collective solutions had to be strengthened in order to tackle the challenges of the new world of work. TCAs were regarded as a fundamental part of companies’ obligations to perform human rights due diligence across their operations and supply chains. Those agreements could not replace the duty of governments but were essential tools that needed to be strengthened by the ILO.
 14. It would be important to build a common understanding during the Meeting on how the ILO could enhance its role in promoting cross-border social dialogue. The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration), updated two years previously, had introduced the concept of human rights due diligence among other elements. Global agreements between multinational companies and trade unions were essential mechanisms for companies to carry out human rights due diligence, in particular with respect to labour rights. One possible action for the ILO would be to issue guidance on how to apply the MNE Declaration, especially with regard to due diligence and the role of TCAs in that process.
 15. Concerning cross-border social dialogue in relation to trade agreements, the Global Commission on the Future of Work had recommended strengthening the link between trade,

⁹ ILO: [Standing Orders for technical meetings and Standing Orders for meetings of experts](#), Geneva, 2019.

financial, economic and social policies, with a role for the ILO as a focal point for strategies related to the future of work.

16. The Meeting of Experts had both an important responsibility and an opportunity before it to shape a fairer globalization for the future of work. Social dialogue was in the DNA of the ILO and was its most important tool.
17. The Employer Vice-Chairperson recalled that social dialogue was fundamental to fulfilling the ILO's mandate and constituted one of its four strategic objectives, as established in the Declaration on Social Justice for a Fair Globalization (Social Justice Declaration). Cross-border social dialogue had emerged to fulfil a variety of purposes, including: to establish a level playing field on social and labour standards; to coordinate social policies in increasingly interlinked economies; to address specific issues of a cross-border nature; and to exchange experience and good practice between countries.
18. Several key points needed to be taken into account during the discussions. The many different forms and levels of social dialogue, and the fact that there was no hierarchy among them, needed first to be recognized. Cross-border social dialogue took place in relation to a range of multilateral instruments, such as the standards and processes deriving from international organizations, and TCAs. It had become institutionalized to varying degrees in the activities of regional economic communities, such as the Economic Community of West African States (ECOWAS) and the European Union (EU), as well as other structures such as the G7 and G20. The Meeting should address all forms and levels of cross-border social dialogue in a balanced manner.
19. Robust social dialogue at the national and local levels was needed in order for cross-border social dialogue to be successful and have its outcomes implemented in a legitimate manner. Respect for national and local traditions, culture and practices regarding social dialogue was also crucial, ensuring a bottom-up approach. The lack of effective implementation and enforcement of national labour laws and regulations in many countries was another key issue. A central goal of cross-border social dialogue – as of other forms – should be to help strengthen national legal frameworks in order to drive meaningful and lasting improvements for workers on the ground, with the active engagement of the social partners at local level. Governments had a critical role to play in that respect, which could not be ceded to private initiatives.
20. The Employer Vice-Chairperson underlined that cross-border social dialogue was one of many types of stakeholder engagement used by companies to meet their responsibility to respect human rights and conduct business responsibly. Referring to the MNE Declaration, the United Nations (UN) Guiding Principles on Business and Human Rights (UNGPs) and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (OECD Guidelines), the task now was to provide support for the application of those standards, agreed at the global level, in each national context.
21. Cross-border social dialogue should not be equated with collective bargaining and the role and benefits of other forms of social dialogue had to be addressed. It was necessary to consider how to strengthen the representativeness of the social partners on the ground. While cross-border social dialogue was important, it did not supersede dialogue at national, sectoral or local level. The labour force in purely domestic economies constituted the vast majority of workers worldwide (80 per cent). IFAs were few in number (183) and mainly concerned French and German multinational enterprises (MNEs). As IFAs were not the dominant form of cross-border social dialogue, they should not be accorded undue prominence in the discussion.
22. Cross-border trade and foreign direct investment (FDI) generated many benefits for workers, including contributions to economic growth, job creation, poverty reduction,

entrepreneurship and the transition from the informal to the formal economy. It was important to acknowledge those positive impacts as well as the challenges they entailed. Global supply chains brought growth and development to low- and middle-income countries and had positive spill-over effects on domestic markets as well. Global supply chains were complex, diverse and fragmented. Companies' ability to influence their supply chains depended on many factors, such as how many suppliers there were, the structure and complexity of the supply chain, and the company's market position. That complexity was recognized by international texts and instruments such as the UNGPs, the OECD Guidelines and the MNE Declaration.

- 23.** The Office report contained one inaccuracy in table 1, citing the International Chamber of Commerce (ICC) as a global cross-industry employers' organization. That was not the case, it could not be described as a social partner organization and so it should be deleted from the table.
- 24.** The Meeting needed to be careful when assessing the ILO's role in relation to cross-border social dialogue. Convening and facilitating tripartite social dialogue was at the core of the ILO's mandate; the ILC, the Governing Body and sectoral meetings were all examples of cross-border social dialogue promoted by the ILO. However, the ILO did not necessarily have a role to play in all forms of cross-border social dialogue and its role in that regard needed to be carefully stipulated. It should be recognized that the purpose of the Meeting was not to discuss standard-setting action. The Governing Body had agreed that a third meeting of experts would explore the next steps with respect to decent work in global supply chains.
- 25.** Furthermore, some forms of cross-border social dialogue did not represent models for others. That was the case, for example, of the maritime transport sector which was the only sector with a global collective agreement. That sector was unique as its operations largely took place in international waters. It could not, therefore, be used as a model for other cross-border social dialogue efforts. Finally, ILO action had to be guided by the diverse needs and realities of the constituents at national level.
- 26.** The conclusions of the Meeting of Experts should be short, action-oriented, balanced and clear. All forms of cross-border social dialogue should be considered on an equal basis. The budgetary implications of the proposals to be made should also be taken into account, so that there would be sufficient resources for coordinated action in practice.
- 27.** The Government Vice-Chairperson stressed the historic nature of the moment, in the ILO Centenary year and following the launch of the report of the Global Commission on the Future of Work. That report paved the way for a diversified approach to social dialogue, including an important role for cross-border social dialogue, in strengthening the social dimension of globalization and the new social contract.
- 28.** The definition of cross-border social dialogue in the Office report covered a broad scope of action which should be respected in the discussion. The Meeting should focus on certain objectives of cross-border social dialogue, to be agreed through consensus, and not seek to cover all its aspects. Decent work in global supply chains was an important issue through which it might be possible to measure the impact of cross-border social dialogue. The role of the traditional, legitimate social partners should be highlighted, while the role of governments might vary depending on the form that cross-border social dialogue took. In that respect, the outcomes of research could help governments define their role. The ILO should support governments through capacity-building programmes. Finally, she noted the place given to sectoral social dialogue at the European level in the Office report. Further research was needed to shed light on that topic in other regions.

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- 29.** The Government expert of Morocco noted that the report of the Global Commission on the Future of Work proposed a people-centred approach which would strengthen the social contract. Only social dialogue would ensure the adaptation of the social contract to the changes under way. The definition of cross-border social dialogue in the Office report should be discussed during the Meeting. Various initiatives by governments, the social partners, civil society organizations, international organizations or multinational companies could be considered as cross-border social dialogue. Morocco was involved in several relevant initiatives, including the United Nations Global Compact (UNGC), the OECD Guidelines, the inclusion of social clauses in free trade agreements (FTAs) signed with the United States and the European Union, and the promotion of corporate social responsibility (CSR) and public-private partnerships, as well as a project on social dialogue in the southern Mediterranean countries. The ILO had an important role to play in supporting its tripartite constituents, including governments, in particular through capacity-building and research on the impact of such initiatives on working conditions and job creation.
- 30.** The Government expert of the Netherlands emphasized the central importance of social dialogue throughout Dutch history. Social dialogue, based on mutual trust between workers and employers, had many positive effects, including on productivity, the well-being of workers and labour conditions. Cross-border social dialogue was particularly necessary in a globalizing world with fading borders. The mandate of the Meeting of Experts was not confined to global supply chains. Work in the Netherlands on CSR policies showed the value of cross-border social dialogue in enabling companies to meet the objectives of international guidelines, such as the OECD Guidelines, the UNGPs and the MNE Declaration. She noted that the Responsible Business Conduct sector agreements were a multi-stakeholder covenant for specific sectors in the Netherlands. The concerned stakeholders, including businesses, trade unions, non-governmental organizations (NGOs) and the Government, committed to promote responsible business conduct in global supply chains, through due diligence. Cross-border social dialogue could be used to improve due diligence processes and promote decent work; concerned stakeholders required guidance on how to do that. In conclusion, she recalled the sensitivity of cross-border social dialogue as an issue at the heart of the ILO, in which the social partners had an important role to play, especially in the context of globalization.
- 31.** The Government expert of the Republic of Korea said that, with deepening globalization and regional integration, initiatives in cross-border social dialogue had been spreading widely, particularly in global supply chains. His country had accumulated knowledge and experience in strengthening tripartite social dialogue. The ILO should support and encourage tripartite actors across the world to share new social dialogue practices and accelerate knowledge generation and dissemination. Careful consideration was needed of how to strengthen cooperation among stakeholders, and the ILO should focus not only on the traditional tripartite constituents, but engage as well with other actors.
- 32.** The Government expert of South Africa said that critical work had recently been done on inclusive development and global supply chains and that opportunities for cross-border social dialogue were multiplying. Social dialogue lay at the core of policy and legislation in South Africa. Its National Economic Development and Labour Council (NEDLAC) remained as relevant as ever, bringing government and the social partners together to discuss social and economic legislation and policy issues. The Meeting came at an opportune time as NEDLAC was re-examining the role of social dialogue in the context of the Fourth Industrial Revolution. The absence of global rules for MNEs resulted in them developing their own rules regarding CSR and FDI. In parallel, there was a growing mismatch between the action of global actors (transnational companies) and the social partners at national level; cross-border social dialogue could help close that gap. However, capacity and resource constraints were of concern. The ILO should take a leading role in research, capacity-building and the dissemination of information; that would help create an enabling environment for cooperation and partnership, while taking into account each country's

unique experiences in the design of solutions. Cross-border social dialogue could positively impact freedom of association, collective bargaining, non-discrimination, labour migration and occupational safety and health (OSH) across the global value chains of MNEs.

- 33.** The Government expert of the United States recognized that social dialogue was at the core of the ILO's mission. Cross-border social dialogue had been institutionalized with the founding of the Organization, and was on the increase in a globalizing and digitizing world. That could contribute to greater realization of decent work and the fundamental principles and rights at work around the world. She supported the use of the working definition of cross-border social dialogue proposed in the Office report. Yet, that expansive definition risked making it challenging to narrow the focus of the Meeting and may also limit the overarching conclusions that could be drawn. There was no one-size-fits-all approach to cross-border social dialogue, and its different mechanisms afforded different opportunities and were bound by different limitations.
- 34.** The Government expert of France noted the particular interest in cross-border social dialogue in France, as IFAs had been pioneered by MNEs headquartered in France. Concern for the respect of international labour standards (ILS) in the global supply chains of MNEs had led to the passing of the 2017 law on human rights due diligence, which had introduced a flexible approach to regulation. While different approaches to CSR were possible, it was preferable to work in a tripartite fashion. ILO guidance was needed with respect to how to achieve effective cross-border social dialogue. There was a growing interest, beyond France and Germany, in the daily operations of MNEs and a need to create new spaces for cross-border social dialogue. Awareness of some of the benefits of MNEs was growing, for example, the harmonization of social protection policies throughout the value chain. It was important also to recognize that MNEs could enhance their reputation by engaging in CSR and cross-border social dialogue. Risks needed to be considered as well, such as of increased bureaucracy, "domino effects" of collective action through the value chain and data protection issues.
- 35.** The observer from the European Union said that cross-border social dialogue was embedded in the values, governance, laws and practice of the EU, its member states, social partners and companies. Since 2000, TCAs had played an increasing role in the promotion of decent work and the management of change in MNEs and in global supply chains. The ILO constituents should explore ways to enable TCAs to realize their full potential. The European social partners had recently carried out a joint project and reached joint conclusions on that issue. It was necessary to link workplace, national and cross-border levels of social dialogue, in particular to encourage ownership and implementation. EU law provided for standing cross-border representation and dialogue on economic and social matters in MNEs, in particular, through the European Works Councils (EWCs).
- 36.** Multi-stakeholder initiatives and partnerships were also supported by the EU as useful tools to support responsible business conduct, for example on OSH, and coordination between the different stakeholders. A number of initiatives at EU level were of potential interest to the Meeting, including dialogue between the social partners in the maritime sector, tripartite consultations for socio-economic governance, and the consultative bodies established in relation to the monitoring of labour and environmental clauses in trade agreements. With regard to the Meeting of Experts, topics of interest included the role of the ILO and other actors in documenting and monitoring cross-border social dialogue, building capacity, providing advice and guidance, supporting coordination and developing partnerships, and promoting enabling frameworks for cross-border social dialogue and its links with other levels.

Discussion point 1: What are the contemporary experiences, challenges and trends characterizing cross-border social dialogue initiatives?

37. The Employer Vice-Chairperson noted there was no one-size-fits-all approach to social dialogue and that the differences between countries and regions should be respected. Social dialogue in regional economic communities varied in its form, outcomes, objectives and results. Such variations could be due to different regional needs and priorities, stages of regional integration, levels of political commitment, national industrial relations systems and capacities of local actors to engage in, and follow-up on the results of, cross-border social dialogue. She summarized certain good practices and challenges of social dialogue in different regional economic communities, as described in the Office report.
38. There were many different types of trade and investment agreements, including North–North, South–South and North–South. Some such agreements included labour clauses. It was crucial to focus on measures that supported countries to improve labour conditions on the ground, which could further strengthen ties between the trading countries. Cooperation – through technical assistance, capacity-building and enhanced dialogue with the national social partners – was the best approach. A bottom-up approach was needed to strengthen the capacity of national institutions and actors, including the local social partners, to progressively meet international standards over time. Promotional provisions to strengthen cooperation and capacity-building offered more sustainable solutions that could help strengthen the implementation of the core labour standards in a wide range of countries and situations.
39. The experience of social dialogue in international forums and interregional groupings demonstrated constructive collaboration between the social partners on pressing global challenges and issues. Three examples were provided. First, the Employers’ and Workers’ groups collaborated in the G7 and G20 processes, and produced joint statements. The challenge was to ensure that national governments implemented their commitments from those meetings. Second, ILO sectoral meetings brought together the national social partners and governments to share experience and identify practical solutions to issues in specific sectors. For example, the ILO constituents had recently adopted a revised code of practice on shipbuilding and ship repair, including the latest OSH standards and approaches. Third, the social partners had a common position on non-authoritative standards developed by external organizations that threatened to undermine the consensus-based approach of the ILO and the United Nations (UN). For example, in 2017, the International Organization of Employers (IOE) and the International Trade Union Confederation (ITUC) had jointly opposed a proposal to revise the International Organization for Standardization, ISO 26000 guidance on social responsibility.
40. She stated that TCAs were a largely Eurocentric tool that did not affect the vast majority of the world’s workers. At the same time, however, it was important to understand their role. There were several reasons why companies did or did not sign a TCA. For example, TCAs did not provide any added value when companies already had relevant policies and procedures in place, including for active stakeholder engagement. Other companies considered TCAs as a risk to local industrial relations and preferred to deal with social issues at the local level. Another concern was that global union federations (GUFs) did not necessarily represent the key national unions, which could give rise to local-level industrial conflicts.
41. She described the relationship between responsible business conduct, CSR and cross-border social dialogue. She explained that responsible business conduct covered many actions, issues and actors and that it was not limited to human rights due diligence. Companies’ approaches were often developed in consultation with a wide range of stakeholders,

including employees and trade unions. Equally, the term CSR did not reflect the broad range of actions that companies proactively undertook in order to be responsible in their operations and relationships; other relevant terms included responsible business conduct, business and human rights and sustainability. In conclusion, she underlined that due diligence went beyond the right to freedom of association and effective recognition of the right to collective bargaining, and meant directly consulting potentially affected stakeholders or their representatives.

42. The Worker Vice-Chairperson noted that the 2016 ILC conclusions concerning decent work in global supply chains referred explicitly to the need to enhance the effectiveness and impact of TCAs. She did not agree that TCAs were limited to a few European countries and had limited scope and impact. Such agreements should be strengthened, rather than criticized. Direct reference to ILO Conventions and other international instruments, such as the Universal Declaration of Human Rights or the OECD Guidelines, made TCAs a vehicle for promoting such principles and instruments worldwide. As a direct result of TCAs, thousands of workers enjoyed effective freedom of association, and access to trade unions and collective bargaining. UNI Global Union had signed 56 agreements with companies from Europe and elsewhere, including Brazil, Indonesia, Japan, Malaysia, Mexico, South Africa and the United States. Thus, TCAs were far from being an exclusively European phenomenon. IndustriALL had concluded a similar number of global agreements to UNI Global Union, and both of them had signed the Accord on Fire and Building Safety in Bangladesh (hereafter, the Accord), with around 200 company signatories.
43. The application of ILS and the UNGPs by companies was inherently top-down, as the leadership of a corporation adopted a position which embedded respect for human rights into its culture, rules and practices, starting from the top and flowing down through the supply chain. Moreover, negotiating a global agreement did not aim to interfere with local practices but rather to give local parties access to collective bargaining where that was otherwise not possible, given that certain governments did not enforce the fundamental rights or encouraged an anti-union atmosphere. TCAs were thus primarily intended to secure and protect the right to organize and bargain collectively, and contained explicit language to that effect. Recently, agreements had expanded to cover other topics of mutual concern, such as discrimination, harassment, the right to disconnect and the right to access data. Most agreements included a mechanism to resolve labour disputes.
44. IFAs fostered simple, long-standing, and constructive relations between companies and their employees and were an aspect of mature human resources management and industrial relations at the global level. Employers increasingly recognized the reputational risks they incurred by not engaging with a global union, which could give them advance notice of problems before they arose. For example, that year, UNI Global Union had signed agreements with four French companies, in part motivated by the recent law on due diligence. Those agreements provided an important role for trade unions, helped risk assessments and facilitated access to remedies. However, the lack of sufficient resources for wide dissemination of agreements at the local level reduced their impact; capacity-building and training by the ILO could help strengthen their effectiveness.
45. The MNE Declaration had been updated in 2017 to include operational tools, namely national focal points and a company-union dialogue procedure. The procedure had been used twice with a satisfactory outcome, but its impact could be further enhanced, for example, by establishing a list of qualified facilitators. The OECD Guidelines were accompanied by a number of authoritative guidance documents and procedural frameworks regarding the functioning of National Contact Points (NCPs) and the process for dealing with complaints. The *OECD Due Diligence Guidance for Responsible Business Conduct*, published in May 2018, had encouraged companies to enter into direct agreements with trade unions in order to realize effective human rights due diligence with respect to labour rights; that had also fostered cross-border social dialogue. Finally, the Global Deal was a global partnership

which aimed to address the challenges in the global labour market through enhanced social dialogue and thereby to allow all people to benefit from globalization.

46. The audit-focused CSR model adopted by many companies was outdated and had failed in practice. Companies were now expected to carry out human rights due diligence in collaboration with trade unions, a process which went far beyond voluntary and unilateral CSR. Many governments had either adopted or were considering the adoption of mandatory due diligence legislation stipulating respect for fundamental rights and formalizing the role of trade unions and other relevant stakeholders.
47. Many trade agreements included labour provisions which aimed to ensure respect of domestic labour laws consistent with ILS. Some included legally binding commitments with respect to the fundamental principles and rights at work, employment terms and conditions and dispute resolution mechanisms. In practice, however, those mechanisms had rarely been triggered and the ILS were often incorrectly interpreted. The ILO could help to ensure coherence in that regard. Finally, while governments provided some information and sought the views of trade unions, the overall negotiation process lacked transparency, with no clarity regarding how those views were taken into consideration.
48. The Government Vice-Chairperson noted that the instruments of the UN, the ILO and the OECD were often cited by other international organizations. For example, the G20 meeting in 2017 in Germany had demonstrated the coherence of those multilateral instruments. The implementation of the revised MNE Declaration needed to be strengthened at global, national and regional levels. Negotiations on due diligence, which involved stakeholders beyond the social partners, should be considered as an instance of cross-border social dialogue, and their coherence reinforced by drawing upon the expertise and instruments of the ILO. Capacity-building was required for all the stakeholders concerned.
49. The Government expert of the United States highlighted certain trends regarding cross-border social dialogue. New communications technologies and the increasing availability of information were enabling factors for social dialogue, particularly at the cross-border level. Workers had raised issues with companies along their supply chains and businesses had marketed their private compliance initiatives in order to differentiate their products. The same challenges confronted cross-border and national social dialogue processes, including the need for capacity-building, for willingness to engage by all parties, and to strengthen labour law enforcement. Those challenges could be exacerbated in the cross-border context, given the uneven strength of the negotiating parties, varied cultural contexts and legal frameworks, and limits on the enforcement powers of national labour administrations in the home and host countries of MNEs.
50. The various multilateral instruments related to cross-border social dialogue enjoyed widespread support from the tripartite constituents. The United States actively promoted cross-border social dialogue through the G20 and G7 meetings, and it had supported the new dialogue mechanisms such as Better Work and the Vision Zero Fund, which helped build capacity and create enabling environments. Her country continued to strengthen the labour chapters of its FTAs and social dialogue mechanisms could help in their enforcement. The United States supported the use of voluntary TCAs, including IFAs, where enterprises and workers deemed those effective and appropriate. Businesses had an obligation to comply with labour laws and respect human rights, and her country welcomed responsible business conduct initiatives.
51. The Government expert of Morocco said that the efficiency of the various instruments should be measured. Two experiences in Morocco were relevant: a public-private partnership between Morocco and Spain which aimed to improve the CSR principles of Moroccan enterprises; and EU-Mediterranean cooperation to create a space for social dialogue between Jordan, Morocco and Tunisia leading to the adoption of a charter on social dialogue.

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52. The Government expert of Bangladesh stated that cross-border social dialogue was an age-old phenomenon when linked to global trade, investment and production systems, yet was a new term in the context of decent work and labour rights. Consumers' demands had evolved regarding human rights across global supply chains and, in response, MNEs, global trade and investment partners and international organizations had developed guiding principles, instruments and enforcement mechanisms. Those played a crucial role in shaping countries' domestic and international policies regarding international trade and investment. National economic, social and political circumstances varied regarding the costs and benefits of those instruments and cooperation frameworks, and different approaches were used to enforce and monitor the various instruments by different organizations.
 53. Good practices of cross-border social dialogue were more numerous in Europe than elsewhere, and the Office report could have shed more light on the reasons behind the marked variations between regions. The Meeting of Experts should be guided by the 2018 ILC conclusions concerning social dialogue and tripartism, in particular regarding the notion that there was no one-size-fits-all approach to organize and strengthen social dialogue.
 54. The Government expert of the Netherlands explained the example of the Dutch responsible business conduct sectoral agreements. In those agreements, there were projects to promote social dialogue in specific sectors through engagements with companies and workers at the local level. The added-value of social dialogue was not always clear to such companies and it was therefore important to identify the business case for both local and cross-border social dialogue.
 55. The Government expert of the Republic of Korea highlighted the role of multilateral instruments in contributing to cross-border social dialogue, fair globalization, and decent work. The ILO and relevant stakeholders needed to follow the guidance contained in the MNE Declaration in activities related to cross-border social dialogue and the promotion of decent work in global supply chains. He recalled the importance of other authoritative multilateral instruments, which had great potential to contribute to strong governance in global supply chains. Policy coherence among the various multilateral initiatives would support cross-border social dialogue at the regional level.
 56. In the countries of East Asia, such as China, Japan and the Republic of Korea, cross-border social dialogue was not being driven by a regional economic community, as was the case in the Association of Southeast Asian Nations (ASEAN). Many MNEs from other parts of the world operated in East Asia, just as many East Asian MNEs operated in other regions. There were several possible reasons for the lack of cross-border social dialogue in East Asia, including the absence of a political or economic regional organization and the fact that many East Asian MNEs already had policies in place to deal with supply chain issues. Research was needed to understand why cross-border social dialogue had not spread into many parts of the world, including East Asia, and how best to promote it. Such research would enable the exchange of best practices and provide a basis for commitment to future action. He described the work initiated by the Seoul Metropolitan Government to create the Decent Work City Network, through which 15 cities around the world had committed to promote the fundamental principles and rights at work at the local level.
 57. The Government expert of France said that IFAs were extremely well-elaborated instruments, while acknowledging they did not represent the sole form of cross-border social dialogue. Despite their low number, they covered many countries and workers. France had experienced a period of digital development and, in that context, the Government had worked on the quality and experimented with the development of IFAs. The resulting new generation of IFAs involved the social partners at both local and global levels, and sought to expand access to social protection through the whole value chain, including subcontractors. Those were examples of social innovation at an international level. The French Government had established a platform to facilitate the exchange of experiences and assessment of IFAs.

Governments, although not signatories to the agreements, had an important role to play in ensuring their implementation. Employers' organizations at all levels needed to work towards securing inclusive growth for all citizens, both within and outside global supply chains.

- 58.** The need for enhanced integration of ILS in investment agreements was included in France's G7 social objectives for 2019. More space should be afforded to the social partners during negotiation of trade and investment agreements so they could pursue the inclusion and implementation of social clauses, including ILS. While high levels of vigilance were exercised by environmental NGOs over environmental clauses, this was not yet the case for social clauses. Governments and social partners had a shared responsibility in that respect. The ILO also needed to promote better integration of ILS in trade agreements. She noted the collaboration of the ILO with the World Bank and other stakeholders in the Universal Social Protection Initiative and the need for an "international social dialogue label" on that project.
- 59.** The Employer Vice-Chairperson supported the remark made by the Government expert of Bangladesh that there was no "one-size-fits-all" approach to social dialogue, and that national traditions had to be respected. She agreed also with the Government expert of the United States that IFAs were a positive development when voluntarily concluded by both parties. She referred to the important point made by the Government expert of Morocco regarding the need for capacity-building to reach the 80 per cent of workers who did not work in global supply chains. Cross-border social dialogue therefore needed to involve employers' organizations whose members included small and medium-sized enterprises (SMEs). The employer constituency of the ILO was employers' organizations rather than individual companies; the focus should thus be on how cross-border social dialogue could help the 80 per cent of workers in domestic companies.
- 60.** The Global Deal duplicated existing multilateral instruments. It should therefore not be referenced during the Meeting of Experts. ILS were negotiated at the ILC, which included national trade unions and employers' organizations; it was therefore a bottom-up process which took into account the views of constituents on the ground.
- 61.** The Worker Vice-Chairperson commented on the new generation of IFAs, a phenomenon that had been highlighted by the Government expert of France. In the previous two years, new agreements had been concluded which addressed digitization; social dialogue would ensure the involvement of all parties in negotiating the digital transformation. Workers' organizations were closely examining those issues, including how framework agreements could cover subcontractors and franchisees. Social dialogue and collective bargaining were the only way forward in that respect.
- 62.** In her earlier remarks, she had not meant that the development of ILS was a top-down process. In similar vein, IFAs were negotiated with the involvement of national affiliates of the concerned global workers' organization(s). The most effective agreements had been negotiated where there was also engagement by the local-level management of the MNE. The point she had sought to make was that local or national standards had to meet or exceed international labour standards and, if they did not, the international standards prevailed; IFAs upheld that same principle.

Discussion point 2: How can cross-border social dialogue become more relevant, inclusive and effective in the future?

63. The Employer Vice-Chairperson said that an enabling environment was fundamental to the success of cross-border social dialogue. Efforts to advance cross-border social dialogue should not replace action to strengthen social dialogue at the national and local levels. Cross-border social dialogue needed to take a bottom-up approach, involve the representative national social partners and respect national traditions, systems and practices. Top-down cross-border initiatives carried a risk of conflict at the local level due to little or no engagement of the national social partners. They also risked excluding the vast majority of workers who were not part of global supply chains. Free, independent, strong and representative employers' and workers' organizations, having mutual trust and commitment, were of fundamental importance, as was respect by governments for the autonomy of social partners and for social dialogue. Freedom of association had to be respected in national law and practice.
64. Three challenges regarding the rule of law inhibited cross-border social dialogue. The first was the lack of effective implementation and enforcement of national labour laws and regulations in many countries. Those implementation gaps had to be addressed by national governments and the social partners in the framework of the ILO supervisory mechanism. The second challenge was the volume and density of labour laws in some countries, which left very little space for social dialogue to find creative solutions on the ground or to shape labour market conditions. The third was that legislation had to be designed with the involvement of the social partners, which would improve its quality and its implementation. Only with those conditions in place at the national level would cross-border social dialogue become more relevant, inclusive and effective.
65. Turning to responsible business conduct or CSR, there were many private sector initiatives and frameworks that promoted social dialogue, including across borders. Their forms, formats and purposes differed considerably and their richness showed how seriously companies and employers took their responsibilities. She highlighted four points in that respect:
- (i) The substance of the challenge faced needed to be examined first, and not the form of social dialogue. Favouring a specific tool without considering its suitability to address a specific problem would not work.
 - (ii) Companies (in the same way as governments and trade unions) could not be expected to have a perfect record. Rather, they should be supported to improve over time. Linked to that, it was important to recognize that many labour and human rights challenges were not unique to one firm but were systemic issues that no single company could tackle by itself.
 - (iii) Cross-border social dialogue was one of many types of stakeholder engagement that responsible companies carried out. Individual companies needed to identify and engage with the relevant stakeholders depending on the topic of concern (for example, human rights, the workplace, environmental compliance or corruption).
 - (iv) Finally, private sector initiatives could never be a substitute for state action to protect labour rights, and governments could not cede their duty to private actors and systems. Companies could complement and support government action, but could not replace it.
66. Many forms of cross-border social dialogue did not involve dispute resolution or need a grievance or enforcement mechanism. European social dialogue was an example, where the

social partners acted as co-legislators without a grievance mechanism being in place. Equally, dispute resolution, grievance and enforcement mechanisms differed just as the forms and character of cross-border social dialogue differed. A fundamental point on access to remedy was the fact that it was incumbent upon States to enforce domestic laws and ensure victims in their jurisdictions could access courts and other relevant state-based grievance mechanisms. Global standards made it clear there was no intention to shift responsibility for an adverse impact from the entity causing it to the enterprise with which it had a business relationship.

- 67.** Regarding approaches and efforts to resolve disputes through cross-border social dialogue, conflicts between signatories of TCAs were in practice generally resolved through informal dialogue between the company and workers' representatives. That dialogue helped create a collaborative relationship between management and workers, enabling problems to be addressed promptly and constructively and, as far as possible, at the local level. Some TCAs contained provisions on conflict resolution, including what should happen when no informal solution was possible. Those provisions varied, including the possibility for termination of the agreement, mediation or arbitration. The individual company and the counterpart signatory union had to agree on the best approach for them. Since the 2017 revision of the MNE Declaration, the ILO had offered a company-union dialogue service to help operationalize its voluntary principles. Two cases had been successfully completed to date, which showed that the ILO could play a supportive role in cases where a company and a union voluntarily agreed to use its facilities to meet and discuss issues without prejudice. The tripartite constituents had agreed that that mechanism was both voluntary and confidential, characteristics which were of fundamental importance.
- 68.** The arbitration mechanism under the Accord in Bangladesh had given rise to many challenges. The Worker expert from IndustriALL had stated, regarding the two cases it had taken to arbitration in 2016, that the process had been very heavy and costly. Both cases had been settled before the oral hearing, which would no doubt have entailed significant additional costs for both the global union and the companies. Research did not support the assertion made by some that the binding nature of the dispute settlement process under the Accord made it effective, including when compared to the industry-led Alliance for Bangladesh Worker Safety. Research published in April 2018 by the New York University Stern School of Business in fact showed a slightly higher level of remediation of safety issues under the Alliance than the Accord, as well as a larger number of factories suspended for their failure to remediate. Thus, the binding procedure had not been more effective than the non-binding one. The more important factor was the shared willingness of the parties to work together towards a common goal of improving working conditions and building safety in the factories.
- 69.** Finally, it was very important to address the linkages between cross-border and other levels of social dialogue. The success of cross-border social dialogue depended on the strength of dialogue at regional, subregional, national, sectoral and local levels. It was necessary to continually focus on the basics at ground level, such as public governance systems and the autonomy of the social partners.
- 70.** The Worker Vice-Chairperson said that TCAs could achieve decent work especially in countries where the rule of law was weak. The ambition of her group was to explore ways in which the ILO could promote TCAs and go beyond the status quo in that type of cross-border social dialogue. The enabling environment, and especially the institutional and legal frameworks in place, came first. While instruments such as the OECD Guidelines and the UNGPs helped promote TCAs, a governance framework for those agreements was still lacking, which brought considerable uncertainty and challenges for the negotiating partners. The absence of a legal framework was a barrier to cross-border social dialogue, including with respect to recognition of the right to strike in cross-border disputes. The Workers' group sought such a framework which would establish entitlement to information, consultation,

cross-border bargaining as well as provide clarity on other industrial relations issues, including the right to strike.

71. Other factors also contributed to an enabling environment for cross-border social dialogue, such as laws providing for mandatory due diligence, as enacted already in France, and soon to be adopted in other European countries. Even in the absence of laws, due diligence was mandatory for MNEs under the OECD Guidelines. There was a need to clarify the role of trade unions in due diligence processes, including in the identification of risks, preventive measures and remedies. The ILO could offer assistance regarding how to structure the meaningful engagement of trade unions in due diligence. The MNE Declaration was a vehicle for the ILO to build up in-depth experience on labour rights and due diligence, to gather good practices and identify appropriate models where trade unions were key partners. The ILO could also contribute through conducting research into what were the core elements of operational-level grievance mechanisms, which were accessible to workers throughout the operations of a company.
72. Another enabling factor for cross-border social dialogue was to have a solid record of effective social dialogue in the home country of the company involved, which was a factor positively linked to the conclusion of TCAs. However, she did not agree with the proposition that effective national social dialogue mechanisms were a prerequisite for cross-border social dialogue. If that were the case, in practice very few TCAs would be possible outside Western Europe, given that so many countries did not respect freedom of association rights and had serious governance gaps.
73. Trade and investment agreements had implications for decent work; those agreements sometimes constrained the capacity of governments to implement labour policy. Governments should consult with trade unions when negotiating a trade or investment agreement, so as to ensure that its provisions did not undermine national labour law or the country's ability to regulate working conditions. Furthermore, the labour chapters of those agreements should be binding and enforceable through a monitoring mechanism that included the social partners.
74. The Maritime Convention, although unique in certain respects, deserved close examination in terms of the potential it offered for certain other groups of workers, for example those working through digital platforms and also in other occupations. That was an issue on which the ILO should engage in the future.
75. There were very many private initiatives. The Global Deal was one example with 100 partners, including governments, trade unions, business organizations and companies. Social dialogue and collective bargaining had to be promoted in all possible ways, and the Global Deal should receive credit in that respect, as well as for the useful research it had produced.
76. On the issue of dispute resolution, the Employers' group had mentioned the arbitration procedure under the Accord in Bangladesh. The process had indeed been lengthy and had not reached a hearing; however, it had achieved an important settlement, with substantial amounts of money made available to remediate problems in the factories. The case showed that the arbitration rules set up for corporate arbitration were not suitable for labour-management disputes. Further discussion was needed on a process that would be less expensive and time consuming; it had been a good learning experience. The Accord had registered important achievements across 1,600 factories with 200 brands involved, raising the remediation levels to more than 85 per cent. It was at that time being transferred to the Government. It had been effective in improving factory safety in Bangladesh.
77. The OECD Guidelines contained an important mechanism for dispute resolution, which had a specific instance procedure involving NCPs in national governments. The Swiss NCP had

dealt successfully with cases involving FIFA, and those in France, the Netherlands and other countries had also achieved good outcomes, by bringing the parties to the table to negotiate outcomes in a way that would not otherwise have been possible. The MNE Declaration's model for dispute resolution required strengthening, possibly by having a contact point for managing disputes.

- 78.** Most TCAs included a dispute resolution process that included discussions at different levels of the company, including monitoring through joint visits, using a mediator if both parties agreed or sometimes arbitration. In some cases, TCAs were enforceable under the national law covering the signatory company. However, references to mediation and arbitration were often vague with no clear and comprehensive procedure attached. There was no dedicated space for mediation and arbitration in global disputes and the enforcement gap in many TCAs was an important deficit. There was also a profound lack of trust in voluntary measures following the failure of CSR initiatives. However, TCAs were not part of CSR. Strong dispute resolution systems increased compliance and deepened commitment, while accountability was important to give credibility to those agreements. There was a need to explore arbitration models, as a last resort after other efforts, including conciliation, mediation and meetings at various levels of the company, had been attempted. One option would be to strengthen the facilitator model under the MNE Declaration. A list of qualified facilitators should be established by the Office, making the process more official and less ad hoc in nature. National focal points could also be strengthened, and supported by guidance from the ILO on the MNE Declaration. They could become a vehicle to provide support for the enforcement of TCAs.
- 79.** Regarding the linkage between cross-border and other forms of social dialogue, the question of respecting local practices arose. All TCAs had to respect national law, as well as national systems for recognizing trade unions local partners were always involved in some way in the negotiation of those agreements. In the case where there were no local unions representing workers in that particular company, other means were found to involve interested workers in the discussions. Global union federations were very deeply connected to their affiliates at the local level and would never seek to violate national laws. Too often, however, those laws fell far below what they considered to be the corporate duty to respect rights. In such instances, they sought in TCAs to improve upon the minimum required by the local law.
- 80.** The Worker expert from the ITF spoke about the global collective bargaining framework agreement in the maritime sector, which contained three elements. First, its financial element included everything from pay to employment stability to the access of ITF inspectors to board the vessel to check that the agreement was being respected. Second, the professional element included sickness and injury pay, provident funds, and provisions regarding work in dangerous areas. Third, the social element included leave, access to email and internet and so on. Negotiations on the framework agreement took place every two years at the global level. Once the global framework agreement had been concluded, the ITF's national affiliates started negotiations with companies in their own countries, which could result in national and sometimes company-level agreements. All those agreements had to respect the framework set at the global level. That was a model that worked in practice, in an industry that had become increasingly globalized, was one of the most dangerous in the world, and was subject to different legal regimes due to the mobility of ships on the high seas. The social partners had come together to develop that successful model, which could be replicated in other industries if the social partners were ready to engage in meaningful cross-border social dialogue.
- 81.** The Worker expert from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) described work towards a Convention on the elimination of violence and harassment in the world of work. Some global agreements on protecting workers against sexual harassment in the workplace had recently

been concluded with certain MNEs. All those agreements, negotiated through social dialogue at the global level, referred to local implementation. The national affiliates had engaged with management in each national jurisdiction to agree on implementation arrangements, which demonstrated clearly the link between national and cross-border social dialogue.

- 82.** The Worker Vice-Chairperson said, in conclusion, that the global unions were working on many different core issues. She was very motivated about the future of TCAs and cross-border social dialogue. In the face of globalization, CSR was not the way forward and there were other models that could be employed. The challenge was to make them work and to ensure the continued relevance and importance of the ILO in the new world of work.
- 83.** The Government Vice-Chairperson noted that governments recognized the benefits of social dialogue at all levels from local to global. Governments wished to create an enabling environment for cross-border social dialogue and to ensure that such dialogue was not impeded. They wanted as well to provide opportunities at national level for a better knowledge and awareness of the various tools and instruments available. They prioritized neither a top-down nor a bottom-up approach, but instead promoted a cross-cutting approach that included both national and transnational social dialogue. With the help of the ILO, they could bring a greater awareness of cross-border social dialogue to national dialogue institutions, which should be broadened to include other stakeholders.
- 84.** Provisions in TCAs needed to be in accordance with national legislation. Cross-border social dialogue could allow the governments of MNE home and host countries to identify gaps in their national governance frameworks. This would allow them to put in place legislation to ensure respect for workers' rights in enterprises throughout the global supply chains of MNEs. TCAs should foresee mechanisms for dispute resolution which could be managed autonomously by the social partners or which could call on a third party mediator, such as the ILO. Those should operate in coordination with, and complement, existing arrangements for dispute resolution.
- 85.** The ILO should assist in creating an enabling environment for cross-border social dialogue, including through monitoring, research and impact evaluation, and capacity-building. In the context of UN reform, the ILO could provide training to UN Resident Coordinators to raise their awareness of tripartite cross-border social dialogue.
- 86.** The Government expert of the United States stated that governments should ensure that employers and workers were free to engage in voluntary dialogue initiatives of their choosing, and avoid creating any barriers to that. More government-to-government agreements which covered labour and employment issues could include mechanisms for cross-border social dialogue to support their effective implementation. Companies should use social dialogue to help ensure respect for workers' rights in their operations. There was no substitute for effective labour law enforcement by governments, including of the rights to freedom of association and collective bargaining. However, businesses also had the obligation to respect workers' rights, even where enforcement gaps existed. She requested clarification from the Workers' group on their point regarding the lack of governance frameworks for TCAs, given that fundamental principles and rights at work applied everywhere, irrespective of the national context. Effective social dialogue at the enterprise and national levels would strengthen the actors' capacity for cross-border dialogue. Investment in capacity-building at the national level could be considered as an enabling condition for that.
- 87.** The Government expert of South Africa noted that the NEDLAC constituted the enabling institutional framework for social dialogue in her country. Support from the ILO for capacity-building and additional resources for social dialogue would be welcomed. South

Africa was a partner in the Global Deal and her country saw its value as an instrument to forge consensus; she encouraged other States to consider joining it.

- 88.** The Government expert of the Netherlands stressed that ILO capacity-building was important at the local level, including in the lower tiers of global supply chains. Positive examples were needed of how local businesses could set up social dialogue, which could also help MNEs in their supply chains. The ILO should develop guidelines for businesses, sectors and other stakeholders on how to set up cross-border social dialogue in their supply chains including for due diligence. Those guidelines could be integrated within other relevant guidelines, such as the due diligence guidance of the OECD. The Dutch Economic and Social Council was interested in exploring cross-border social dialogue, including the role of the ILO, as well as in taking those issues up internationally with other economic and social councils.
- 89.** The Government expert of the Republic of Korea noted that cross-border social dialogue could be better implemented in countries where local social dialogue was well established. There was a need to utilize existing social dialogue bodies, or to establish such bodies where those did not already exist, to address issues related to MNEs and cross-border social dialogue. In his country, the national social dialogue institution had recently been reformed to adopt new principles and include members of additional stakeholder groups such as youth, women and atypical workers. But, until that date, the issue of MNEs and cross-border social dialogue had not yet been considered.
- 90.** The Government expert of Mexico noted the increasing relevance and importance of social dialogue in the globalized world. The active participation of the social partners in the design of labour policies and reforms should be encouraged, while it was indispensable to ensure respect for the rule of law through effective labour inspection and dispute prevention and resolution mechanisms. The Government of Mexico had developed public policies and activities in line with the principles of the MNE Declaration, including strategies to promote equal opportunities and inclusion for vulnerable people including non-nationals. The Ministry of Economy was the NCP for the OECD Guidelines and had organized various forums, including employer, worker and civil society participants, which focused on CSR and sustainable development. Efforts had also been made to promote dialogue between companies and actors working on human rights. The labour chapter of the FTA signed between Canada, Mexico and the United States in 2018, reflected their joint desire to include the social partners in monitoring compliance with the labour commitments. Its article on public engagement required each party to consult with a national labour body, including representatives of workers' and employers' organizations, on the matters covered by that chapter in order to guarantee the effective implementation of human rights and labour laws.
- 91.** The Government expert of Bangladesh noted that strong national social dialogue could facilitate inclusive and effective cross-border social dialogue, if supported by sound institutions and legal frameworks. A recent labour reform in Bangladesh had reduced the threshold for trade union recognition at the enterprise level; tripartite consultation was mandatory in the ready-made garment sector; and the Workers' Resource Centre had been established to build the capacity of workers. Similar initiatives might target cross-border social dialogue. There should be strong coordination between different private initiatives, with mutual respect and recognition for the work accomplished by them. Dispute resolution, grievance and enforcement mechanisms were crucial and should be guided by national conditions, laws and regulations, as prescribed by the Collective Agreements Recommendation, 1951 (No. 91). Labour standards should not be used for protectionist trade purposes as specified in the ILO Declaration of 1998.
- 92.** The Employer Vice-Chairperson, responding to the comments made by the Workers' group, said that international frameworks for information and consultation, including on the right to strike, were not on the agenda of the Meeting and therefore should not be discussed. The

Global Deal was not a private initiative but rather a state initiative led by the Prime Minister of Sweden. Sweden had also financed research by the OECD. The success of the Accord in Bangladesh had not been due to its binding nature, and the non-binding Alliance was in fact equally successful. The Employers' group supported the agreements signed by the IUF on sexual harassment and hoped for similar agreements on LGBTI rights.

93. As the MNE Declaration had been revised only two years previously, it should not be changed again; the same applied to the dialogue facilitation services, which needed to be tested in practice. The Employers' group supported the fundamental principles and rights at work, which applied to all workers and not only to the 20 per cent who worked in global supply chains. Capacity-building at the national and local levels should be strengthened, in line with the Social Justice Declaration, as well as tripartite social dialogue institutions. The need for additional guidance from the ILO on due diligence was regarded with scepticism, as the OECD Guidelines on that issue had been drafted in consultation with the social partners. Cross-border social dialogue initiatives had to include the social partners at national level if they were to be effective. Labour standards should never be used for protectionist purposes in international trade, as had been stated by the Government expert of Bangladesh.
94. The Worker expert from IndustriALL Global Union noted that the world of work still faced many challenges, such as worker exploitation and the non-payment of salaries; additional efforts were needed at the global level to resolve those issues. Cross-border social dialogue aimed not to replace industrial relations at the national and local levels but to create an enabling environment for dialogue at those levels. Cross-border social dialogue was indeed particularly important when conditions for social dialogue at the domestic level were problematic. CSR and voluntary auditing initiatives should not be given undue attention, as those measures had failed to improve wages or protect collective bargaining rights. Cross-border grievance mechanisms and binding dispute resolution systems could help reduce the global governance gap. The Bangladesh Accord was the result of a contractual agreement between the social partners, and was not a unilateral initiative.
95. The Worker Vice-Chairperson said that the Global Deal had been initiated by the Government of Sweden, and had generated significant positive effects on collective bargaining and social dialogue at the national and cross-border levels. The Accord's success had resulted from its multi-employer engagement and binding nature, without which it could not have achieved the same results. It had also had a spill-over impact on the Alliance. In contrast to the employers' position, the Workers' group considered the issue of a global bargaining framework to be within the scope of cross-border social dialogue; such a legal framework would eventually be needed for TCAs and should be embedded in the ILO. They accepted, however, the employers' position that the issue could not be addressed within the scope of the Meeting.
96. The OECD guidance on due diligence did not cover the role of trade unions in any detail. The ILO should provide guidance on that issue, including regarding processes to map risk prevention and remedies. Certain elements of the MNE Declaration had never, or only rarely, been used, and those required more attention – for example, the national focal points and the facilitator function. Responding to the comment by the Government expert of the United States, it was difficult to enforce fundamental principles and rights at work in the absence of a national legal framework to guarantee those rights.
97. The Employer Vice-Chairperson observed that what really mattered was results on the ground. CSR could contribute but it was never a substitute for legislation and its effective enforcement by the public authorities. The ILO's global supervisory mechanism also helped ensure that national governments implemented the law. Different types of grievance mechanism existed and were necessary, but not all forms of social dialogue required the establishment of such mechanisms. The Employers' group did not see any merit in engaging the Meeting of Experts in discussion on a global industrial relations legal framework, an

issue on which no progress could be achieved in the context of the meeting. They should instead focus on areas where progress could realistically be made, respecting the diversity of national industrial relations systems.

Discussion point 3: What should be the role and added value of the ILO in the area of cross-border social dialogue?

- 98.** The Worker Vice-Chairperson appreciated the enthusiasm expressed by the Government group for the role of the ILO in cross-border social dialogue, which her group shared. The Workers' group wanted the value of TCAs in addressing decent work deficits and ensuring rights to be recognized and promoted. TCAs were an important vehicle for workers' involvement in due diligence processes and remedy mechanisms. The ILO should make a commitment to promote TCAs in all its work.
- 99.** There was no need for another revision of the MNE Declaration, but rather for an action plan for its implementation, especially in a cross-border context. The publication of a list of competent facilitators for the mediation of disputes upon request by the parties would be a straightforward next step, which would give confidence, choice and transparency to the parties to a dispute. The ILO should prioritize the training of tripartite-appointed national focal points. The merging of that role and the role of NCPs under the OECD Guidelines, as had been done in Norway, was one approach that might be applied elsewhere.
- 100.** Guidance from the ILO was needed on the meaningful engagement of trade unions in due diligence processes, an important issue that was not covered by the OECD guidance, including on the role played by TCAs in those processes. ILO guidance on the key elements for effective operational-level grievance mechanisms was also required. The Workers' group sought a new international treaty on business and human rights, so as to provide a legal framework for TCAs. Their proposal for a new ILO standard on that issue would be addressed at the forthcoming meeting on global supply chains, under the follow-up to the discussion on that topic at the ILC in 2016.
- 101.** The ILO should promote cross-border social dialogue, including at other specialized agencies of the UN and in trade bodies, and should advocate the engagement of the social partners in the negotiation, monitoring and enforcement of trade agreements. Cross-border social dialogue was an essential mechanism to protect the rights of migrant workers, and the ILO should promote the social partners' involvement in the elaboration, review and implementation of bilateral and multilateral government agreements on that topic, in line with the ILO *General principles and operational guidelines for fair recruitment*. Oversight mechanisms, such as tripartite committees, should also be set up. Those agreements needed to be disseminated through regional bodies, and the ILO could strengthen the capacity of local partners in that regard.
- 102.** The Workers' group was ambitious regarding the promotion of TCAs and deepening the recognition of the role of trade unions in due diligence mechanisms. That avenue presented vast opportunities for the ILO to promote cross-border social dialogue, goals which were achievable in the new centenary.
- 103.** The Employer Vice-Chairperson stated that particular attention needed to be paid to the improvement of ILO action on social dialogue, as one of the ILO's cross-cutting policy drivers. However, it should be recognized that the ILO did not necessarily have a role to play in all forms of cross-border social dialogue, where the autonomy of the social partners came into play. ILO action should always be guided by the diverse needs and realities of the constituents at national level.

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- 104.** The ILO played an important role in knowledge generation, through its research, databases, publications, and seminars for knowledge dissemination and mutual learning among constituents. Research should not favour certain forms of company-level dialogue over others, but should evaluate the content and impact of different initiatives, identifying the factors for success and the challenges. There were diverse approaches to social dialogue, including TCAs, workplace cooperation and multi-stakeholder engagement processes; case studies and research were needed on all those various forms. The ILO-EU database on TCAs should be developed further into a user-friendly, factual and up-to-date tool, ideally including the full text or a summary of the agreements, which would allow for comparison.
 - 105.** Many guidelines existed on human rights due diligence, by the UN, the OECD, the European Commission and by different member States. The ILO should not duplicate those efforts, particularly given the consistency in language between the revised MNE Declaration and those other guidelines. Instead, the ILO could help companies to identify risks by providing accessible, country-specific, up-to-date information on issues including the fundamental principles and rights at work. That would be especially useful for SMEs which otherwise had difficulty getting such information. The ILO, with input from the social partners, could also increase its engagement in the annual UN Forum on Business and Human Rights.
 - 106.** The ILO should also generate and disseminate knowledge on other forms of cross-border social dialogue. For example, the ILO could develop a deeper understanding of emerging experiences in regional dialogue processes and institutions, and their challenges and opportunities in supporting regional integration. It could also respond to the needs of constituents in regional blocs, including through development cooperation projects.
 - 107.** The Employers' group welcomed ILO sectoral meetings, which allowed employers and workers to address jointly-identified, sector-specific challenges at a global scale. Their many positive outcomes included the elaboration of conclusions, codes of practice, guidelines and practical recommendations on various issues.
 - 108.** Regarding capacity-building and development cooperation, her group had already underlined that a strong social dialogue culture at national and local levels underpinned success in cross-border social dialogue, and that social dialogue outcomes derived their legitimacy from the membership and mandate of the social partner organizations. Strong, representative and autonomous social partner organizations were the key to success, and so the development of constituents' capacity to engage constructively in social dialogue at different levels, including through Decent Work Country Programmes (DWCPs), should be at the centre of the ILO's efforts. A project to develop a compendium of labour laws in the countries of the Southern African Development Community (SADC) was welcomed, but needed to be completed and disseminated. The ILO-International Finance Corporation (IFC) Better Work Programme was based on the principles of cross-border social dialogue, with an advisory committee at the global level which included the social partners. At national level, the programme engaged in dialogue with governments, employers' and workers' organizations, as well as with MNEs and their suppliers. The ILO could explore constituents' interest in expanding that programme to additional countries.
 - 109.** Continued, proactive advocacy was needed by the ILO to encourage other international organizations to engage with the social partners on relevant issues. The Sustainable Development Goals (SDGs) offered another opportunity for the social partners' further engagement, particularly in light of Goal 17 which called for partnerships between different actors at the global, regional, national and local levels.
 - 110.** The Meeting of Experts did not aim to discuss standard-setting actions, which would be considered by a third Meeting of Experts regarding decent work in global supply chains, as had been decided by the Governing Body. In conclusion, the ILO should continue to respond

to the needs and realities of its constituents on the ground to help make cross-border social dialogue more relevant, inclusive and effective.

- 111.** The Government Vice-Chairperson recalled several ILO authoritative texts which addressed the role of the ILO in the promotion of cross-border – and other forms of – social dialogue. The Social Justice Declaration referred to trade and other multilateral agreements. The ILO should inform its constituents about the follow-up that had been accomplished regarding those different texts or instruments, so that they might build upon what had already been achieved.
- 112.** The Government group had three main priorities with respect to cross-border social dialogue: the fundamental principles and rights at work, due diligence in supply chains and the promotion of social dialogue at all levels. However, other issues needed also to be taken on board, such as international labour migration, gender equality, agricultural development and minority rights. Research was needed on the development of, and obstacles to, cross-border social dialogue in regions other than Europe. The ILO could also conduct research to measure the impact of cross-border social dialogue, and produce a guide containing specific case studies, covering the different perspectives of the three constituent groups. All research should be made available on the ILO website. Campaigns and advocacy on cross-border social dialogue should remain general, and avoid promoting any one instrument or approach to the detriment of others. With regard to monitoring and capacity-building, the ILO should be proactive through DWCPs, and pay special attention to training programmes at the International Training Centre of the ILO (ITC–ILO) in Turin, including the training of UN resident coordinators in the context of UN reform.
- 113.** The OECD Guidelines targeted governments and were inadequate to meet the needs of MNEs, their subcontractors and suppliers. Generic guidance should be produced on sustainable social dialogue at different levels that met the capacity-development needs of all constituents. Ultimately, the coordinating and convening role of the ILO in relation to cross-border social dialogue should be recognized and strengthened by the conclusions of the meeting.
- 114.** The Government expert of Morocco said that governments should be supported by the ILO to establish an enabling environment for cross-border social dialogue, strengthen labour administration, implement national legislation and promote social dialogue at the national level. The ILO should inform governments and the social partners about the different initiatives, including their impact on employment and working conditions, and strengthen the capacity of the social partners at national level to participate in cross-border social dialogue.
- 115.** The Government expert of Bangladesh said that documentation of knowledge and good practices needed to be customized to different national and regional contexts, as well as be translated into national languages. The ILO should promote national, regional and global networks of experts and practitioners. The Global Compact for Safe, Orderly and Regular Migration could be a tool to promote cross-border social dialogue on the issue of migrant workers. The Office should pursue special awareness training for employers’ and workers’ organizations through the ITC–ILO, and continue promotional campaigns, in collaboration with buyers and brands, as had been done under the Better Work programme, to promote cross-border social dialogue.
- 116.** The Government expert of the Netherlands said that ILO research should document practices in cross-border social dialogue, including in connection with due diligence and the promotion of decent work in global supply chains, showing what did and did not work. A database of research on cross-border social dialogue would be useful. Capacity-building of all concerned parties at the local level was needed, using a bottom-up approach. New practical ILO guidelines, targeted at companies, could fill gaps in the OECD due diligence

guidance regarding how cross-border social dialogue could contribute to due diligence in global supply chains. Capacity-building was needed for both the OECD NCPs and the national focal points under the MNE Declaration. Cross-border social dialogue should be promoted through different ILO programmes, including public-private partnerships, and advocated for inclusion on the agendas of other international forums as well as of national social and economic councils.

- 117.** The Government expert of the United States supported the call for research on cross-border social dialogue outside Western Europe. In order to avoid possible duplication, all existing research on the topic should first be compiled in a single database which constituents could access. The ILO could create a user-friendly resource describing the different options for cross-border social dialogue. It should continue capacity-building of constituents to engage in social dialogue, through DWCPs and at ITC–ILO, including using distance-learning. The ILO should advocate new opportunities for social dialogue within the multilateral system, in the context of UN reform.
- 118.** The Government expert of South Africa pointed out that the ILO should support monitoring and evaluation mechanisms, in order to identify gaps and best practices, and also help to establish national platforms for social dialogue, which could contribute to an enabling environment for cross-border dialogue. In South Africa’s NEDLAC, social dialogue had been extended to include representatives of communities and non-governmental organizations.
- 119.** The Government expert of Mexico said that the ILO had a key role in promoting social dialogue regarding the MNE Declaration and in assisting governments to implement policies to strengthen national and cross-border social dialogue. The protection of migrant workers should be pursued through social dialogue, including in the G7 and the G20. While the ILO had no direct role in bilateral or multilateral trade agreements, it could provide support in that respect, for example, by sharing good practice. Social dialogue spaces were needed as well to share recent experience regarding gender issues, migrant and agricultural workers, and workers in the platform economy.
- 120.** The Government expert of the Republic of Korea said that the ILO should work in close partnership with governments and civil society. Building the capacity of sub-contractor companies was crucial to ensure decent work in global supply chains. The Korea Labour Foundation had hosted a forum to discuss international standards in global supply chains, and the ILO could support that kind of local initiative.
- 121.** The Government expert of France underlined the role of the ILO in supervising the application of standards. The ILC conclusions in 2016 had indicated that the ILO could support dispute resolution processes and, upon request, provide mediation; that service could be offered by the ILO. The next General Survey on social dialogue might include a question on how the existing ILO tools and instruments could contribute to cross-border social dialogue. Under its presidency of the G7 in 2019, France had undertaken to promote international labour standards in the context of multilateral action. The *Handbook on assessment of labour provisions in trade and investment arrangements*, produced in 2016 by the ILO, was an example of guidance for member States and the social partners. Similar guidance regarding cross-border social dialogue, the instruments that exist and their application, would be very valuable.
- 122.** The Worker Vice-Chairperson pointed out the need to avoid producing an exhaustive list of activities related to cross-border social dialogue, in which the ILO was already engaged, which risked diluting the focus that was needed in the meeting. The 2016 ILC conclusions had contained specific reference to adding value to IFAs, monitoring and dispute resolution mechanisms. Collective bargaining was at the heart of social dialogue. While it was recognized that cross-border social dialogue took many forms, attention had to be paid to

global companies. The denial of the fundamental rights of so many workers around the world was unacceptable. Governments had to step up their efforts, but companies also had a special responsibility in that regard. Some of the biggest companies in the world had entered into TCAs and through that action, they were shaping global practice. Her group wanted to see the ILO robustly endorse and promote TCAs as an effective way – although not the only one – to address decent work deficits, and thereby help maintain the forward momentum.

- 123.** Regarding the MNE Declaration, the ILO should set up a list of competent external facilitators, which would be of great service to workers’ representatives and to companies, who did not currently have access to such a service when disputes arose, but only to the public courts. That would be cost-effective and also increase the ILO’s visibility with respect to TCAs. The OECD due diligence guidance and the MNE Declaration referred to the “meaningful engagement” by companies with stakeholders, including workers and trade unions, in due diligence. The ILO could help clarify the meaning of “meaningful engagement” by providing examples of what it looked like in practice, as well as of identification of risks and prevention strategies. Such work would not be resource intensive and would add considerable value. Capacity-development in the regions on TCAs, and their better dissemination, was needed. The Workers’ group welcomed other suggestions that had been made, such as for a database and study of good practices, but considered the specific endorsement of, and support for, TCAs to be the most vital contribution the ILO could make.
- 124.** The Employer Vice-Chairperson highlighted that the mandate of the meeting was cross-border social dialogue; TCAs were just one piece of the puzzle and all the other pieces needed equal consideration as well. Her group remained unconvinced that additional guidance by the ILO on due diligence was needed or would add any value to the existing guidance on that issue, namely the MNE Declaration (paragraph 10(e)) and the OECD guidance (pp. 19–20). Those texts indicated clearly who were the relevant stakeholders for consultation in due diligence. She supported the proposals made by the Government group on capacity-building of governments and the social partners to prepare them for engagement in cross-border social dialogue, in the context of DWCPs. TCAs should not be used to erect barriers to other forms of cooperation with the ILO, such as public–private partnerships.
- 125.** In reference to the comment made by the Workers’ group regarding a list of facilitators under the MNE Declaration, the Government expert of the United States enquired why the Office had not yet issued such a list and how the facilitation service was resourced.
- 126.** An expert from the Office responded that, up until that date, only two requests for facilitation had been received and, in light of that, there had been no need to establish a list. But now the pilot phase was over, that would be done. There was no requirement for the facilitators to be external to the ILO; the function had been performed by an ILO specialist on one occasion, by mutual agreement of the parties. The service had thus far been funded by the ILO regular budget; in the event that more requests would be received, additional resources could be needed.
- 127.** The Employer Vice-Chairperson noted that the process to compile a list of expert facilitators should involve tripartite consultations and not be done by the Office acting alone.
- 128.** The Worker Vice-Chairperson said that experience had shown that using external mediators added credibility to the process. The function should therefore be housed at the ILO but use external facilitators. Those same facilitators might also be used to mediate disputes arising under TCAs.
- 129.** The Employer Vice-Chairperson replied that only the function foreseen under the MNE Declaration should be discussed at the Meeting.

Discussion of the tentative conclusions of the Meeting of Experts

- 130.** The Chairperson, opening the first drafting session, noted that the Office had drafted tentative conclusions,¹⁰ based on the first two days' discussion, in English, French and Spanish. The groups had been able to review the draft text in their respective group meetings.
- 131.** The Worker Vice-Chairperson said that the tentative conclusions reflected the work of the past days, were well structured and covered the main topics.
- 132.** The Employer Vice-Chairperson said that the document was too long (at five pages) and needed to be shortened. The content of the text did not reflect the respective views of the three groups, notably of the Employers' group, in a balanced way, did not cover the full range of forms of cross-border social dialogue and contained some inaccuracies.
- 133.** The Government Vice-Chairperson said that the tentative conclusions represented a good basis on which to work, although certain elements required reinforcement or rebalancing. It would be important for the Meeting to adopt a text which would have visibility and be taken into account from the moment of its adoption.
- 134.** The Chairperson introduced the first sentence of the text for discussion.
- 135.** The Government Vice-Chairperson proposed to insert, following "The Meeting of Experts on cross-border social dialogue, having met in Geneva from 12 to 15 February 2019", the definitions as presented in the Office report: "analysed contemporary experiences, challenges and trends characterizing cross-border social dialogue initiatives, developed between or among governments, workers and employers or their representatives beyond national borders to promote decent work and sound labour-management relations. It also analysed the role and added value of the ILO in order to provide guidance on the future work of the Organization in this area. The Meeting adopts, this fifteenth day ...".
- 136.** The Worker Vice-Chairperson agreed to the change. The Employer Vice-Chairperson also agreed, noting that the inclusion of additional text at that place would necessitate the deletion of text elsewhere.
- 137.** The sentence was adopted as amended.

Paragraph 1

- 138.** The Employer Vice-Chairperson proposed that reference should only be made to the conclusions adopted by the ILC. The reference to "the conclusions to promote decent work and protection of fundamental principles and rights at work (FPRW) for workers in export processing zones (EPZs) adopted in 2017" should be deleted, as those conclusions had a different status.
- 139.** The Worker Vice-Chairperson agreed.
- 140.** The Government Vice-Chairperson proposed to correct the balance of the text, by differentiating between the conclusions of the ILC and those of the Meeting of Experts on EPZs. She proposed as follows: "Recognizing the fundamental role of social dialogue under

¹⁰ The tentative conclusions, as drafted by the Office for consideration by the Meeting of Experts, are presented in the appendix.

the Philadelphia Declaration, the Declaration on Fundamental Principles and Rights at Work, the Declaration on Social Justice for a Fair Globalization and the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (“the MNE Declaration”), these conclusions build on and aim to contribute to the implementation of the conclusions concerning the recurrent discussion ...”. The existing text would then follow, deleting the reference to EPZs, but adding, at the very end of the paragraph, “as well as the conclusions to promote decent work and protection of fundamental principles and rights at work (FPRW) for workers in export processing zones (EPZs) adopted in 2017”.

141. The Government Vice-Chairperson requested to add the sentence: “These conclusions aim at enhancing the contribution of cross-border social dialogue to the promotion of decent work in an increasingly interconnected world of work.”
142. The Chairperson proposed “the present conclusions” to clarify the meaning.
143. The Worker Vice-Chairperson accepted the Government group’s proposal.
144. The Employer Vice-Chairperson recalled that the document should not exceed five pages and should refer only to authoritative texts adopted by the ILC. The Employers’ group supported inclusion of the three ILO Declarations (of 1944, 1998 and 2008) but not of the MNE Declaration, which had been adopted by the Governing Body. She had no observations regarding the proposed new final sentence, except regarding the length of the text.
145. The Government Vice-Chairperson agreed to deletion of the reference to EPZs, but requested to keep reference to the MNE Declaration at the end of the paragraph.
146. The Employer Vice-Chairperson pointed out that, although her group supported the MNE Declaration, it could not be placed at the same level as the ILC conclusions.
147. The Government Vice-Chairperson suggested to insert a third paragraph referring to the MNE Declaration.
148. The Employer Vice-Chairperson stated that the appropriate place to make a reference to the MNE Declaration was in paragraph 5, which addressed multilateral instruments and cross-border social dialogue.
149. The Government Vice-Chairperson suggested putting the MNE Declaration in square brackets, to review later when discussing paragraph 5.
150. The Chairperson proposed to adopt paragraph 1 provisionally, with bracketed text, subject to possible later revision. His proposal was accepted.
151. The first heading “Contemporary experiences, challenges and trends” was adopted without amendments.

Paragraph 2

152. The Employer Vice-Chairperson said that the paragraph was not entirely accurate. She proposed to replace the first sentence, starting “Cross-border social dialogue ...” by “Social dialogue is at the heart of the ILO’s mandate.”
153. The Worker Vice-Chairperson wished to keep the reference to cross-border social dialogue in the first sentence, as it was the topic of the meeting. In order to be brief and avoid confusion, she proposed to delete the second sentence and move the description of cross-border social dialogue that was currently in paragraph 4 up to paragraph 2.

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- 154.** The Government Vice-Chairperson added that, by including “Recognizing the role of social dialogue under the Philadelphia Declaration” in paragraph 1, the more general point about social dialogue had been covered. The paragraph under discussion was about cross-border social dialogue, thus it was important to say “Cross-border social dialogue is at the heart of the ILO’s mandate”. The reference to ILO governance was also important. Finally, she suggested to add “and for preparing itself for the future of work”, so the first sentence would read: “Cross-border social dialogue is an essential aspect of ILO governance and fundamental for carrying out its mandate and for preparing itself for the future of work”.
- 155.** The Employer Vice-Chairperson did not agree that cross-border social dialogue was at the heart of the ILO’s mandate; all types of social dialogue were at its heart. She also insisted on retaining the reference to the present meeting as an example of cross-border social dialogue, and to the ILO Centenary.
- 156.** The Government Vice-Chairperson agreed to include that social dialogue was at the heart of the ILO mandate, but wished to add that cross-border social dialogue was an essential aspect of that mandate, with the Meeting of Experts being an example.
- 157.** The Worker Vice-Chairperson withdrew her proposal to delete the second sentence, on condition that the reference to cross-border social dialogue was retained as had been proposed by the Government group.
- 158.** The Employer Vice-Chairperson proposed the following formulation: “Social dialogue is at heart of the ILO’s mandate. Cross-border social dialogue is an essential aspect of it.” The reference to ILO governance should be removed. The expression “future of work” might be difficult for external people to understand and could be replaced by “Centenary”.
- 159.** The Government Vice-Chairperson explained that by “future of work” she was referring not to celebration of the ILO Centenary but to the way forward.
- 160.** The Employer Vice-Chairperson proposed instead “and preparing itself for the world of work in the twenty-first century”.
- 161.** The Worker Vice-Chairperson wished to retain the reference to cross-border social dialogue being “fundamental for carrying out its mandate”, and suggested “preparing itself for the future” at the end of the sentence.
- 162.** The Employer Vice-Chairperson accepted the phrase “preparing itself for the future” but maintained her wish to delete “fundamental for carrying out its mandate” as that exaggerated the role of cross-border social dialogue.
- 163.** The Worker Vice-Chairperson said that the reference to the Meeting of Experts should be deleted.
- 164.** The Government Vice-Chairperson agreed with the Workers’ group’s suggestion. She suggested adding, at the end of the sentence, the phrase: “is an essential aspect of this mandate, while preparing for the future”.
- 165.** The other groups agreed, and paragraph 2 was adopted as amended.

Paragraph 3

- 166.** The Worker Vice-Chairperson suggested to insert “increasing inequalities” after “digitization”. Otherwise, she agreed to the draft text.

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- 167.** The Employer Vice-Chairperson did not accept the draft text. She proposed to rephrase the first sentence: “Over the past century, cross-border social dialogue has developed in the context of expanding international trade, deepening globalization and regional integration.” In the second sentence, she proposed to delete “in particular” (as FPRW were not standards), as well as the remainder of the sentence. In the final sentence, “Yet” should be deleted, and the sentence should read: “These developments occur in the context of a continued need to respect, promote and realize the FPRW.”
- 168.** The Government Vice-Chairperson agreed to the changes proposed by the Employers’ group at the beginning of the paragraph but asked them to justify their deletion of “digitization”. She proposed to add, at the end of the paragraph: “in a context where restrictions on freedom of association and the right to collective bargaining may represent a challenge in many parts of the world”, which was negotiated language. The Office confirmed that the source of the language was the ILC conclusions concerning the Recurrent Discussion on Social Dialogue in 2013 (paragraph 6). The use of the word “may” left open the possibility that the challenges may be decreasing in certain countries. She did not support the inclusion of “increasing inequalities” as had been suggested by the Workers’ group. She proposed as well to delete the reference to FPRW as it was a repetition of the first paragraph.
- 169.** The Worker Vice-Chairperson wished to reinstate “digitization and increasing inequalities”. In the second sentence, she could agree to the deletion proposed by the Employers’ group of “establishing a level playing field; coordinating social policies in more interconnected economies” but wanted to retain “addressing decent work deficits” at the end of that sentence. She did not agree to the use of the word “may”, as challenges to freedom of association and collective bargaining undisputedly persisted in many parts of the world.
- 170.** The Employer Vice-Chairperson explained that it was factually incorrect to state that digitization had been a driver for cross-border social dialogue, although it had indeed been a driver of many other things. She agreed with the Government Vice-Chairperson that it was best not to refer to the issue of increasing inequalities. She accepted the Workers’ proposal to retain “addressing decent work deficits”. However, the reference to the ILC conclusions of 2013 was outdated. The conclusions of the Meeting of Experts should be framed in a positive, forward-looking and broad way in terms of the continued need to promote all the fundamental principles and rights at work, and not only freedom of association and the right to collective bargaining.
- 171.** The Worker Vice-Chairperson agreed to delete “digitization” and “increasing inequalities”, on condition that “addressing decent work deficits” would remain. She agreed to the Government group’s proposed wording regarding freedom of association and the right to collective bargaining representing a challenge in many parts of the world, but with deletion of the word “may”. She repeated that freedom of association and collective bargaining deserved special mention as enabling rights that allowed the realization of the other fundamental rights.
- 172.** The Employer Vice-Chairperson stated that the 2013 ILC conclusions had been superseded by the 2018 conclusions, which did not make the same diagnosis of the current state of affairs; there had clearly been progress since 2013. All the FPRW should be mentioned together, or not at all.
- 173.** The Chairperson recalled that the 2018 ILC conclusions had reaffirmed the 2013 conclusions.
- 174.** The Government Vice-Chairperson also supported deletion of “digitization” and “increasing inequalities”. Reference to the continued need to respect, promote and realize the FPRW should be made, and to the fact that the right to collective bargaining remained a challenge in many parts of the world. This had been a guiding principle of the 2013 ILC conclusions.

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175. The Employer Vice-Chairperson did not agree with the governments' proposed wording regarding collective bargaining. She proposed instead: "Freedom of association and the right to collective bargaining remain a challenge, and there is a continued need to respect, promote, and realize the FPRW" without qualifying by "in many countries in the world".
176. The Worker Vice-Chairperson proposed the insertion of "The exercise of" before "freedom of association and the right to collective bargaining", to clarify the meaning.
177. The other groups agreed to that proposal, and paragraph 3 was adopted as amended.

Paragraph 4

178. The Employer Vice-Chairperson proposed the insertion, in the second sentence following "depends on", of "respect for the autonomy of the social partners" and of "and an enabling environment", following "in good faith dialogue". She also suggested the inclusion of "sectoral" and "regional" in the last line.
179. The Worker Vice-Chairperson accepted that proposal.
180. The Government Vice-Chairperson also accepted that proposal. She suggested to replace "voluntarily" by inserting "and willingness" between "the capacity" and "of the parties to engage in", as a stronger formulation; to replace "appropriate coordination" by "appropriate linkages", and to insert "national" in the last line.
181. The other groups agreed and paragraph 4 was adopted as amended.

Heading 2

182. The Employer Vice-Chairperson found the proposed heading too long and preferred the formulation used in the Office report.
183. After a brief discussion, the experts agreed on a revised heading as suggested by the Employers' group: "Multilateral instruments for a fair globalization, decent work and cross-border social dialogue."

Paragraph 5

184. The Worker Vice-Chairperson found the paragraph quite straightforward, but proposed to put the ILO MNE Declaration before the other instruments, as it was an instrument of the ILO.
185. The Employer Vice-Chairperson considered the paragraph too lengthy and not quite correct. The first sentence should start: "The promotion of social dialogue" (not CBSD),¹¹ and "including among actors across supply chains" should be deleted as that was a very general statement. The term "authoritative" should be inserted before "international instruments" and "guidance documents" after it. The remainder of the first sentence should be deleted, as it was not appropriate to list only those international instruments that covered due diligence. There were many other international instruments whose scope was broader than due diligence and human rights.

¹¹ The acronym for cross-border social dialogue (CBSD) was used in the tentative conclusions.

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186. The Government Vice-Chairperson requested the Employers' group to explain further their reasons for deleting the list of instruments.
 187. The Employer Vice-Chairperson said that the list was incomplete, as there were many other international instruments such as ILS, sectoral guidance, the Social Justice Declaration and regional instruments.
 188. The Government Vice-Chairperson proposed that the paragraph should start by referring to cross-border social dialogue, which was the subject of the conclusions. She proposed the formulation "CBSD is embedded in and needed for the effective implementation of many international instruments, such as ...". The listing of the UNGPs, the MNE Declaration and the OECD Guidelines for Multinational Enterprises was not intended to be an exhaustive list but, rather, it gave some important examples relating to cross-border social dialogue. As such, it was not problematic.
 189. The Worker Vice-Chairperson agreed with the Government group's proposal. It was important to keep the reference to the MNE Declaration and to due diligence. The intention was not to list all instruments that contribute to social dialogue but only those related specifically to cross-border social dialogue.
 190. The Employer Vice-Chairperson did not agree. It was not true that cross-border social dialogue was needed for the effective implementation of the UNGPs and the OECD Guidelines for Multinational Enterprises; that assertion did not reflect the content of those instruments.
 191. The Chairperson suggested deleting "The promotion of" in the beginning of the paragraph and inserting "contributes to" after "supply chains".
 192. The Employer Vice-Chairperson agreed, as the international instruments listed promoted social dialogue in general and not only cross-border social dialogue.
 193. The Worker Vice-Chairperson asked why the Employers' group had proposed to delete "including among actors across supply chains".
 194. The Employer Vice-Chairperson explained that such wording would unduly narrow the focus.
 195. The Chairperson proposed to continue the discussion and come back later to that point. He also requested deletion of footnote 1.
 196. The Government expert of the Republic of Korea said that the words "embedded in" should be retained.
 197. The Employer Vice-Chairperson said that it was not correct to refer to the OECD Guidelines as a whole, and that specific reference should be made to its chapter concerning employment and human rights.
 198. The discussion of paragraph 5 continued, with no clear consensus emerging on how to treat the different instruments in a consistent manner. The Employers' group made the point that they did not want to include a reference here to global supply chains, and the paragraph should not address only due diligence. The Workers' group insisted on the inclusion of companies' due diligence obligations somewhere in the conclusions, either in paragraph 5 or in paragraph 11, as well as of reference to actors in global supply chains. The Government group suggested using wording from the MNE Declaration's chapter on General Policies (10(g)) and removing the reference to the UNGPs and the OECD Guidelines.

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199. It was agreed to place paragraph 5 in square brackets and to adjourn the session to allow for group meetings.

Heading 3

200. The title “Cross-border social dialogue in regional economic communities, bilateral and multilateral trade and investment agreements and interregional groups/forums” was initially accepted by the three groups without amendment.

Paragraph 6

201. The Employer Vice-Chairperson said it was not accurate to say that regional and subregional cross-border social dialogue was also on the rise, because it had been on the rise in Europe and other regions since the 1980s. She proposed the following: “Regional and subregional social dialogue is a major form of CBSD. In the European Union, CBSD has had a long-standing history and is part of the European social model.” A new sentence would start: “Initiatives have also been taken ...” and the existing text would remain until the end of the paragraph, with the addition of “and the Greater Mekong Subregion” at the end.
202. The Worker Vice-Chairperson requested further information about the Greater Mekong Subregion initiative. The Employer expert from China explained that there had been an ILO-supported project to combat trafficking and forced labour, which had included recent work to promote OSH and road transport safety in the five countries of that subregion.
203. The Workers’ group accepted that addition.
204. The Government Vice-Chairperson proposed to reorder the items in the title to make it more coherent, placing “interregional groups/fora” immediately after “regional economic communities”. In the first sentence of paragraph 6, she suggested inserting “interregional” after “subregional”; including SADC in the list; and adding at the end of the paragraph: “The G7, G20 and OECD also include active fora for CBSD.”
205. The Employers’ and Workers’ groups agreed to the changes.
206. The Government expert from Korea suggested to delete the words “is part of the European social model” given that not all the experts had a comprehensive understanding of what that meant.
207. The Employer Vice-Chairperson and the Worker Vice-Chairperson agreed to that deletion.
208. Paragraph 6 and heading 3 were adopted as amended.

Paragraph 7

209. The Worker Vice-Chairperson proposed changes to the second sentence of paragraph 7: the deletion of “lack of capacities of institutions and of the social partners” and the replacement of “inadequate resources” by “inadequate accountability and weak enforcement mechanisms” as the latter was a more important factor than the lack of resources.
210. The Employer Vice-Chairperson did not support the changes proposed by the Workers’ group. She added that the sentence was too negative and represented a distorted version of reality; paragraph 81 of the Office report was more nuanced and closer to reality.

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- 211.** The Government Vice-Chairperson proposed to rephrase the paragraph as follows: “Consultative mechanisms in labour-related provisions in some bilateral and multilateral trade and investment agreements involve national employers’ and workers’ organizations in the implementation of such provisions. The effectiveness of these mechanisms depends on the capacity of institutions and of the social partners involved, transparency, and adequate resources to facilitate cross-border social dialogue.”
- 212.** The Worker Vice-Chairperson appreciated that the paragraph was now less negative but repeated that the inclusion of enforcement mechanisms and accountability was important.
- 213.** The Government Vice-Chairperson said that her reference to “consultative mechanisms” at the start of the paragraph had been an important point of consensus within her group, and those mechanisms did not relate directly to enforcement.
- 214.** The Employer and Worker Vice-Chairpersons agreed with the Government group’s proposal to amend paragraph 7.
- 215.** Paragraph 7 was adopted as amended.

Heading 4

- 216.** The Employer Vice-Chairperson proposed a new shorter title: “Cross-border social dialogue through TCAs”, as had been used in the Office report.
- 217.** The Government Vice-Chairperson agreed with that proposal but suggested to add sectoral agreements in the title, given that the maritime framework agreement would be addressed in the following text.
- 218.** The Worker Vice-Chairperson agreed to shorten the title as long as the content of the following paragraphs was retained. She therefore suggested to come back to the title after discussion of the text. She emphasized that the maritime agreement was a type of TCA.
- 219.** The Employer Vice-Chairperson wanted to refer only to TCAs in that section. The maritime agreement was not a TCA but a sectoral agreement. She therefore proposed deletion of paragraph 9 of the text.
- 220.** The Government Vice-Chairperson considered the maritime shipping agreement to be a unique and innovative approach which should be mentioned in the conclusions, but wondered about its inclusion in the section on TCAs. She asked the Office to explain why that had been done.

Paragraph 8

- 221.** The Employer Vice-Chairperson suggested to start the paragraph with: “Transnational company agreements are voluntary instruments.” and to delete the remainder of the first sentence. The second sentence would be: “Like the other forms of CBSD, TCAs can create conditions conducive to the respect for FPRW including social dialogue, within MNE operations” and proposed to delete “including in GSCs”. The third sentence would be retained up until “agreements” and the remainder of the paragraph deleted.
- 222.** The Worker Vice-Chairperson did not accept the changes proposed by the Employers’ group but had her own changes to propose. She suggested a new first sentence: “TCAs, such as IFAs, thematic agreements addressing health and safety, gender equality, as well as regular dialogue mechanisms involving consultation and information sharing, are a major form of

CBSD. These are creating conditions conducive to the organization of workers, trade union activity and collective bargaining within MNE operations, including in GSCs”. She suggested to keep the last two sentences of the paragraph and to add: “among other objectives, in order to achieve decent work” at the end.

223. Following a short break to allow for consultations within the groups, and since the Worker Vice-Chairperson indicated that her group needed more time to discuss that issue, the paragraph was bracketed.

Paragraph 9

224. The Employer Vice-Chairperson had already proposed to delete paragraph 9.
225. The Worker Vice-Chairperson stated that paragraph 9 should be kept. However, the word “framework” should be deleted in the first sentence, as that agreement should more correctly be described as a global collective bargaining agreement. It was a very interesting model that could be applicable to other sectors, and had been specifically referenced in the report of the Global Commission on the Future of Work as a type of agreement that might be explored for use in the digital and platform economy.
226. The Government Vice-Chairperson had already expressed that her group found the example interesting and thought the paragraph should be retained, although perhaps should be moved elsewhere in the conclusions. She believed that the report of the Global Commission on the Future of Work had referred to the Maritime Labour Convention, 2006, as amended (MLC, 2006) and not to the maritime shipping agreement.
227. The Employer Vice-Chairperson underlined that the Global Commission had been a body of independent experts and it could not speak on behalf of the ILO. Only the ILC or, under certain circumstances, the Governing Body could do that. She insisted that the paragraph be deleted.
228. An Office expert explained the reason for the positioning of paragraph 9 under the heading on TCAs. He repeated the analysis made by the Workers’ group that TCAs ranged from single-issue agreements to framework agreements to full-blown transnational collective agreements. The only transnational collective agreement, to the knowledge of the Office, was the one in the maritime shipping sector. The Office report stated, in paragraphs 105 to 107, that there were other forms of “transnational company agreements”; that should in fact have said “transnational social dialogue” or something similar. The Accord was cited as an example of an “evolution” of a TCA, signed between two global union federations and many MNEs. The case of the maritime agreement, concluded between the ITF and an employers’ federation (the ship owners), should have been cited in that section of the report.
229. The Chairperson enquired of the Office whether paragraph 9 could be moved to another part of the draft conclusions.
230. The Office expert replied that it might be included under the section on multilateral agreements, but it would be better retained in its existing place.
231. The Employer Vice-Chairperson repeated that her group could not agree to retention of the paragraph anywhere in the conclusions. The maritime agreement was a sectoral agreement, not a company agreement, as it had been signed by an employers’ organization. It was unique, covering workers on international waters, who were not under any national jurisdiction. Therefore, it could not be suggested as a model for cross-border social dialogue in other sectors where the workers lived in a particular country.

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- 232.** The Worker Vice-Chairperson did not agree with the Employers' group regarding the uniqueness of the agreement. It was only unique in certain respects. There were several similar agreements, for example with the Universal Postal Union or the Asian Media Unions, normally referred to as global or sector agreements. The term TCAs covered a very broad spectrum of agreements, and was not in fact a term commonly used by workers' organizations. The maritime agreement was one example of the most mature relationship and its supposed uniqueness was no reason to exclude it. Her main point was that there was a very rich diversity of agreements at the global and regional levels, which went far beyond agreements signed between one company and one union.
- 233.** The Government Vice-Chairperson stated that the Government group had not yet discussed that issue and may wish to review its position. She noted certain inaccuracies in the report as well as the respective positions of the Employers' and Workers' groups with respect to paragraph 9. The Government group found the example innovative and not so unique as to rule out its possible replication. The wording of the paragraph could potentially be modified to indicate that the experience could be used as an example. However, given all the points of view expressed, she proposed to delete the paragraph from that place in the conclusions. When dealing with the role of the ILO in research, the Meeting could consider including specific research on sectoral agreements. That would allow the Office to solicit the views of all the stakeholders as a basis for deeper reflection on that issue.
- 234.** The Chairperson suggested leaving the paragraph pending, and invited the three groups to seek a solution, taking into consideration the proposal made by the Government group.
- 235.** In the interests of moving forward, the Employer Vice-Chairperson agreed to reflect in a constructive way on the Government group's proposal, on condition that a decision was taken to delete paragraph 9.
- 236.** The Worker Vice-Chairperson needed more time to consult and proposed to bracket the paragraph.
- 237.** The Worker expert from the ITF noted that the fact of seafarers working on international waters did not mean they were not covered by any legal framework. The terms and conditions of seafarers on flags of convenience vessels were governed by the national law of the flag State, as established by the United Nations Convention on the Law of the Sea. The maritime shipping agreement was a sectoral agreement negotiated at the international level, and represented one of the most mature forms of industrial relations at the global level. Although it was confined to the shipping sector, there existed a literature on how it could be replicated in other industries including, although not exclusively, for other mobile workers such as in the aviation sector, where the social partners were willing to do so. Regardless of that possibility of replication, the maritime agreement should stay in the text, as an excellent example of an outcome of cross-border social dialogue which covered more than 200,000 seafarers.
- 238.** The Employer Vice-Chairperson underlined the need to concentrate on points of consensus and there was clearly no consensus on that point. In response to a request by the Government expert of the United States for further clarification of the Employers' position, she restated that, because the shipping sector was so specific and so different to all other sectors, it could not be used as a model for other agreements or other forms of cross-border social dialogue. It was also strange that it was the only example of a sectoral agreement mentioned in the text. She did not agree that it was an example of mature social dialogue, it covered only a small number of workers and it was not comparable to other sectors or types of work.
- 239.** The Worker Vice-Chairperson stated that the text did not present the case as a model for replication; it positioned it as an interesting example.

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240. The Chairperson proposed a compromise to delete paragraph 9 on condition that the experts committed to include a reference to the maritime sector and agreement in the section on the role of the ILO.
241. The Government Vice-Chairperson proposed specific wording for possible inclusion under the section on ILO research in paragraph 15(A)(i), adding at subparagraph (c) “Challenges and opportunities in sectoral agreements, including in the maritime sector.”
242. The Employer Vice-Chairperson accepted the Government group’s suggestion on condition that paragraph 9 was deleted as well as all other references to the maritime shipping sector, specifically in paragraph 14(d).
243. The Worker Vice-Chairperson said her group felt that both original references to the maritime sector should be retained. Her group needed closure on the entire section on TCAs before taking a final decision. She therefore proposed to bracket the paragraph.
244. Paragraph 9 was bracketed.

Paragraph 10

245. The Worker Vice-Chairperson proposed the deletion of: “While only a minority of MNEs have signed a TCA”. There was no need to enter into a debate on the number or size of MNEs that had signed TCAs. The first sentence should start: “TCAs have implications ...” (and to continue as in the draft text). The sentence on the impact of TCAs was unnecessarily negative. She proposed to insert “critically important” and delete “can be particularly weak”, so the sentence would then read: “The impact of TCAs on the improvement of working conditions along the supply chain is critically important in the countries where labour administration and inspection are also weak ...” (to continue as in the draft text).
246. The Employer Vice-Chairperson suggested the deletion of “While” in the first sentence, so it would start “Only a minority ...”, which was a statement of fact. She proposed the deletion of “enterprises and” in the second line. In the second sentence, “be a means through which a company performs human rights due diligence” should be deleted and replaced by “contribute to the corporate responsibility to respect human rights”. She proposed as well to delete “and enterprises along the supply chain” in the third sentence.
247. The Government Vice-Chairperson said there was a contradiction in the proposal made by the Employers’ group. There was no need to state that only a minority of MNEs had signed a TCA, which did not add value. That also contradicted the sentence stating that TCAs were expanding in coverage, which needed also to be deleted. The Government group agreed to keep the reference to the corporate social responsibility to respect human rights but did not support the deletion of “due diligence”. She agreed with the Workers’ group’s formulation regarding the “critically important” impact of TCAs. It was not clear to her why “and enterprises” should be removed. Many companies in France, for example, had signed TCAs which had significant implications for the enterprises themselves, and not only for the workers.
248. The Worker Vice-Chairperson did not understand why the Employers’ group wanted the reference to supply chains to be deleted. The impact of TCAs was particularly important where the labour inspection and administration were weak. The Office report contained no evidence that the impact of TCAs on working conditions was weak. The reference to the supply chain was important in light of the fact that the discussion on global supply chains had been one of the events leading up to the Meeting of Experts. The impact of TCAs on working conditions in supply chains was the key issue that needed to be reflected in that paragraph, which was not currently the case. Taking paragraphs 8, 9 and 10 together as a

package, the Workers' group did not think they could make further progress until they could confer. She noted also that the positions of the Employers' and Workers' groups on paragraph 10 were very far apart.

- 249.** The Employer Vice-Chairperson said that a study by the Office's Sectoral Policies Department had concluded that the impact of TCAs was very weak. Her group accepted to delete "only a minority of MNEs have signed a TCA" and the last sentence of the paragraph, as had been proposed by the Government group. She considered the phrase "implications for enterprises" to be redundant, given that it was enterprises which signed the agreements; nonetheless, she could agree to keep it. She proposed the second sentence to read: "TCAs can also contribute to the corporate responsibility to respect human rights." Due diligence was just one of many tools used to ensure respect for human rights, and not the only approach. It was therefore not correct to refer at that point to "human rights due diligence" which was too narrow. She insisted to delete the reference to the supply chain which was not accurate; the impact of the vast majority of TCAs was on the operations of the enterprise, and only a small minority of them included a supply chain clause. The reference to the weakness of labour administration and inspection was an accurate description of reality and should be retained.
- 250.** The Worker Vice-Chairperson said that supporting due diligence was a fundamental part of TCAs, and she agreed with the Government group's language in that regard. She understood the point that only a minority of global agreements explicitly referenced the supply chain. However, there were some big global agreements, such as the Accord, which only covered the supply chain, and others like ACT and all the IndustriALL global agreements had supply chain implications. The meeting's conclusions needed to reflect those important commitments to promoting decent work in supply chains. Eliminating all reference to the supply chain in the document was completely unacceptable to her group. She insisted also to keep the reference to the relationship between TCAs and due diligence.
- 251.** The Employer Vice-Chairperson stated that she had made her proposal in a spirit of compromise and consensus. Given the lack of willingness on the other side, she would insist on reinstating the first sentence: "Only a minority of MNEs have signed a TCA". It was not accurate to say that TCAs were instruments for due diligence. Due diligence was a different exercise that would be referenced later in the document.
- 252.** Following a suspension of the drafting session, the Chairperson announced that the three Vice-Chairpersons had agreed to meet, accompanied by their respective advisers, to examine together the remainder of the document. Their proposed revisions to the tentative conclusions would be distributed to the three groups the following morning. The revised draft would then be examined by the Meeting of Experts during the plenary drafting session. He closed the session.
- 253.** The Chairperson opened the third drafting session and explained that the Officers, comprising the three Vice-Chairpersons and their advisers, had prepared a revised draft of the conclusions, which would be reviewed by the respective groups.
- 254.** The Government expert of the United States expressed her strong disappointment at the way extensive time had been taken from the planned plenary session by the Officers for their discussion that morning, which had not been foreseen in the plan of work of the Meeting. The revised text still had to be discussed in plenary session to ensure the conclusions would be arrived at in a transparent, credible and consensus-based fashion, through the participation of all the experts.
- 255.** The Chairperson explained why he had decided to allow the Vice-Chairpersons to produce a consensus-based text. Although that process had taken time, he believed that it would ultimately accelerate the progress of the Meeting.

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- 256.** The Government expert of the United States referred to the standing orders for Meetings of experts to explain why she took issue with that approach. While she appreciated the efforts made by the three Vice-Chairpersons to explore areas of consensus, she hoped that the process would turn out well, in spite of the short time left for discussing the conclusions.
- 257.** The Chairperson thanked the Government expert of the United States and suspended the plenary so that the group meetings could take place.
- 258.** The Chairperson, upon reopening the third drafting session, said he hoped that the text would provide a basis to reach a consensus, and lead to the adoption of conclusions by the Meeting of Experts. He explained that the Governing Body had adopted new Standing Orders for Meetings of Experts. The experts were participating in their personal capacity, and each of them would be able to express his or her views during the paragraph-by-paragraph review of the revised draft. Those views would be reflected in the report of the Meeting. The new Meeting rules were still at an experimental stage and would be reviewed after two years. He advised the experts to avoid reopening debates conducted already, and to keep their interventions as short as possible. The review of the revised draft conclusions, as distributed that morning, resumed, starting with the title of the document.

Title and chapeau

- 259.** The title and chapeau text (not numbered) were adopted with no changes.

Paragraph 1¹²

- 260.** The Employer Vice-Chairperson proposed to remove the bracketed text on the ILO MNE Declaration.
- 261.** The Worker and the Government Vice-Chairpersons agreed to that deletion.
- 262.** The Chairperson suggested the replacement of “these conclusions” by “the present conclusions” for the sake of clarity.
- 263.** All groups agreed and paragraph 1 was adopted as amended.
- 264.** The first heading was adopted.
- 265.** Paragraph 2 was adopted with no changes.

Paragraph 3

- 266.** The Employer Vice-Chairperson said that, as previously agreed, “in particular” should be replaced by “and”, as the FPRW were not ILS.
- 267.** The Worker and the Government Vice-Chairpersons agreed to that change.
- 268.** Paragraphs 3, 4 and the second heading were adopted with no further amendments.

¹² The paragraph numbering of the draft conclusions, cited in the following section of the report, corresponds to the paragraph/subparagraph numbering of the final Conclusions as adopted by the Meeting of Experts.

Paragraph 5

269. Based on a recommendation of the Secretariat, the Chairperson proposed, in the sixth line, to delete “consistent with the UNGPs”, as the UNGPs did not directly refer to the social partners.
270. The Worker Vice-Chairperson preferred to modify that phrase, to read “which is consistent”, for greater clarity.
271. The Employer Vice-Chairperson proposed to rephrase as: “The MNE Declaration, which is consistent with the UNGPs, emphasizes that ...”
272. The Worker and the Government Vice-Chairpersons agreed to that change and paragraph 5 was adopted as amended.
273. The third heading was adopted with no changes.

Paragraph 6

274. The Government Vice-Chairperson requested the deletion of the last phrase of the paragraph, which referred to the G7, G20 and the OECD, as not all experts in the Government group agreed to that reference, and there were other interregional groups that were not mentioned.
275. The other groups agreed and paragraph 6 was adopted as amended.

Paragraph 7

276. The Government expert of the United States requested to remove the commas in the first sentence, which were unnecessary.
277. The paragraph was adopted as amended.

Fourth heading

278. The Employer Vice-Chairperson stated that it had been agreed with the Workers’ group to shorten the heading to “Cross-border social dialogue through transnational company agreements.”
279. The heading was adopted as amended.

Paragraph 8

280. The Government expert of the United States appreciated the significant efforts made to find compromise language for that paragraph. She suggested that “respect for” be replaced by “realization of” or “exercise of”. She was concerned that the current drafting risked giving the mistaken impression that there were certain situations in which the respect of the fundamental principles and rights at work was not required. It would, however, be appropriate to say that TCAs helped create better conditions for individuals to exercise or realize those principles and rights.

281. The Employer and Worker Vice-Chairpersons did not agree to that proposal. “Respect” was the appropriate term to use when referring to enterprises.

282. Paragraph 8 was adopted.

Paragraph 9

283. The Government expert of Bangladesh suggested deletion of the comma after the word “TCAs”.

284. The paragraph was adopted as amended.

285. The fifth heading was adopted with no changes.

Paragraph 10

286. The Chairperson informed the Meeting that an amended wording for that paragraph had been proposed by the Employers’ and the Workers’ groups. He asked whether the Government group wished to make any statement.

287. The Government Vice-Chairperson welcomed the agreement between the Employers’ and the Workers’ groups. However, the revised text had not yet been discussed within her group and she requested a pause so that those discussions might take place.

288. The Employer Vice-Chairperson suggested that such discussion should better take place once the following change had been discussed, as those changes were linked.

289. The Chairperson suggested to bracket paragraph 10.

290. Paragraph 11 was adopted.

291. The sixth heading was adopted.

Paragraph 12

292. The Government Vice-Chairperson suggested to rephrase the chapeau text as follows: “While respecting the autonomy of, and in consultation with, the social partners,” in order to avoid stating “social partners” twice in the same sentence.

293. The chapeau of paragraph 12 was adopted as amended by the Government group.

294. Subparagraphs (a), (b), (c) and (d) were adopted with no changes.

Paragraph 12(e)

295. The Government expert of the United States pointed out an error: the second “and” should be deleted.

296. The Employer Vice-Chairperson said that a semicolon should be added at the end.

297. Subparagraph (e) was adopted as amended.

Paragraph 12(f)

298. The Government expert of the Republic of Korea proposed replacing “different forms of social dialogue at all levels” with “different forms and levels of social dialogue”.
299. Subparagraph (f) was adopted as amended.
300. Subparagraph (g) was adopted.

Paragraph 12(h)

301. The Chairperson proposed to replace the word “promotion” by “promote” and delete the “s” at the end of “Declarations”. The sentence would then read “Promote all aspects of the MNE Declaration.”
302. The Government Vice-Chairperson suggested the addition of “including as regards to due diligence” at the end of the sentence.
303. The Employer Vice-Chairperson rejected that proposal.
304. The Worker Vice-Chairperson welcomed the Government group’s suggestion, but explained that lengthy discussions had taken place with the Employers’ group regarding the acceptable number of references to due diligence in the document. She could not therefore support their amendment.
305. The Government Vice-Chairperson asked the Employers’ group to explain their reasons for rejecting her proposal, and requested that note of their refusal be put on the record.
306. The Employer Vice-Chairperson said that she had already explained her reasons many times.
307. The Government Vice-Chairperson requested paragraph 12(h) to be bracketed to allow the Government group to discuss that issue.

Paragraph 12(i)

308. The Government expert of the Netherlands stated that discussions had taken place on subparagraph (i) within the Government group. They proposed an alternative formulation: “establish national focal points on a tripartite basis or make use of similar tools or processes, like the OECD NCPs, to promote the ILO MNE Declaration”.
309. The Employer Vice-Chairperson rejected that proposal, stating that her group had already made a concession by dropping the word “consider” (appointing national focal points). Reference to the OECD NCPs was not appropriate in the ILO context. The formulation they had proposed was fair and balanced, and her group was not prepared to modify it.
310. The Worker Vice-Chairperson could agree to the existing text, but had thought that agreement had been reached to insert “or make use of similar processes,” following “on a tripartite basis”, without reference to the OECD.
311. The Employer Vice-Chairperson accepted the Workers’ group’s proposed insertion.
312. The Government expert of the Netherlands accepted the proposed text.

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- 313.** The Government expert of the United States said that the meaning of the second clause of the sentence: “or facilitate the involvement of the social partners in relation to the principles of the MNE Declaration” was unclear to her.
- 314.** The Worker Vice-Chairperson suggested to replace “or” by “and” to clarify the meaning.
- 315.** The Government expert of the United States accepted that proposal, but asked for further clarification of what was meant by “the principles of the MNE Declaration”.
- 316.** The Office proposed an amendment, drawing on language taken from the MNE Declaration’s annex on operational tools: “to facilitate the involvement of the social partners in similar tools and processes to promote ...”.
- 317.** The Workers’ and the Employers’ groups rejected the proposal by the Office.
- 318.** The Government expert of the Republic of Korea expressed that the appointment of the focal point was the key issue in that subparagraph, and the involvement of the social partners was a separate issue.
- 319.** The Worker Vice-Chairperson argued that the key point of that subparagraph was indeed to appoint focal points, whose role was first to promote the MNE Declaration, and second, to facilitate involvement of the social partners.
- 320.** The Government expert of the United States commented that the explanation from the Worker Vice-Chairperson had clarified the meaning, and she proposed the insertion of “and for the facilitation of the involvement”.
- 321.** That proposal was accepted by the Meeting, and subparagraph (i) was adopted as amended.
- 322.** Subparagraph (j) was adopted. ¹³

Paragraph 13

- 323.** The Government expert of the United States asked for the reasoning behind the deletion of the reference, in the previous draft of the chapeau text, to employers and workers (as individuals), and the inclusion in the current draft of only “workers’ and employers’ organizations”.
- 324.** The Worker Vice-Chairperson explained that the issues covered in that paragraph were mainly organizational responsibilities rather than individual ones.
- 325.** The Government expert of the United States disagreed. Some of the provisions were more in line with individual workers or employers, for example, the second one on “providing information on the content of the initiatives to the stakeholders affected by them”, given that TCAs were signed by individual companies.
- 326.** The Employer Vice-Chairperson stated that, as organizations themselves, her group could only make commitments on behalf of employers’ organizations and not on behalf of their individual member companies.

¹³ The Employer Vice-Chairperson, Ms Hornung Draus, left the meeting and was replaced in her role by Ms Anne Vauchez.

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327. The Chairperson remarked that the standard terminology at the ILO was workers' and employers' organizations.
328. The Government Vice-Chairperson said the example cited by the Government expert of the United States was the only contentious point, as the other examples targeted only employers' and workers' organizations. She suggested that the wording of the relevant subparagraph might be modified accordingly.
329. The Chairperson suggested that the sentence "provide information on the content ..." could become a separate subparagraph (b).
330. The Government Vice-Chairperson said that the text should include a commitment by workers' and employers' organizations to ensure that those companies who had made a commitment provided that information; it would be very difficult for the employers' organizations to provide that information themselves.

Paragraph 13(a)

331. The Employer Vice-Chairperson recommended looking at the text in order, starting with subparagraph (a). She proposed to delete "promote transparency", which had been agreed with the Workers' group.
332. The Worker Vice-Chairperson accepted that proposal.
333. The Government Vice-Chairperson agreed provisionally, dependent on what would be included in subparagraph (b).

Paragraph 13(b)

334. The Employer Vice-Chairperson suggested the insertion of "encourage their members to" at the beginning of the subparagraph.
335. The Worker Vice-Chairperson said it was clear that some of the provisions in paragraph 13 applied to individual employers rather than employers' organizations. For example, in subparagraph (f), the parties to disputes were normally employers and very seldom employers' organizations. It was not clear that the Employers' group's proposal to refer to "their members" was sufficient to resolve that problem, because not all employers were members of an organization. There was therefore a need to amend the chapeau text.
336. The Employer Vice-Chairperson proposed starting paragraph 13 with "The social partners should ..."
337. The Government Vice-Chairperson asked for the text also to reflect the fact that enterprises which were signatories to agreements should provide information on them. She therefore proposed "and encourage the companies concerned to do so" to be inserted at the end of the subparagraph. However, if that direct reference to companies was not acceptable, an alternative formulation would be "and encourage the parties concerned to do so".
338. The Chairperson asked if that proposed amendment would affect the language in subparagraph (a).
339. The Government Vice-Chairperson stated that the removal of "promote transparency" had resulted in the loss of the notion of providing information. That had now been resolved by

subparagraph (b), as amended, and therefore her group did not seek any revision to subparagraph (a).

340. The chapeau text of paragraph 13, and subparagraphs (a) and (b) were adopted as amended.

341. Subparagraphs (c), (d) and (e) were adopted.

Paragraph 13(f)

342. The Government expert of the United States pointed out grammatical errors and proposed “consider developing” instead of “consider to develop”, and “in order to enhance”, instead of “to enhance compliance”.

343. The Government expert of Bangladesh suggested to move “For the parties concerned” to the end of the sentence.

344. The Government expert of the United States requested clarification regarding whether it made sense to say (in the chapeau) that workers’ and employers’ organizations should: “consider developing dispute mechanisms for the parties concerned”.

345. The Worker Vice-Chairperson explained that the parties concerned referred not to workers’ and employers’ organizations but rather to the parties that had signed a TCA. Even if that sentence was not quite grammatically correct, she requested to keep that formulation and order in the text.

346. The Government expert of the United States still thought that the proposed text was not logical.

347. The Government expert of France expressed her concern about the lack of clarity, especially for people who had not been present at the Meeting of Experts. The report should state that “the parties concerned” referred to the enterprises and workers’ organizations that had signed a TCA.

348. The Government expert of the United States suggested to replace “For the parties concerned” by “Ensure that the parties concerned”.

349. The Employer Vice-Chairperson proposed “Encourage the parties concerned” or “For the parties concerned ...”. The latter formulation was accepted by the groups.

350. Subparagraph (f) was adopted as amended.

351. Subparagraph (g) was adopted with no changes.

352. The Government Vice-Chairperson requested the Workers’ and Employers’ spokespersons to explain, for the benefit of the other members of her group, why paragraph 14(b)¹⁴ in the original draft conclusions, which had read: “Enhance the representation of national employers’ and workers’ organizations in CBSD”, had been deleted.

353. The Worker Vice-Chairperson explained that her group did not understand what that phrase meant and did not think it added value.

¹⁴ Paragraph 14 in the original draft conclusions corresponded to paragraph 13 in the revised conclusions.

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- 354.** The Employer Vice-Chairperson agreed with the explanation by the Workers' group, adding that it made no sense to request the social partners to enhance their representation when they were already representative groups.
- 355.** The Government expert of Morocco said that her understanding of the intent of the original text was to encourage international workers' and employers' organizations to support the participation of their national members in cross-border social dialogue.
- 356.** The Employer Vice-Chairperson replied that that text had referred to enhancing the representation of workers' and employers' organizations, and she continued to support its deletion.
- 357.** The Worker Vice-Chairperson added that there was already language on enhancing the involvement of local constituents in cross-border social dialogue elsewhere in the conclusions.
- 358.** The Government expert of Morocco was not convinced by the arguments provided, but could accept the deletion.
- 359.** The Government expert of the United States stated, for the record, that in her view the Meeting of Experts should have provided recommendations for MNEs on how they could successfully conduct, or make better use of, cross-border social dialogue in their operations. The conclusions contained nothing that was specifically directed to individual MNEs.
- 360.** The Government expert of France supported the statement by the Government expert of the United States.
- 361.** The seventh heading was adopted without amendment.

Paragraph 14

- 362.** The Government expert of the United States proposed to insert "and recognizing its unique convening power", in the chapeau text, after "tripartite constituents".
- 363.** That suggestion was subsequently accepted by the groups.
- 364.** Subparagraphs A(i)(a), (b) and (c), and A(ii) were adopted without amendment.
- 365.** The Government expert of France requested that subparagraph B(i) be bracketed because her group had not yet had the opportunity to review changes introduced by the Employer and Worker Vice-Chairpersons, subsequent to an earlier tripartite consensus having been reached on that point.
- 366.** Subparagraphs B(ii) to B(viii), and C(i) to C(iv) were all adopted without amendment.
- 367.** The Government Vice-Chairperson did not understand why language that had been included in the former subparagraph D(v), referring to campaigning for and capacity-building of stakeholders involved in human rights due diligence processes with respect to fundamental labour rights, had since been deleted. Her group considered that deletion to be a retrogressive step in terms of the role they saw for the ILO in that area. Given the sensitivity of the term "due diligence", an alternative formulation to capture that same point might be "human rights and respect of fundamental labour standards".

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- 368.** The Employer Vice-Chairperson replied that those activities were already institutionalized in existing mechanisms and there was no need to duplicate those.
- 369.** The Worker Vice-Chairperson supported in principle the argument of the Government Vice-Chairperson but had withdrawn the amendment in order to reach consensus.
- 370.** The Government Vice-Chairperson requested the subparagraph to be bracketed.
- 371.** Subparagraph D(i) was adopted without amendment.
- 372.** The Government expert of the Netherlands, who had to leave the Meeting, thanked the experts for the work accomplished but expressed her view that the outcomes up until that point were not sufficiently ambitious. She encouraged the experts to be more ambitious in the time remaining.
- 373.** Following an adjournment requested by the Government group to consider the bracketed text, the Chairperson gave the floor to the Government group's Vice-Chairperson to allow her to present the outcome of those discussions.

Paragraph 14.B (chapeau) and 14.B(i)

- 374.** The Government Vice-Chairperson indicated that her group had taken the collective decision to accept all the remaining bracketed text, with the exception of paragraphs 14.B (chapeau) and 14.B(i). Her group requested the reinstatement of the word "guidance" in both places. The ILO should go beyond the compilation of good practices; that was an extremely important point for the Government group. She proposed discussion with the Workers' and Employers' groups in order to find a mutually acceptable solution on that point.
- 375.** The Chairperson remarked that the Government group had made a significant concession by accepting all the other amendments proposed by the Employers' and the Workers' groups. He would not like to see the Meeting fail because agreement could not be reached on that one point.
- 376.** The Employer Vice-Chairperson said that her group could not agree to the term "guidance"; the best option was "compendium", which had been agreed with the Workers' group.
- 377.** The Worker Vice-Chairperson emphasized that the question of guidance had been a hot topic since the start of the Meeting. Her group had advocated for guidance, in particular on how social dialogue could contribute to due diligence. However, the employers had maintained their opposition. In the interest of reaching a consensus, they had reluctantly conceded on that point, given other issues that were even more important to them.
- 378.** The Government Vice-Chairperson understood the Workers' position. As the Government group had not been a party to the discussions that had led to the agreement to delete the word "guidance" from the conclusions, she requested the Employers' group to explain their opposition to that term.
- 379.** The Employer Vice-Chairperson said that companies engaged in good practices and her group was not prepared to enter into further discussion on that point.
- 380.** The Government expert of the United States requested further clarification from the Employers' group. In her opinion, the term "good practices" was not a practical implementation term. Governments were proposing guidance on practical implementation because they frequently received requests regarding that.

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- 381.** The Employer Vice-Chairperson pointed out that many documents existed on that issue, and her group could not move beyond a compendium of good practices.
- 382.** The Government expert of Mexico asked the Workers' group for their reaction to the arguments put forward by the Employers' group.
- 383.** The Worker Vice-Chairperson was acutely aware of the very strong position of the Employers' group on that point. Her group had wanted to see "guidance" in the conclusions of the Meeting, but had decided that the current outcome was the best they could achieve.
- 384.** The Chairperson advised the Meeting that the word guidance was not explicitly included in the MNE Declaration. He sought suggested compromise language from the secretariat.
- 385.** The Employer Vice-Chairperson corrected an earlier mistake on her part. She had intended to say that many guidance documents existed already, not compendiums.
- 386.** The Government Vice-Chairperson pointed out that those documents were very weak on the issue of social dialogue and industrial relations.
- 387.** The Secretary-General proposed, on behalf of the Chairperson, to substitute the word "guidance" by "assistance". The sentence would then be "developing assistance in implementing different forms of cross-border social dialogue".
- 388.** The Employer Vice-Chairperson did not accept that proposal.
- 389.** The Chairperson appreciated the substantial effort that had been made by the Government group in accepting all the Employers' and Workers' groups' amendments. The intensive work carried out during the Meeting should not be put at risk for the sake of one word. The ILO was a tripartite house and that principle needed always to be respected.
- 390.** The Secretary-General made an alternative proposal for paragraph 14.B(i): "Developing a compendium, based on good practices in different forms of cross-border social dialogue, including in how to guide due diligences processes."
- 391.** After a short break, the Employer Vice-Chairperson ¹⁵ reminded the experts of all their work over the past days to find appropriate compromises. They should not lose sight of the efforts already made to get to that point. The new language proposed was not acceptable to his group.
- 392.** The Worker Vice-Chairperson understood the position of the Employers' and the Government groups and had nothing more to add.
- 393.** The Chairperson said that the Government group's concern was about both the language and the process of reaching that language. The three parties should find an agreement in a tripartite fashion.
- 394.** The Secretary-General made a further proposal of: "including practical advice on due diligence processes".
- 395.** The Employer Vice-Chairperson insisted that the whole Meeting had been conducted in a tripartite way, and the Government group had been involved at all stages. A focus solely on the issue of "guidance" risked ignoring the inclusion of reference to the due diligence process

¹⁵ The substitute Employer Vice-Chairperson left the meeting and was replaced by Mr Kevin Coon.

which was the main issue at stake, as well as reference to TCAs. Compromises had been made by all sides in the interest of achieving a consensus, with the result that perhaps none of the parties would be completely satisfied by the entirety of the text.

- 396.** The Worker Vice-Chairperson explained there was a fundamental disagreement between the Employers' and Workers' groups about the role of trade unions in due diligence, which could not be resolved in the Meeting. Given that disagreement on the core issue, it would be impossible to produce guidance acceptable to both parties. Her group believed that, over time, trade unions should and would have a role to play in due diligence. For that reason, a compendium of good practices could be a starting point to build a consensus about the role trade unions could play.
- 397.** The Government Vice-Chairperson observed that the general interest was being sacrificed. Governments needed guidance on due diligence because there was a strong demand on their labour administrations, coming from enterprises and other stakeholders, about how to implement it in practice and, so far, those demands remained unanswered. The Government group was dismayed by the position taken by the Employers' and Workers' groups on that point. She found it very hard to believe that she had heard it said that the ILO should not provide guidance on that topic.
- 398.** The Chairperson said that the Government group could choose to accept the text without inclusion of the term "guidance" and, individually or as a group, register their point of view for inclusion in the report of the Meeting. It would be a waste of time, energy and goodwill to conclude the Meeting without consensus, and each party would need to take its share of responsibility for that outcome.
- 399.** The Government expert of the Republic of Korea indicated that, for the sake of achieving a fruitful conclusion of the Meeting, he did not wish to raise an objection to the conclusions as they stood at that point. He did, however, fully support the position of the Government Vice-Chairperson.
- 400.** The Government Vice-Chairperson called upon each member of her group to express his or her opinion regarding adoption of the text.
- 401.** The Government expert of Morocco supported the Government group's position, and expressed her disappointment with the position of the Workers' and Employers' groups on the question of guidance. The Government group had conceded on a number of other points, and needed practical advice on that issue. However, in the interest of achieving consensus, she could agree to adoption of the proposed conclusions.
- 402.** The Government expert of South Africa fully supported the statement of the Government Vice-Chairperson. Perhaps the solution to the problem would lie in defining the compendium as a tool for the specific use of governments, based on good practices, which would not imply any commitment regarding its possible use by employers or workers.
- 403.** The Government expert of Bangladesh noted the significant progress made during the Meeting. All points raised would be reflected in the report. Thus, even without inclusion of the word "guidance", he could accept the text.
- 404.** The Government expert of the United States pointed out that the bracketed text that remained in the document needed to be resolved by the Meeting. There were no shortcuts to finalizing the text, and dialogue in plenary would have been helpful to understand everyone's positions, especially in a meeting convened to discuss social dialogue. She did not wish to walk away from the conclusions.

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405. The Government expert of Mexico expressed her support for the Government Vice-Chairperson regarding the inclusion of “guidance”. She did not want to break a consensus, but regretted the position taken by the Workers’ and Employers’ groups on an issue that was very important for the governments. She did not wish to sacrifice the progress made at that late stage, and endorsed the conclusions.
406. The Government expert of France hailed the results that had been achieved, and appreciated the rich exchange of views that had taken place within the Government group, as well as with the Employers’ and Workers’ groups, including where there had been disagreements. She thanked all the parties, and particularly the Government experts, for their constructive inputs to the debates on topics which were at the very heart of the future of work. For the sake of consensus, she could agree to the text as it stood. She expressed her intent to pursue that discussion in the meeting of the Governing Body later in the year.

Remaining bracketed text

407. The Chairperson said that the remaining bracketed text needed to be carefully reviewed so that the conclusions as a whole could be adopted by the Meeting.
408. Paragraph 10 was un-bracketed and adopted.
409. Paragraph 12(h) was un-bracketed and adopted.
410. The Chairperson requested the deletion of “practical advice” from paragraph 14.B(i), in light of what had been agreed by the experts.
411. The Government expert of the United States stated, for the record, that the drafting of paragraph 14.B(i) was unclear.
412. The proposed new text in paragraph 14.C(v), regarding campaigning, was deleted.
413. The Employer Vice-Chairperson clarified that the wording of 14.B(i) should be changed to: “Developing a compendium based on good practices”, and that the rest of the text in that subparagraph would remain unchanged.
414. The Government expert of the Republic of Korea did not think the compendium should be limited to good practices.
415. The Government expert of Bangladesh proposed: “Developing a compendium of good practices on different forms of cross-border social dialogue.”
416. The Worker Vice-Chairperson requested to revert to the earlier formulation of paragraph 14.B(i)
417. Paragraph 14.B(i) was adopted as amended.

Adoption of the conclusions of the Meeting of Experts

- 418. The Chairperson submitted the text as a whole for the approval of the Meeting of Experts, which would then become its agreed conclusions.
- 419. The Workers' group approved the text.
- 420. The Employers' group approved the text.
- 421. The Government group approved the text.
- 422. The conclusions of the Meeting of Experts on cross-border social dialogue were adopted.¹⁶

Closing remarks

- 423. The Chairperson congratulated the experts for having reached a consensus and adopted the conclusions. He thanked the three Vice-Chairpersons for their commitment and dedication. He expressed his appreciation as well to all the members of the secretariat, and especially the interpreters, for their hard work in support of the Meeting.
- 424. The Secretary-General thanked the experts and the Chairperson for their active commitment, engagement and hard work, which had resulted in adoption of the conclusions. That achievement, reached through a process of tripartite social dialogue, was a most fitting way to start the Centenary year of the ILO.
- 425. The Employer Vice-Chairperson thanked the Office for a good report that had provided a starting point for the discussions. He remarked that everyone present cared about the issues that had been discussed. Human rights due diligence was a difficult issue in which everyone had a keen interest.
- 426. The Worker Vice-Chairperson recognized that the experts had done an important job on a developing aspect of industrial relations and social dialogue. The conclusions that had been finally adopted would, over time, help close the gaps between workers and employers by identifying where their differences lay with respect to those important issues. The discussion had coincided well with the ILO Centenary, enabling it to address newly emerging topics, which was important for it to position itself as the leading international organization for social justice.
- 427. The Government Vice-Chairperson thanked the Office for its well-prepared report. She thanked all the experts for their important contributions to the tripartite discussion and for having demonstrated their ability to come together, reach agreement and make concessions. Despite the difficulties they had encountered along the way, they had been able to reach consensus on a text that had been in the making for several years, thus achieving something that many before them had been unable to do.
- 428. The Chairperson declared the Meeting of Experts closed.

¹⁶ The [Conclusions of the Meeting](#) are available on the [Meeting's webpage](#).

Appendix

Tentative conclusions as drafted by the secretariat and submitted to the Meeting on 14 February 2019

The Meeting of Experts on cross-border social dialogue, having met in Geneva from 12 to 15 February 2019, adopts this fifteenth day of February 2019 the following conclusions:

1. These conclusions are in line with and build on the conclusions concerning the recurrent discussion on social dialogue adopted at the 102nd Session of the International Labour Conference (ILC) in 2013, the conclusions concerning decent work in global supply chains (GSCs) adopted at the 105th Session of the ILC in 2016, the conclusions to promote decent work and protection of fundamental principles and rights at work (FPRW) for workers in export processing zones (EPZs) adopted in 2017, and the conclusions concerning the second recurrent discussion on social dialogue and tripartism adopted at the 107th Session of the ILC in 2018.

Contemporary experiences, challenges and trends

2. Cross-border social dialogue (CBSD) is an essential aspect of ILO governance and fundamental for carrying out its mandate. The present Meeting is an example of cross-border social dialogue, taking place at a seminal moment for the Organization as it is celebrating its centenary.
3. Over the past century spaces for cross-border social dialogue have multiplied in response to deepening globalization, regional integration and digitization. It has created opportunities for promoting international labour standards (ILS) in particular FPRW; establishing a level playing field; coordinating social policies in more interconnected economies; and addressing decent work deficits. Yet, these developments occur in a context of threats to freedom of association and declining collective bargaining in many parts of the world.
4. Cross-border social dialogue occurs in various forms and at different levels. Its effectiveness depends on the capacity of parties to engage voluntarily in good faith dialogue; on labour law enforcement and workplace compliance at the national level; and on appropriate coordination between social dialogue at local and global levels.

Multilateral instruments, including the ILO's MNE Declaration, that contribute to cross-border social dialogue and fair globalization and decent work

5. The promotion of CBSD, including among actors across supply chains, is included in many international instruments, such as the UN Guiding Principles on Business and Human Rights (UNGPs), the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (the "MNE Declaration") and the OECD Guidelines for Multinational Enterprises. The MNE Declaration incorporates the UNGPs, which emphasize that all enterprises should carry out human rights due diligence "to identify, prevent, mitigate and account for how they address their impacts on human rights".¹ Due diligence includes meaningful engagement with all potentially affected stakeholders, including workers and their representative organizations.

¹ United Nations: *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, New York and Geneva, 2011, Principle 15(b).

Cross-border social dialogue in regional economic communities, bilateral and multilateral trade and investment agreements and interregional groups/forums

6. Regional and subregional CBSD is also on the rise. Significant progress has been achieved in the European Union (EU) and initiatives have also been taken in other regional groupings, such as the Economic Community of West African States (ECOWAS), the Association of Southeast Asian Nations (ASEAN), the Organization of American States (OAS) and the Caribbean Community (CARICOM).
7. Labour-related provisions in some bilateral and multilateral trade and investment agreements establish consultative mechanisms involving national employers' and workers' organizations in the implementation of such provisions. A lack of capacity of institutions and of the social partners, limited transparency and inadequate resources to facilitate cross-border dialogue are among constraints of such mechanisms.

The role of transnational company agreements in promoting cross-border social dialogue, dispute prevention and resolution, and decent work across MNE operations

8. Transnational company agreements (TCAs), such as international framework agreements (IFAs), as a major form of CBSD, are creating conditions conducive to the organization of workers, trade union activity and collective bargaining within MNE operations, including in GSCs. TCAs can help to improve industrial relations in the enterprises covered by the agreements, and to prevent and manage labour disputes. They are intended to enable country level social dialogue and industrial relations.
9. Maritime shipping is the only global industry covered by a global collective bargaining framework agreement between international social partners (ship-owner and seafarer representatives from across the globe), regulating wages and other terms and conditions of work. The framework agreement guides agreements negotiated at the national and company level.
10. While only a minority of MNEs have signed a TCA, the agreements have implications for enterprises and workers in many regions and countries. TCAs can also be a means through which a company performs human rights due diligence. The impact of TCAs on working conditions and enterprises along the supply chain can be particularly weak, where labour administration and inspection are also weak, and where workers are not effectively represented at the local or cross-border level. As TCAs expand in terms of content and coverage, challenges in appropriate dissemination and implementation become more evident.

Responsible business conduct, including human rights due diligence, that contributes to cross-border social dialogue

11. The majority of MNEs globally have not signed a TCA. However, corporate social responsibility (CSR) and Responsible Business Conduct (RBC) policies and initiatives exist in many enterprises, also as a means of managing their human rights due diligence. CSR and RBC initiatives have evolved in conjunction with international instruments, particularly the UNGPs. Several CSR and RBC initiatives are developed in consultation with a wide range of stakeholders, including workers and trade unions.
12. Governments increasingly play a role in providing frameworks and incentives for private sector initiatives. Some countries have enacted legislation, formulated national action plans on business and human rights and adopted other national policy initiatives and strategies to support the implementation of the UNGPs and human rights due diligence, and to create new opportunities for national and cross-border stakeholder consultations and agreements involving employers'

organizations, business representatives and trade unions. Recent initiatives at the national level are still to be evaluated.

Increasing the relevance, inclusiveness and effectiveness of cross-border social dialogue

13. National labour administrations can play an important role in making CBSD initiatives relevant and inclusive, and their outcomes effective. While respecting the autonomy of the social partners, governments should place a high priority on promoting an enabling environment for cross-border social dialogue and:
 - (a) ensure that FPRW, in particular freedom of association and the effective recognition of the right to collective bargaining are embedded in national law and practice;
 - (b) build the capacity of labour administrations and labour inspectorates in relation to cross-border social dialogue and to address enforcement gaps;
 - (c) ensure effective access to justice, including judicial and non-judicial remedies;
 - (d) enhance the role of the social partners in the formulation and effective implementation of national laws and regulations, including in relation to due diligence regulations;
 - (e) consult the national social partners during the negotiation, implementation and monitoring of the labour provisions of bilateral and multilateral trade and investment agreements;
 - (f) ensure effective linkages between different forms of social dialogue at all levels, and strengthen their complementarity;
 - (g) strengthen existing national economic and social councils and similar institutions and expand their mandate to include CBSD related issues;
 - (h) appoint national focal points for the effective promotion of the MNE Declaration and promote the company-union dialogue under the MNE Declaration;
 - (i) adopt national policies and regulations that are conducive to CBSD and allow the effective implementation of human rights due diligence.
14. Workers, employers and their representative organizations at all levels (enterprise, sectoral, national, cross-border) should:
 - (a) promote transparency and raise awareness about the content of initiatives promoting social dialogue and sound labour relations at the cross-border level;
 - (b) enhance the representation of national employers' and workers' organizations in CBSD;
 - (c) ensure meaningful engagement of all potentially affected stakeholders, when undertaking human rights due diligence, while reserving a central role to workers and their representative organizations as well as to social dialogue and industrial relations;
 - (d) explore the conclusion of global sectoral collective bargaining framework agreements, building on the experience of the maritime shipping sector;
 - (f) extend the representation of workers in CBSD, especially workers from developing economies;
 - (h) promote the company-union dialogue procedure under the 2017 MNE Declaration for the resolution of disputes between companies and unions, if they voluntarily agree to make use of these ILO services;
 - (i) develop available dispute resolution mechanisms under TCAs, to enhance compliance;
 - (j) establish grievance mechanisms that could be accessible to all workers, throughout the operations of the company, as part of comprehensive due diligence.

The role and added value of the ILO in the area of cross-border social dialogue

15. Guided by the diverse needs and realities of its tripartite constituents, the ILO should provide support, as appropriate, in the form of:
- A. Knowledge generation and dissemination, which may include:
 - (i) conducting research, notably on:
 - (a) the content, scope and impact of various CBSD initiatives;
 - (b) challenges and opportunities in emerging regional or subregional social dialogue processes and institutions (such as the Southern African Development Community (SADC), ECOWAS, ASEAN, CARICOM), and provide technical assistance upon request based on the research findings;
 - (ii) updating and expanding the EC-ILO database on TCAs, thereby facilitating the dissemination and monitoring of TCAs;
 - (iii) establishing a single and user-friendly ILO repository of knowledge on cross-border social dialogue.
 - B. Policy advice, including through:
 - (i) developing policy guidance on different forms of cross-border social dialogue, based on good practices, including in the area of due diligence;
 - (ii) Operationalizing para. 23 (c) of the 2016 ILC conclusions on Decent Work in GSCs to support and facilitate upon joint request, the process of negotiation and follow-up of IFAs;
 - (iii) Taking advantage of sectoral meetings, and other means available to the ILO, including Decent Work Country Programmes (DWCPs), to promote and encourage CBSD in all its forms.
 - C. Training, capacity-building and development cooperation, including through:
 - (i) developing and delivering training on cross-border social dialogue, in collaboration with ITC/Turin, including in the context of the UN reform;
 - (ii) supporting social partners' initiatives at the level of regional economic communities;
 - (iii) building the capacity of national social dialogue institutions in relation to the various forms of cross-border social dialogue;
 - (iii) supporting ILO member States to establish national focal points on a tripartite basis to promote the MNE Declaration, and provide the focal points with appropriate training;
 - (iv) enhancing the capacity of national labour administrations and inspectorates of Member States in the area of cross-border social dialogue.
 - (v) pursuing the conclusion of PPPs with MNEs interested in cross-border social dialogue.
 - D. Promotional campaigns and advocacy, including through:
 - (i) promoting TCAs as a tool to address decent work deficits and advance labour rights through cross-border social dialogue;
 - (ii) strengthen efforts to promote the MNE Declaration, placing priority on the development and publication of a list of facilitators for the company-union dialogue and the establishment and training of national focal points;
 - (iii) promoting cross-border social dialogue across UN bodies, including in the context of the UN reform and the Sustainable Development Goals (SDGs);
 - (iv) advocating the involvement of national social partners in trade and investment agreements, and in relation to specific issues, such as fair labour migration policies;
 - (v) campaigning for and building capacities of relevant stakeholders involved in human rights due diligence processes with respect to fundamental labour standards

E. Standard-setting action:

- (i) as agreed by the ILO Governing Body, and in line with the 2016 ILC conclusions on Decent Work in GSCs, a meeting of experts will be convened to explore next steps in the area of promoting decent work in global supply chains, and to consider, inter alia, “what guidance, programmes, measures, initiatives or standards are needed to promote decent work and/or facilitate reducing decent work deficits in global supply chains”. (paragraph 25).