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Termination of Employment at the Initiative of the Employer

Fifth Item on the Agenda



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INTRODUCTION

On 22 June 1981 the International Labour Conference, meeting in Geneva at its 67th Session, adopted the following resolution:

The General Conference of the International Labour Organisation,
Having adopted the report of the Committee appointed to consider the eighth item on the agenda,

Having in particular approved as General Conclusions, with a view to the consultation of governments, proposals for a Convention and a Recommendation concerning termination of employment at the initiative of the employer;

Decides that an item entitled "Termination of employment at the initiative of the employer" shall be included in the agenda of its next Ordinary Session for a second discussion, with a view to the adoption of a Convention and a Recommendation.

By virtue of this resolution and in accordance with article 39, paragraph 6, of the Standing Orders of the Conference, the Office is required to prepare, on the basis of the first discussion by the Conference, the texts of a proposed Convention and Recommendation and to communicate them to governments so as to reach them not later than two months from the closing of the 67th Session of the Conference, asking them to state within three months whether they have any amendments to suggest or comments to make.

The purpose of the present report is to transmit to governments the texts of the proposed Convention and Recommendation, based on the Conclusions adopted by the Conference at its 67th Session.

Governments are requested, in accordance with the Standing Orders of the Conference, to submit any amendments or comments with regard to the proposed texts as soon as possible and in any case so as to reach the Office in Geneva not later than 30 November 1981. Governments which have no amendments or comments to put forward are asked to inform the Office by the same date whether they consider that the proposed texts are a satisfactory basis for discussion by the Conference at its 68th Session. Governments are requested to consult, before they finalise their replies, the representative organisations of employers and workers and to indicate which organisations they have consulted. The result of the consultation should be reflected in the governments' replies; under the Standing Orders of the Conference, only replies of governments are taken into account in the preparation of the final report.

CHAPTER I

THE PROCEEDINGS OF THE 67th SESSION OF THE CONFERENCE RELATING TO TERMINATION OF EMPLOYMENT AT THE INITIATIVE OF THE EMPLOYER

Extracts from the Report of the Conference Committee

1. The Committee on Termination of Employment was set up by the Conference at its third sitting on 4 June 1981. It was originally composed of 156 members (56 Government members, 53 Employers' members and 47 Workers' members). In order to ensure equality of voting strength, 2,491 votes were allotted to each Government member, 2,632 to each Employers' member, and 2,968 to each Workers' member. The composition of the Committee was subsequently modified nine times and the number of votes allotted to each member was modified accordingly.

2. The Committee elected its Officers as follows:

Chairman: Mr. Abdul Latiff (Government member, Malaysia);

Vice-Chairmen: Mr. Gyga (Employers' member, Switzerland) and Mr. Mehta (Workers' member, India);

Reporter: Mr. Tsomondo (Government member, Zimbabwe).

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4. The Committee held 14 sittings.

5. The Committee had before it Reports VIII (1) and VIII (2) prepared by the Office on the eighth item of the agenda of the Conference: Termination of Employment at the Initiative of the Employer. The Committee based its discussions on the Proposed Conclusions set out in Report VIII (2). After a general discussion, the essence of which is summarised below, the Committee examined the Proposed Conclusions Point by Point.

General Discussion

6. It was generally agreed that the time was ripe, some 18 years after the adoption of the Termination of Employment Recommendation, 1963 (No. 119), to reconsider that Recommendation in the light of developments since that date. The Workers' members urged the review of Recommendation No. 119 as regards its form as well as its content. Since 1963 many developments had occurred in national law and practice regarding the content of protection in case of termination of employment at the initiative of the employer. Important economic changes and technological developments had occurred since then, resulting in massive job loss in many countries. The problem of large-scale unemployment, well known by developing countries, was thus affecting many developed countries that had previously approached full employment. The rapid technological changes of recent

years had caused much unemployment and threatened to produce even more massive redundancies.

7. The Workers' members stressed that the failure of employment policies to prevent large-scale redundancies and growing unemployment made it necessary to adopt certain of the policies put forward in the Proposed Conclusions, including measures to guarantee alternative employment for those losing their jobs. On the question of redundancy, in particular, the ILO should not in its standard setting fall behind other international standards. Attention also needed to be given to the problem of multinational enterprises, where a counterweight was required in order to protect workers against dismissal.

8. The Workers' members felt that legislation was needed to provide protection in this field. Although in some countries unionised workers had achieved good protection through collective bargaining, in many countries, particularly in the developing world, unionism was weak. Only legislation could provide protection to the non-unionised. Binding standards were required at the international level as well. For ILO standards to have the greatest impact, they should be included in the strongest type of instrument, that is, a Convention. As a consequence of the developments that had occurred in national law and practice since 1963, a common minimum protection had been achieved in many countries. These fundamental principles were reflected in the Proposed Conclusions. The Workers' members felt that these proposals were not particularly radical. They would have liked a stronger text improving more significantly on Recommendation No. 119. However, they felt that the Proposed Conclusions could be the basis for a Convention setting forth basic principles that already were widely adopted and on which all could agree, supplemented by a Recommendation.

9. The Employers' members recognised the importance of the subject and considered that Recommendation No. 119 could be improved upon in the light of the experience gained since 1963. They had decided to seek such improvement. In the years since its adoption, Recommendation No. 119 had contributed greatly to providing increased security of employment in many countries. While they recognised the need for protection of the worker in connection with termination of employment, the Employers' members emphasised that such protection had to be viewed in the context of employment policy as a whole. The more the question of termination of employment was subject to detailed regulation, the greater was the reluctance of employers to engage new workers and the more the labour market was adversely affected. Some Employers' members stressed that workers should seek to ensure the security of their employment by efficient performance of their duties, not just through legislation or collective agreements. It was also pointed out that, in some circumstances, the alternative to termination of the employment of part of the workforce was termination of all.

10. The Employers' members felt that it was necessary to proceed in this matter step by step. They favoured the adoption of a new Recommendation improving upon Recommendation No. 119. A Recommendation was the most flexible kind of instrument and would be more easily applicable by a wide spectrum of countries than a Convention. To facilitate wider application, the content of the Proposed Conclusions had also to be made more flexible. They were convinced

that it was preferable to adopt an instrument capable of application by a majority of countries than to adopt one with a more ambitious content that would remain a dead letter.

11. Many Government members underlined the importance of the subject before the Committee. Many countries were confronting difficult economic circumstances characterised by high rates of inflation, growing unemployment and low rates of economic growth. In the years since its adoption Recommendation No. 119 had influenced positively the law and practice of a large number of countries. However, many further developments had occurred in national law and practice on termination of employment since 1963. It was therefore an opportune moment to discuss the question again with a view to the adoption of improved standards. Some Government members expressed the view that, having regard to the diversity of national law and practice on the subject, often based on varying legislative, institutional and cultural traditions, the standards to be adopted should be made as flexible as possible. It was also suggested in this connection that flexibility was also required since the continuing nature of present economic difficulties made further rapid change in national law and progress on the subject likely in future years. A number of Government members who emphasised the importance of flexibility considered that only a Recommendation could give the flexibility required and indicated that their governments could not ratify a Convention on the subject. It was suggested that an important reason for the considerable influence of Recommendation No. 119 was its flexibility. In this connection, several Government members indicated that, under the law and practice of their countries, certain aspects of protection in respect of termination of employment were left to regulation by the parties and were deemed to be not appropriate for legislative regulation, and that ratification of a Convention on the subject, which would require the adoption of legislation, was consequently precluded.

12. A number of other Government members supported the adoption of a Convention supplemented by a Recommendation. Certain of these members urged that the provisions to be included in a Convention had to be drafted in a flexible manner so as to take into account the differences in national law and practice and to allow wide ratification. To this end, the Convention should include only fundamental principles, with other matters treated in the Recommendation. Several Government members considered that the subject of termination of employment should be covered by legislation, so as to establish guarantees for all. Another Government member expressed the view that, even though ratification of a Convention by his Government was not possible, since certain aspects of the subject-matter were considered to be proper for regulation by the parties but not by legislative action, his Government felt that the subject might lend itself to coverage by the instrument having the greater importance, that is a Convention, which might be useful to other countries than his own. Another Government member favoured the adoption of a Convention supplemented by a Recommendation which would guarantee the right to work and afford protection against unemployment, through trade union control of the grounds for dismissal and guarantees of new employment to those losing their jobs.

13. During the course of the general discussion, some Government, Employers' and Workers' members provided information on the law and practice concerning

termination of employment in their countries. This information, which was very useful for the work of the Committee, is not reproduced in the present report.

Examination of the Proposed Conclusions Contained in Report VIII (2)

FORM OF THE INTERNATIONAL INSTRUMENTS

Point 1

14. Point 1 was adopted, subject to any necessary drafting changes that might result from the decision to be made on Point 2.

Point 2

15. The Committee decided to postpone the discussion of Point 2 until after discussion of Points 3 to 22.

PROPOSED CONCLUSIONS WITH A VIEW TO A CONVENTION

I. PREAMBLE

Point 3

16. Point 3 was adopted without change.

Proposed New Point

17. The Government member of the German Democratic Republic submitted an amendment to insert in the Preamble the following new Point:

The Preamble should now state that the achievement of full employment which is included in the Declaration of Philadelphia as a basic aim of the ILO requires adequate standards concerning termination of employment.

The Government member of the German Democratic Republic emphasised the link between the objective of full employment, enshrined in the Declaration of Philadelphia, and the adoption of appropriate standards on termination of employment. The Workers' members supported the amendment. The amendment was opposed by the Employers' members, who doubted its usefulness. Several Government members opposed the amendment since they considered that there was no direct link between standards on termination of employment and the question of full employment, which was the subject of other ILO standards included in the Employment Policy Convention, 1964 (No. 122). Put to the vote, the amendment was rejected by 135,945 votes to 209,967, with 345,912 abstentions.

18. Having regard to the result of the vote, the Government member of the German Democratic Republic withdrew two amendments proposing the insertion of two further Points in the Preamble.

Point 4

19. The Employers' members submitted an amendment to replace Point 4 by the following text:

The Preamble should note that the adoption of the Termination of Employment Recommendation, 1963, has enabled significant progress to be made in the law and practice of many member States so that it is now appropriate to adopt a new instrument on the subject.

The Employers' members considered that the text proposed in this amendment was more concise and referred to the essential considerations that should guide the Committee in its work. The Workers' members opposed the amendment, preferring the original text. After a vote of 189,210 votes in favour, 187,302 against, with 43,240 abstentions, and a request by the Workers' members for a record vote, the Employers' members withdrew the amendment, which they did not consider to be an essential matter, in order to save time.

20. Point 4 was adopted without change.

II. METHODS OF IMPLEMENTATION

Point 5

21. The Committee decided to postpone the discussion of Point 5 until after the discussion of Point 2, which had been postponed until the completion of the discussion of Point 22, since a decision on Point 5 was closely linked with a decision on Point 2.

III. SCOPE OF THE INSTRUMENT AND DEFINITIONS

Point 6

22. The Government member of India submitted an amendment to replace paragraph (1) by the following text: "The Convention should apply to all branches of economic activity, subject to national laws and regulations and national practices." The Employers' members supported this amendment, subject to the following subamendment, which was accepted by the Government member of India:

The instrument should apply, gradually, to all branches of economic activity and all employed persons, subject to provisions of national legislation, collective agreements, arbitral awards or judicial decisions or in such other manner consistent with national practice.

The Workers' members considered that the amendment would permit exclusion of very many workers for whom protection was essential, and that the subsequent paragraphs would provide sufficient flexibility. The Committee decided to postpone further discussion of paragraph (1) and this amendment until after consideration of paragraphs (3) and (4).

23. The Workers' members submitted an amendment which proposed the deletion of paragraph (2). They felt that certain categories of worker who could be

excluded from the application of the instrument under this paragraph deserved to be protected. One Government member stated that since recourse to fixed-term contracts of employment was sometimes necessary, for example, to replace women workers during maternity leave, the retention of paragraph (2) was essential. The proposed instrument should permit the exclusion of workers employed under such contracts, but include provisions to ensure that employers did not have repeated recourse to fixed-term contracts in order to evade the protection to be provided for by the proposed instrument. A Government member also opposed the amendment as this paragraph made clear that the proposed instrument was intended to cover workers employed under contracts of indefinite duration. The Employers' members opposed the amendment as it would remove an essential element of flexibility. The Workers' members indicated that they might take a more flexible attitude on this if they could be assured that the proposed instrument would take the form of a Convention. In response to a question regarding the intent of their amendment, the Workers' members indicated that the amendment sought the protection of workers during the term of their contract, not at its expiry. In reply, an Employers' member stated that the amendment would require continuation of a fixed-term contract after its expiry, which would make temporary employment impossible, with negative consequences for employment. Put to the vote, the amendment was rejected by 160,908 votes to 235,532, with 23,320 abstentions.

24. The Government members of Belgium and France submitted an amendment to replace the first sentence of paragraph (2) by the following text: "The fact that the provisions of the Convention apply to the following categories of employed persons, the extent to which they apply and the modalities of application may be determined by the methods of implementation referred to in Point 5." The Government members of Belgium and France indicated that the amendment was intended to clarify the meaning of the opening phrase of this paragraph by specifying that each country could decide to exclude the categories of workers concerned totally or partially or to apply the instrument fully to them. The Employers' members submitted an amendment that also sought to clarify the meaning of the text, but in the following terms: "The methods of application referred to in Point 5 should permit the determination of the extent to which the provisions of the present instrument would be applicable to:". The Workers' members opposed these amendments. In reply to a request for clarification from the Employers' members, a representative of the Secretary-General indicated that the wording of the Proposed Conclusions was identical to that found in certain other international labour Conventions, for example the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which in identical terms authorised certain exclusions from these instruments. These provisions had been interpreted by the ILO supervisory bodies as authorising, but not requiring, total or partial exclusion from the application of these Conventions of the categories of workers to which they referred. Having regard to the explanations given, the Government delegates of Belgium and France and the Employers' members withdrew their amendments, on the understanding that the question of a possible improvement in the drafting of this text would be referred to the Drafting Committee.

25. An amendment that sought to delete clauses (a) and (c) of paragraph (2), withdrawn by the Government member of Norway in the light of the previous vote on deletion of the paragraph, was moved by the Workers' members. Put to the vote, the amendment was rejected by 154,919 votes to 228,536, with 18,656 abstentions.

26. The Government members of Belgium and France submitted an amendment seeking to replace clause (c) of this paragraph by the words "workers engaged on a casual, temporary or provisional basis". The Government member of Belgium explained that the amendment was intended to authorise the exclusion of persons obtaining work through temporary work agencies, whose employment was subject to special rules in certain countries. The word "provisional" could be deleted from the amendment as the meaning was already included in the word "temporary". The amendment was opposed by the Workers' members and one Government member. It was supported by the Employers' members. Put to the vote, the amendment was rejected by 171,336 votes to 209,774, with 29,216 abstentions.

27. The Employers' members submitted an amendment that proposed to insert in paragraph (2) the following new clauses:

- (d) workers employed in small enterprises and in family enterprises;
- (e) domestic personnel;
- (f) personnel with management functions.

It was decided to postpone discussion of this amendment until after consideration of paragraph (4).

28. The Government member of the United Kingdom submitted an amendment that aimed at replacing paragraphs (3) and (4) by the following text:

In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, and where this is appropriate, to exclude from the application of this Convention or certain provisions thereof such categories of employed persons as may be consistent with national practice.

The Government member of the United Kingdom considered that, although paragraphs (3) and (4) sought to provide certain possibilities of exclusions, in general terms, so as to avoid a long listing of particular categories, while not giving member States the right to exclude anyone they wished, they might raise more problems than they solved. It would be difficult to determine whether a "special arrangement" referred to in paragraph (3) provided "as a whole" protection "at least equivalent to that afforded" by the proposed instrument. The term "special problems of a substantial nature" in paragraph (4) was also unclear. His Government would find it difficult to ratify an instrument if the exclusions provided for did not correspond to the exclusions in national practice. The amendment was opposed by one Government member, who stated that national practice should be consistent with international standards, not the other way around. One Government member considered that the amendment gave too much preponderance to national practice. The Workers' members opposed the amendment, which would authorise exclusion of all categories of workers. Their objective was to restrict the scope of exclusion as far as possible. The Workers' members submitted a subamendment which sought to replace the text of the amendment by

the text of paragraph (3), with the deletion of the words “such as public servants”, and subject to the deletion of paragraph (4). This subamendment was discussed in two parts. The Workers’ member favoured the deletion of the reference to “public servants” since they felt that the text was general in intent and inclusion of a particular example of the categories referred to was unnecessary. The amendment was supported by the Employers’ members and one Government member. It was opposed by several Government members who felt that the paragraph required illustration of the sort of categories referred to. Put to the vote, the first part of the subamendment was adopted by 280,397 votes to 51,304, with 25,652 abstentions. The second part of the subamendment sought the deletion of paragraph (4). The Workers’ members were of the view that this paragraph might permit the exclusion of workers who were particularly in need of protection, such as workers in small enterprises, and should therefore be deleted. One Government member stated that the possibility of excluding small enterprises, which were an important source of employment in developing countries, should be provided because of the special employment relationships often found in such enterprises. The Employers’ members opposed the subamendment, which would remove a degree of flexibility that was essential. Put to the vote, the second part of the subamendment was rejected by 141,775 votes to 216,376, with 9,116 abstentions.

29. The Workers’ members submitted a further subamendment which would delete the words “and where this is appropriate” as well as the words “as may be consistent with national practice” and would insert at the end of the amendment the words “whose terms and conditions of employment are governed by special arrangements which as a whole provide protection which is at least equivalent to that afforded by the instrument”. Put to the vote, the amendment was rejected by 166,367 votes to 225,019, with 9,116 abstentions. The amendment proposed by the Government member of the United Kingdom, put to the vote, obtained 11,395 votes in favour, 72,928 against, and 309,679 abstentions. The quorum of 183,232 not having been reached, the amendment was not adopted.

30. The Government member of Japan submitted an amendment to replace paragraph (3) by the following text:

National laws or regulations may exclude from the application of this Recommendation, or certain provisions thereof, categories of employed persons whose terms and conditions of employment are governed by special arrangements, such as public servants, which as a whole provide protection which is at least equivalent to that afforded under the Recommendation.

The Employers’ members opposed the amendment, since it referred only to national laws or practice and made no reference to collective agreements or to the tripartite principle. The Workers’ members also opposed the amendment. The amendment was withdrawn.

31. In reply to a request for clarification of the meaning of the requirement of consultation with organisations of employers and workers, in paragraphs (3) and (4), the representative of the Secretary-General indicated that it was the Office’s understanding that the words, derived from the Holidays with Pay Convention (Revised), 1970 (No. 132), would not require reopening the legislative process when the matter was already covered by legislation adopted following appropriate consultation, but that consultation would be required in connection with ratifica-

tion if a Convention was adopted. Having regard to these explanations, the Government members of the Federal Republic of Germany and India withdrew two amendments aimed at linking this Point to the methods of implementation mentioned in Point 5.

32. The Government members of Belgium, France and Italy introduced an amendment which sought to replace paragraph (4) by the following text:

In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof other limited categories of employed persons due to their special conditions of employment, to their insufficient seniority and to the size or the nature of the undertaking or establishment that employs them.

The Government member of Belgium indicated that the amendment was intended to ensure that it would be possible to exclude from the scope of the Convention or from certain provisions thereof certain categories of workers with special conditions of employment, such as, in his country, dockworkers and construction workers, as well as those employed in small undertakings. With regard to the latter, in some countries the procedural guarantee applicable in case of collective dismissal did not extend to very small undertakings and the proposed instrument should allow for this possibility. The amendment was supported by the Employers' members since it had the same objective as their own proposed amendment to this Paragraph. The Workers' members, as well as several Government members, opposed the amendment, since they believed that workers in small enterprises should benefit from the guarantees to be included in the proposed instruments. Put to the vote, the amendment was rejected by 169,721 votes to 196,736, with 21,113 abstentions.

33. The Employers' members submitted an amendment proposing to replace the words after "where such exist" in paragraph (4) by the following: "to exclude from the application of this Recommendation other categories of employed persons in respect of whose employment special problems of a substantial nature arise, or who are employed in enterprises of a particular type". The Employers' members explained that the purpose of this amendment was to ensure that allowance was made in the proposed instrument for the special problems of particular types of enterprises, such as small enterprises. The amendment was supported by a Government member, subject to replacement of the reference to a Recommendation by a reference to a Convention, if it were later decided to approve the latter form of instrument. The Workers' members and a Government member expressed their opposition to the amendment. In reply to a request for clarification of the meaning of the words "in respect of whose employment special problems of a substantial nature arise", the representative of the Secretary-General explained that having regard to the various categories of workers whose exclusion had been requested by governments in their replies to Report VIII (1), the Office had introduced this general wording, which had been taken from Convention No. 132, with a view to avoiding a long list of possible exclusions. In accordance with normal ILO rules of interpretation, it would be for governments to determine in the first instance what sort of special problems would justify exclusion from the proposed instrument, subject to the principle of good faith interpretation,

and subject to review by the ILO supervisory bodies. If a Convention were adopted, it would be for each government ratifying the Convention to show in its report on the application of that Convention that special problems of a substantial nature arose in respect to application of the instrument to the categories of workers excluded by virtue of this paragraph. The words "in respect of whose employment" used in this paragraph did not express clearly the intention, and if this paragraph were adopted, they would have to be reconsidered by the Drafting Committee. The Employers' members and certain Government members indicated that in their view the categories of workers in respect of whose conditions of employment special problems of a substantial nature arose included those categories mentioned on page 27 of Report VIII (2), and in particular workers employed in small undertakings, domestic personnel and personnel with management functions. The Workers' members did not support this interpretation, indicating that these workers were particularly in need of protection. Put to the vote, the amendment was rejected by 153,166 votes to 193,185, with 38,743 abstentions.

34. The Government member of Iran submitted an amendment to insert at the end of paragraph (4) the words "including employed persons in small undertakings as defined by national law". The amendment was supported by one Government member. It was opposed by the Workers' members. Put to the vote, the amendment was rejected by 134,676 votes to 182,532, with 29,627 abstentions.

35. The Government member of the Federal Republic of Germany, who had submitted an amendment which sought to modify this Point so as to include a reference to the methods of implementation mentioned in Point 5, withdrew his amendment, having regard to the explanations previously given regarding the consultation requirement.

36. Having regard to the preceding discussion on paragraph (4), the Employers' members withdrew the amendment to paragraph (2), the consideration of which had been postponed until after discussion of paragraph (4), and which had sought the insertion in paragraph (2) of a mention of workers employed in small undertakings and in family undertakings, domestic personnel and personnel with managerial functions.

37. Following the discussions on paragraphs (2), (3) and (4), the Committee returned to a consideration of paragraph (1) and of the amendment, submitted by the Government member of India, as subamended with his agreement by the Employers' members. The Government member of India stated that paragraph (1) was too broad, and needed to be made subject to national law and regulations and national practice. The Employers' members considered that this amendment could be considered if reference were also made to collective agreements, court decisions and other methods of implementation. One Government member declared that the amendment would mean that the proposed instrument would be subject to all national provisions and would consequently be devoid of all meaning and effect. The Workers' members and several Government members agreed with this view and opposed the amendment. Having regard to the views expressed, the Employers' members withdrew their subamendment. As the amendment was not seconded, it fell. A difference in wording between the English text of paragraph

(1), which referred to “branches of activity”, and the French and Spanish texts, which referred to “branches of economic activity”, was referred to the Drafting Committee, the Committee understanding that the intention was to cover branches of economic activity.

38. The Government member of Iran submitted an amendment to insert the word “gradually” after the words “the Convention should apply”, so as to provide for a gradual application of the proposed instrument where immediate implementation of all its provisions was not possible. One Government member opposed the amendment, which would authorise indefinite postponement of application of the proposed instrument. In reply to a request for information regarding the position in other international labour standards, a representative of the Secretary-General indicated that certain existing international labour Conventions made provision for implementation by stages, by providing for the initial application of certain parts of the instrument, with other parts being able to be applied subsequently. Put to the vote, the amendment was rejected by 4,558 to 209,880, with 154,843 abstentions.

39. Consideration of an amendment submitted by the Government member of the United States to delete paragraph (5) was postponed until after a decision had been taken on the form of the proposed instrument or instruments, since this paragraph was intended for inclusion in a Convention only.

40. The Government members of Belgium, France and Italy submitted an amendment to replace the words “any categories which may have been excluded in pursuance of paragraphs (3) and (4)” by the words “any categories which may have been excluded or are subject to special provisions in pursuance of paragraphs (2), (3) and (4)”. The amendment was withdrawn.

41. The Government member of Portugal submitted an amendment seeking to insert the following new paragraph: “The exception foreseen in paragraph (2) (a) should not be applicable to contracts of employment for a specified period of time or for a specific task, if it serves to avoid the protection resulting from the application of the Convention.” The amendment was not seconded.

42. Paragraphs (1) to (4) of Point 6, as amended, were adopted.

Point 7

43. Point 7 was adopted without change, subject to any drafting change that might be necessary as a result of the decision on the form of the proposed instrument.

IV. STANDARDS OF GENERAL APPLICATION

JUSTIFICATION FOR TERMINATION

Point 8

44. The Government member of the United States submitted an amendment seeking to delete this Point. This amendment was linked to his amendment to Point 9 that sought to reinforce that provision. Its purpose was to disapprove a system of

national regulation which listed the reasons for which an employer might terminate a worker's employment. Point 8 contained a general requirement of a valid reason for termination of employment, while Point 9 enumerated reasons deemed to be invalid. The provision contained in Point 8 was consistent with national practice in the United States, while those contained in Point 9 were consistent with its national law. The amendment was opposed by the Workers' members and Employers' members, who considered that the proposed instrument should contain a requirement of a valid reason for termination of employment at the initiative of the employer. The amendment was withdrawn.

45. The Government member of the Netherlands submitted an amendment to replace the text of Point 8 by the following: "The employment of a worker should not be terminated unless there is a valid reason for such termination and an adequate protection against unjustified termination." The Government member of the Netherlands indicated that the purpose of the amendment was to limit this provision to stating the general requirement of a valid reason for termination, without stipulating the kind of reasons that were valid, which could be diverse, so as to permit ratification of a Convention containing this principle. The Workers' members supported the amendment. The Employers' members and several Government members opposed the amendment. Put to the vote, the amendment obtained 4,558 votes in favour to 146,286 votes against, with 122,218 abstentions. The quorum of 183,233 not having been reached, the amendment was not adopted.

46. The Workers' members submitted an amendment to insert the word "justifiable" between the words "valid" and "reason" and inserting the word "imperative" before the words "operational requirements". The Employers' members and several Government members opposed the amendment, while several other Government members expressed support for it. Put to the vote, the amendment was rejected by 105,258 to 142,459, with 43,301 abstentions.

47. The Government members of Japan and the United Kingdom submitted identical amendments seeking to insert the following text as a new paragraph to this Point: "The definition or interpretation of such valid reason should be left to be determined by the methods of implementation set out in Point 2." They considered it to be necessary to leave the question of interpretation of the reasons deemed to be valid to national law and practice, as was provided for in Paragraph 2 (2) of Recommendation No. 119. The Workers' members opposed the amendment. One Government member also opposed the amendment, which he felt would give each country too much discretion in interpreting the concept of a valid reason for termination. Another Government member was of the view that this amendment was superfluous, since Point 5 applied to all provisions of the proposed instrument. Put to the vote, the two amendments were rejected by 128,785 votes to 139,443, with 22,790 abstentions.

48. Point 8 was adopted without change.

Point 9

49. The Government members of France and the Netherlands submitted an amendment to delete this Point, since the general rights mentioned therein were

covered by other international labour Conventions or were the subject of discussion in other committees. Discussion should not be reopened in respect to rights that had already become established. The proposed instrument should concentrate on the establishment of new rights. The amendment was supported by the Employers' members. The Workers' members opposed it, since they considered it to be important to specify certain reasons which should not be valid reasons for termination. Several Government members also opposed the amendment, since they felt that it was not superfluous to repeat reference to certain workers' rights. In reply to a request for an indication as to why the various reasons listed in Point 9 had been included, the representative of the Secretary-General indicated that certain of these reasons were already found in Recommendation No. 119, including several that derived from Convention No. 98 and the Workers' Representatives Convention, 1971 (No. 135), while others were new and had been included as a result of the replies by governments to the questionnaire contained in Report VIII (1). The amendment was withdrawn.

50. The Government member of the United States submitted an amendment to replace the opening phrase of Point 9 by "The employment of a worker should not be terminated for the following reasons:". This amendment was withdrawn, since it was linked to the amendment previously proposed with regard to Point 8 which had not been accepted by the Committee.

51. The Employers' members submitted an amendment to replace clause (a) by the following text:

Union membership or non-membership or participation in union activities outside working hours or, with the consent of the employer, within working hours, as long as this conforms to laws, collective agreements or other agreed arrangements.

The Employers' members considered that the proposed instrument should provide protection both of the right to join a union and the right not to join a union. Many workers did not wish to join a union for perfectly legitimate reasons and these workers should be protected against termination of their employment for not doing so. The amendment was supported by one Government member, subject to deletion of the last part of the amendment referring to conformity with laws, collective agreements or other agreed arrangements. This subamendment was accepted by the Employers' members. The amendment was also supported by another Government member, who considered that the right not to join a trade union should be protected together with the right of membership. The amendment was opposed by several Government members and by the Workers' members. One Government member recalled in this connection the historical background that explained the development of union shop clauses in certain countries. The Workers' members also stated that the demand for union security clauses in collective agreements, which was accepted by the employers signing such agreements, had resulted from the fact that employers in some countries preferred to employ non-unionised workers and was thus a matter of self-defence. The terms of clause (a) derived from Convention No. 98. That Convention did not extend protection to non-membership in unions and this issue should not be reopened in the present context. Put to the vote, the amendment as subamended obtained 144,300 votes in favour, 9,750 votes against, with 187,200 abstentions. The quorum of 156,780 not having been reached, the amendment was not adopted.

52. The Workers' members submitted an amendment to insert in clause (a) the words "organisation of" after the words "union membership" and to delete the words "outside working hours or, with the consent of the employer, within working hours". The amendment was opposed by the Employers' members, who felt that the words "organisation of" were superfluous and that the last part of this clause was essential, since without the employer's consent to a worker's participation in union activities within working hours, the activities of the undertaking might be disrupted. The amendment was opposed by several Government members who felt that the present wording of clause (a), which derived from Convention No. 98, was preferable. Put to the vote, the amendment obtained 144,300 votes in favour, 9,750 votes against, with 179,410 abstentions. The quorum of 156,780 not having been reached, the amendment was not adopted.

53. The Workers' members submitted an amendment to insert a new clause between clauses (a) and (b), reading: "participation in a legitimate strike or other legitimate industrial action;". This amendment was identical with an amendment submitted by the Government member of Sweden. The Workers' members expressed the view that the instrument to be adopted should make reference to the right to strike, which was a fundamental right of workers. They did not accept a suggested subamendment, which would have replaced the text of the amendment by "participation in a strike or other industrial action, unless such strike or industrial action was illegal", proposed by the Government member of Zimbabwe. The subamendment was not seconded. Another subamendment, by the Government member of France, which sought to replace the amendment by "participation in a strike in conformity with national legislation and practice" was not accepted by the Workers' members and not seconded. Put to the vote, the amendment obtained 152,100 votes in favour, 3,900 votes against, with 181,350 abstentions. The quorum of 156,780 not having been reached, the amendment was not adopted.

54. The Government member of the Federal Republic of Germany submitted an amendment seeking to insert at the end of the clause (b) the words "if he acts in accordance with existing laws, collective agreements or other jointly agreed arrangements". The amendment was withdrawn.

55. The Workers' members submitted an amendment to delete from clause (c) the words "in good faith" and "involving alleged violations of laws or regulations". The protection afforded by this clause should not be subject to such qualifications, which might be interpreted in a way that gave a restrictive interpretation to this clause. The Employers' members and a Government member opposed the amendment. Put to the vote, the amendment obtained 136,500 votes in favour, 3,900 votes against, with 200,850 abstentions. The quorum of 156,780 not having been reached, the amendment was not adopted.

56. The Government member of Japan submitted an amendment to delete from clause (e) the words "at or after the age normally qualifying for an old-age benefit". The Government member of the United Kingdom submitted an identical amendment. They pointed out that this was a new clause which had not figured in Recommendation No. 119. Since there were situations in national practice where an occupational retirement age was established at a lower age than that giving entitlement to old-age benefit, the proposed instrument should make allowance for

such practices. The amendment thus sought to separate the question of retirement age from that of the qualifying age for old-age benefit. The amendment was supported by the Employers' members. The matter was taken up in the Older Workers Recommendation, 1980 (No. 162) and was complex. It would be better to remove the reference to the qualifying age for old-age benefit, since it was not possible to enter in this instrument into the details that would be required if this reference were to be retained. The Workers' members opposed the amendment, preferring the present text of clause (e). Put to the vote, the amendments obtained 127,920 votes in favour, 9,750 votes against, with 155,400 abstentions. The quorum of 156,780 not having been reached, the amendments were not adopted.

57. The Government member of Portugal submitted an amendment to replace the text of clause (f) by the words "absence of work due to the exercise of right recognised by national law;". The object of the amendment was to replace this clause by more general terms, since as worded at present the clause would be inapplicable in countries without provision for maternity leave. The amendment was opposed by the Employers' members and Workers' members and was withdrawn.

58. The Workers' members submitted an amendment to insert the following new clause: "absence from work due to the worker's family responsibilities." The amendment was opposed by the Employers' members, who felt that it would open the door to abuse. The Government member of France proposed, as a compromise, that the reference to absence from work be deleted and the words "family responsibilities" be inserted in clause (d) after the words "marital status"; that clause would then protect workers against termination because of family responsibilities. This subamendment was accepted by the Workers' members and adopted by the Committee.

59. The Workers' members submitted an amendment to insert the following new clause: "temporary absence from work because of duly certified illness or injury should not constitute a valid reason for termination" and to delete Point 10, which covered this matter. The Employers' members indicated that they could accept this amendment, if the Workers' members would accept their amendment to Point 10, which sought to insert at the end of that Point the words: "however, a pattern of repeated absenteeism or an absence of extended duration could constitute a valid reason for termination". The Workers' members did not accept this suggestion. Put to the vote, the amendment submitted by the Workers' members obtained 133,700 votes in favour, 3,900 votes against, with 194,961 abstentions. The quorum of 156,780 not having been reached, the amendment was not adopted.

60. The Government member of Iran submitted an amendment seeking to insert the following new clause:

The worker who has been absent from work because of maternity leave, military service and the like, should be bound to call on his or her employer within a reasonable time after the end of maternity leave or military service, and declare his or her readiness to resume work. This deadline should be determined by national law and regulations.

The amendment was withdrawn.

61. Point 9, as amended, was adopted.

Point 10

62. An amendment submitted by the Government member of the Netherlands, seeking to delete this Point, was withdrawn.

63. The Government member of Mexico submitted an amendment to replace this Point by the following text:

Temporary absence from work because of duly certified illness or injury shall not constitute a valid reason for termination. If the operational requirements of the undertaking, establishment or service make it necessary to replace the worker concerned, he may be replaced temporarily.

The Government member of Mexico was of the view that temporary absence from work due to illness or injury should not constitute a valid reason for termination. The amendment was supported by the Workers' members. The Employers' members opposed the amendment, considering the present text more flexible. Put to the vote, the amendment obtained 133,700 votes in favour, 1,950 against, with 180,609 abstentions. The quorum of 156,780 not having been reached, the amendment was not adopted.

64. The Employers' members submitted an amendment proposing to insert the following text at the end of this Point: "However, a pattern of repeated absenteeism or an absence of extended duration could constitute a valid reason for termination." This amendment was intended to introduce additional flexibility in this provision. The Workers' members opposed the amendment, considering that the present wording of this Point, referring to "temporary absence" because of "duly certified" illness or injury provided adequate flexibility. One Government member also preferred the original text. The amendment was withdrawn.

65. The Government member of India submitted an amendment to add to this Point the following words: "The definition of temporary absence from work should be determined by the methods of implementation referred to in Point 5." The amendment was not seconded.

66. The Government member of Japan submitted an amendment which proposed to insert, after the words "duly certified illness or injury", the words "that is consistent with national laws or regulations". The amendment was withdrawn.

67. Point 10 was adopted without change.

PROCEDURES PRIOR TO OR AT THE TIME OF TERMINATION

Point 11

68. The Employers' members submitted an amendment seeking to replace paragraph (1) by the following text:

The employment of a worker should not be terminated for reasons related to the worker's conduct or performance, unless he or the workers' representatives have been given by his employer the reason for the termination and he has had an opportunity to give an explanation concerning the allegations made.

Through this amendment the Employers' members sought to include the possibility for the worker to provide explanations either directly to the employer or through the intermediary of workers' representatives. A Government member supported this amendment, which better reflected the existing practice in his country and provided greater flexibility. The Workers' members were opposed to the amendment and preferred the existing text, subject to an amendment that they would propose later. Put to the vote, the amendment obtained 120,783 votes in favour, 5,850 votes against with 175,200 abstentions. The quorum of 156,780 votes not having been reached, the amendment was not adopted.

69. The Government member of Japan submitted an amendment seeking to insert at the beginning of paragraph (1) the words "In accordance with national law or practice". The purpose of the amendment was to provide for additional flexibility. The amendment was supported by the Employers' members. It was opposed by the Workers' members. Put to the vote, the amendment obtained 124,683 votes in favour, 0 votes against, with 161,250 abstentions. The quorum of 156,780 not having been reached, the amendment was not adopted.

70. The Government member of the United States submitted an amendment proposing to delete in paragraph (1) the words "afforded a hearing by the employer at which he is". This deletion would not in his view, affect the principle laid down in this provision according to which a worker should be entitled to defend himself against allegations relating to his conduct or performance before being dismissed. It would, however, provide some flexibility, since the word "hearing" in English had connotations of a formal adversary proceeding. The Employers' members and several Government members supported the amendment as they considered that it would add flexibility to the text. The Workers' members opposed the amendment. In reply to a request for clarification of the term "employer", the representative of the Secretary-General indicated that in the present context the Office understood the word to refer essentially to management, not necessarily to the individual who was considered to be the "employer" in a given undertaking. Put to the vote, the amendment obtained 136,344 votes in favour, 5,850 votes against, with 143,150 abstentions. The quorum of 156,780 not having been reached, the amendment was not adopted.

71. The Workers' members submitted an amendment to add at the end of paragraph (1) the words "previously in writing". The Employers' members opposed the amendment, which would unduly complicate the procedure provided for. Put to the vote, the amendment obtained 116,950 votes in favour, 0 votes against, with 155,844 abstentions. The quorum of 156,780 not having been reached, the amendment was not adopted.

72. The Government members of Denmark, France, Italy, Luxembourg, the Netherlands and the United Kingdom submitted an amendment proposing to insert the following text at the end of paragraph (1): "unless he is guilty of serious misconduct of such a nature that it would be unreasonable to require the employer to continue his employment and that it would justify a summary dismissal". The wording of this amendment was taken from Point 17 (1) and was proposed in order to give the present paragraph greater flexibility. In many countries, a hearing is not obligatory in cases of serious misconduct justifying summary dismissal. The

amendment was supported by the Employers' members. The Workers' members were opposed to the amendment. Put to the vote, the amendment obtained 131,781 votes in favour, 1,950 votes against, with 139,800 abstentions. The quorum of 156,780 not having been reached, the amendment was not adopted.

73. The Government member of Portugal submitted an amendment seeking to insert the word "aptitude" before the word "conduct" in paragraph (1) with a view to ensuring that the paragraph covered termination based on reasons related to aptitude. The amendment was not seconded.

74. The Government member of the Federal Republic of Germany submitted an amendment proposing to insert in paragraph (1) the words "or the Workers' representatives concerned" after the word "employer", with a view to making the text more flexible. The amendment was withdrawn.

75. The Employers' members introduced an amendment to paragraph (2) seeking to replace it by the following text: "In these circumstances the worker should be entitled to advice from another person; this right may be limited by the methods of implementation referred to in Point 5." The amendment would replace the right to assistance at a hearing by a right to receive advice and would provide that this right may be limited by the methods of implementation mentioned in Point 5. The Workers' members opposed the amendment. Put to the vote, the amendment obtained 103,194 votes in favour, 1,950 votes against, with 162,350 abstentions. The quorum of 156,780 not having been reached, the amendment was not adopted.

76. The Government member of Japan submitted an amendment proposing to replace in paragraph (2) the words "should be entitled to" by the words "may, where possible," and the words "this right may be" by the words "this assistance may be," in order to provide greater flexibility. The amendment was opposed by the Workers' members. The Employers' members expressed their support for the amendment. Put to the vote, the amendment obtained 110,994 votes in favour, 3,900 votes against, with 147,300 abstentions. The quorum of 156,780 not having been reached, the amendment was not adopted.

77. An amendment submitted by the Government member of the Netherlands, seeking to replace paragraph (2) by the words: "A worker should be entitled to be assisted at such a hearing by another person" was withdrawn.

78. The Government member of the United States submitted an amendment to replace the word "assisted" by the word "advised", with a view to avoiding a term suggesting a formal adversary procedure. The Workers' members preferred the original wording of this paragraph. The Employers' members supported the amendment. Put to the vote, the amendment obtained 112,944 votes in favour, 5,850 votes against, with 147,300 abstentions. The quorum of 156,780 not having been reached, the amendment was not adopted.

79. Point 11 was adopted without change.

Point 12

80. The Government member of Japan submitted an amendment seeking to replace this Point by the following text:

The question of whether the employer has waived his right to terminate the employment of a worker for serious misconduct if he has failed to do so, without inevitable reasons, within a reasonable period of time after he has knowledge of the serious misconduct, should be left to the methods of implementation referred to in Point 5 to determine.

The Workers' members opposed the amendment. The Employers' members also opposed it, preferring their own proposed amendment to this text. The amendment was not adopted.

81. The Employers' members submitted an amendment proposing to replace the present text by the following:

The Employer should be deemed to have waived his right to terminate the employment of a worker for serious misconduct if he has failed to do so within a reasonable period of time after he has knowledge of this misconduct; but such misconduct may be taken into account in justifying termination of employment in the event of subsequent misconduct.

The Employers' members felt that this Point should be limited to cases of serious misconduct and that the employer should be able in such cases to take into account previous instances of misconduct. The Workers' members opposed the amendment. Put to the vote, the amendment obtained 107,757 votes in favour, 0 votes against, with 155,650 abstentions. The quorum of 156,780 not having been reached, the amendment was not adopted.

82. An amendment submitted by the Government member of the United Kingdom, seeking to insert at the beginning of this Point the words "Unless he can show good reason", was withdrawn.

83. The Government member of the Federal Republic of Germany submitted an amendment proposing to add the word "serious" before the word "misconduct", with a view to making this provision applicable to cases of serious misconduct, since less serious misconduct would not justify termination. The Workers' members opposed the amendment. The Employers' members supported it. In reply to a request for clarification of the meaning of the text, a representative of the Secretary-General explained that in some countries serious misconduct justified summary dismissal while certain lesser misconduct sometimes justified dismissal with notice. If the employer was to be deemed to have waived his right to dismiss a worker in cases of serious misconduct if he did not do so in a reasonable period of time, it had been felt that he should also be deemed to have waived this right in cases of dismissal for lesser misconduct. The question of repeated acts of misconduct was another matter. Where the element of repetition was necessary to justify a dismissal, the present provision would not prevent the competent court or tribunal from taking the successive acts of misconduct into consideration. Waiver of the right to dismiss referred to the time elapsed between the last act of misconduct on which the dismissal was based and the decision to dismiss; the previous acts of misconduct entered into an evaluation of the justification for the decision to dismiss. In this connection, reference was made to the explanations given in Report VIII (2), page 53, regarding the concept of "a reasonable period of time". Having regard to these explanations, the amendment was withdrawn.

84. The Government member of the United States submitted an amendment proposing to insert before the words "he has knowledge" the words "the record indicates". The Workers' and the Employers' members opposed the amendment, which was withdrawn.

85. Point 12 was adopted without change.

Point 13

86. An amendment submitted by the Government member of Japan, seeking to insert the words "where possible" after the word "should" was withdrawn.

87. The Workers' members submitted an amendment to delete the words "on request", considering that the employer should provide the worker with a written statement of the reasons for termination whether or not requested. The Employers' members opposed the amendment, considering that such a statement should not be forced upon a worker who did not want it. Putting the reasons for termination in writing without being requested to do so by the worker might under certain circumstances be considered to be defamatory. Put to the vote, the amendment obtained 106,900 votes in favour, 3,900 against, with 146,094 abstentions. The quorum of 156,780 not having been reached, the amendment was not adopted.

88. The Government member of France submitted an amendment proposing to insert at the end of this Point the words "except in cases of collective terminations for economic reasons". The purpose of the amendment was to indicate that while individual notification of the reasons for termination was necessary in cases of dismissal for reasons of misconduct or inadequate performance, it was not necessary in case of collective terminations due to economic reasons where the workers' representatives were fully consulted. To better express this intention, the Government member of France proposed to modify the amendment to read as follows: "This provision need not be applied in the case of collective terminations for economic reasons subject to the procedures mentioned in Points 20, 21 and 22." The amendment as revised by the author was supported by the Workers' and Employers' members. The amendment as so drafted was adopted.

89. Point 13, as amended, was adopted.

PROCEDURE OF APPEAL AGAINST TERMINATION

Point 14

90. The Government member of India introduced an amendment seeking to insert a new paragraph between paragraphs (1) and (2) as follows: "In cases where termination for technological reasons has already been authorised by the competent administrative authority for such termination, the right of appeal may be restricted according to national law and practice." The Government member of India explained that in his country retrenchment for technological reasons in large enterprises required prior authorisation by the Government, in which case the right of appeal against a termination that had been authorised was restricted. The amendment sought to take this situation into account. Several Government members indicated that systems of prior authorisation also existed in their countries and raised similar problems with respect to the right to appeal. The amendment was initially opposed by the Workers' members and supported by the Employers' members. In reply to a request for information regarding the

background to this issue, the representative of the Secretary-General referred to Report VIII (2) (page 60), where in its comments on government replies, the Office indicated that the competent Conference Committee might wish to consider the question. A subamendment was submitted by the Government member of the Netherlands, seeking to delete the word "technological" so as to make the provision generally applicable. Another subamendment was submitted by the Workers' members with a view to replacing the word "restricted" by the word "modified". Both subamendments were accepted by the author of the amendment. The amendment, as subamended, was adopted.

91. The Workers' members submitted an amendment proposing to insert in paragraph (1) after "a worker", the words "after having been informed of the means of appeal at his disposal", with a view to ensuring that the worker was provided with appropriate information regarding the means of appeal. The Employers' members opposed the amendment, as it did not make clear who should so inform the worker and when. These ambiguities might unreasonably extend the "reasonable period" during which the worker was entitled to appeal, as the worker could always claim that he had not been informed of the means of appeal. The Government member of France proposed that this amendment should be further considered after Point 30, in the Proposed Conclusions with a view to a Recommendation, which would be a more appropriate place for a provision on this question. Further discussion of the amendment was postponed until after Point 30.

92. The Government member of the United Kingdom submitted an amendment which sought to insert the words "Unless he can show good reason" at the beginning of paragraph (2). The amendment was withdrawn.

93. Point 14, as amended, was adopted.

Point 15

94. The Government member of Mexico submitted an amendment proposing to insert the words "or not" at the end of paragraph (1). The amendment was referred to the Drafting Committee.

95. The Workers' members submitted an amendment to insert the following new paragraph between paragraphs (1) and (2). "The employer should bear the burden of proving that the termination was for a valid reason." The Employers' members opposed the amendment, considering that the normal rules in court proceedings should apply. Accordingly, the party making the allegation, that is, the worker alleging that the termination of his employment was unjustified, should bear the burden of proving it to be unjustified. The Workers' members considered, on the other hand, that since the employer had decided to terminate the employment of a worker, it was the employer who should have to allege and prove the reason for the termination. Several Government members opposed the amendment on the grounds that it would present problems in countries in which these cases were decided by the ordinary courts, where the administration of proof belonged to the competence of the judge, whose discretion in this matter could not be restricted. Several other Government members supported the amendment; there were circumstances, particularly in cases of termination for reasons of a technological nature, where only the employer could provide proof of the reasons.

Another Government member felt the detailed question of the burden of proof should not be covered in the instrument to be adopted. Put to the vote, the amendment was adopted by 122,450 votes to 4,650, with 127,100 abstentions. In a record vote, requested by the Employers' members, the amendment was adopted by 131,750 votes to 3,100, with 133,300 abstentions.

96. The Government member of the Netherlands submitted an amendment seeking to delete paragraph (2). The amendment was withdrawn.

97. The Government member of the United States introduced an amendment seeking to replace, in paragraph (2), the final clause beginning with "but the extent to which..." by the words "but they should not also be empowered to decide the size of the workforce to be employed in the undertaking, establishment or service". He indicated that the competent body should be empowered to deal with labour relations matters, but not with matters of a financial or economic nature. The Workers' members opposed the amendment, since they believed that the powers of these bodies should not be so restricted. In some countries, their powers were much more extensive. The Employers preferred the text included in the Proposed Conclusions, which was more flexible, as it left the matter to be decided by the methods of implementation mentioned in Point 5. One Government member considered that the amendment contradicted Point 8, already adopted, which provided for the justification of all terminations. Having regard to the opposition of the Workers' and Employers' members, the amendment was withdrawn.

98. The Government member of France submitted an amendment proposing to replace the last part of paragraph (2), starting with "but the extent to which..." by the words "but whether and the extent to which the bodies should also be empowered to decide whether these reasons are sufficient to justify that termination, should be defined by national legislation and practice". The amendment was withdrawn, on the understanding that the Office text covered the possibility of certain appeal bodies not being empowered to decide whether these reasons were sufficient to justify termination.

99. The Government member of Portugal submitted an amendment proposing to insert after Point 15 the following new Point which was identical to Point 32: In proceedings under Point 14, a worker who has appealed against the termination of his employment should not bear the burden of proving that the termination was unjustified, and to this end:

- (a) the employer should bear the burden of proving that the termination was for a valid reason; and/or
- (b) the bodies referred to in Point 14 should be empowered to investigate the facts and circumstances of the case so as to be able to form a judgement regarding whether termination was justified.

Having regard to the decision regarding the burden of proof, the author withdrew the amendment.

100. Point 15, as amended, was adopted.

Point 16

101. The Government member of the Netherlands submitted an amendment proposing the deletion of this Point. On the understanding that the provisions of

(a) and (b) were alternative, rather than cumulative, she modified her amendment to propose that the last part of (b), beginning with the words "if reinstatement is not desired..." be deleted. Further discussion of this amendment was postponed.

102. The Workers' members submitted an amendment proposing to replace in clause (a) the word "or" by the word "and", to delete the words "or in another job" and to insert after "unpaid wages" the words "and other social benefits". The Employers' members opposed the amendment as being too restrictive. Several Government members were of the view that nullification of termination entailed continuation of the employment relationship and that reinstatement followed logically from this. The Government member of Uganda proposed that discussion of the Workers' members proposed amendment should be postponed until consideration of his own amendment which was more far reaching. It was so decided.

103. The Government member of Uganda submitted an amendment proposing, first, the deletion of clause (a) and, second, the deletion in clause (b) of the words "if reinstatement is not desired by the worker or if the body does not consider it to be practicable." The first part of this amendment was opened to discussion. The Government member of Uganda considered that the remedy of reinstatement was not enforceable and that if the employer refused to reinstate a worker only compensation could be awarded. In reply to a request for clarification, a representative of the Secretary-General indicated that the present text of this Point would require the competent bodies to have the alternative powers to award reinstatement or compensation, depending upon the practicability or impracticability of reinstatement. The Employers' members felt that the existing text of this Point was too restrictive, since it gave the choice between reinstatement and compensation to the worker, while neither the court nor the employer had a choice. They therefore supported the amendment. The Workers' members were opposed to the amendment. The competent bodies should be empowered to nullify a termination and order reinstatement. Put to the vote, the first part of the amendment, proposing the deletion of clause (a) was rejected by 105,400 votes to 147,250, with 17,050 abstentions.

104. The discussion then turned to an amendment submitted by the Government member of France, which proposed replacing Point 16 by the following text:

The bodies referred to in Point 14, if they find that termination is unjustified and if they cannot nullify the termination and propose reinstatement of the worker in accordance with the national legislation and practice in force, should be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate.

To clarify the text of the amendment, the Government member of France modified the amendment by removing the words "in force". The Workers' members stated that they preferred the existing text of Point 16. Put to the vote, the amendment was adopted by 124,000 votes to 9,300, with 141,500 abstentions. With the adoption of this amendment, the other amendments to this Point fell, including those whose discussion had been postponed.

105. The Government member of Japan submitted an amendment proposing to replace the words "The bodies referred to in Point 14" by the words "A court, labour tribunal, arbitration committee or arbitrator". No change of substance was

intended, but it was merely wished to enumerate the bodies referred to in Point 14. On the understanding that no change of substance was involved, the amendment was referred to the Drafting Committee.

106. Point 16, as amended, was adopted.

PERIOD OF NOTICE AND CERTIFICATE OF EMPLOYMENT

Point 17

107. The Government member of the United States submitted an amendment proposing to insert the words "in accordance with national law and practice" after the words "should be entitled to", in paragraph (1), since the concept of a "reasonable period of notice" would need to be specified by national law and practice. The amendment was opposed by the Workers' members. The Employers' members supported it. Put to the vote, the amendment obtained 110,050 votes in favour, 6,200 votes against, with 144,150 abstentions, The quorum of 124,620 not having been reached, the amendment was not adopted.

108. The Government member of Japan submitted an amendment proposing to insert in paragraph (1) the words "except where the continuation of activities of the undertaking or the establishment have become impossible because of inevitable reasons such as a natural disaster", before the words "be entitled". He stated that in cases of *force majeure* it was not possible to give a reasonable period of notice of termination. The Employers' members considered that this was a matter that should be left to each country and that inclusion of these words in the instrument would unduly complicate it. The Workers' members opposed the amendment. The amendment was withdrawn.

109. The Government member of the Federal Republic of Germany submitted an amendment proposing that in paragraph (1) the words "or compensation in lieu thereof" should be deleted. He asked whether the existing text presented an alternative between which each country might choose or whether a country would be obliged to provide employers with both alternatives. A representative of the Secretary-General indicated that in certain countries the legislation gave employers an alternative between the required notice or paying the remuneration for the period of notice in lieu thereof, while in others employers had to give the required notice and sanctioned violation of this obligation by an obligation to pay compensation which might also be equivalent to the remuneration during the notice period. The text of paragraph (2) sought to allow for the two solutions. Having regard to these explanations, the Government member of the Federal Republic of Germany withdrew the amendment.

110. The Workers' members submitted an amendment proposing to insert the words "if the worker so requests" before the word "compensation", since they felt that the worker should always be entitled to a period of notice; this might be replaced by compensation only if the worker so requested. The Employers' members opposed the amendment since they believed that the employer should be able to pay the worker his wages for the period of notice rather than keep the worker in employment during the notice period. Several Government members

also opposed the amendment. Put to the vote, the amendment was rejected by 108,500 votes to 112,623, with 37,200 abstentions.

111. The Employers' members submitted an amendment seeking to delete the words "of such a nature that it would be unreasonable to require the employer to continue his employment during the notice period". They felt that these words added an additional criterion to the notion of "serious misconduct" and might result in having two degrees of serious misconduct, one meeting this qualification—in which case a notice period could be withheld—and another that did not meet this qualification, in which case notice would have to be given. The Workers' members opposed the amendment. Several Government members also opposed the amendment, since they considered that the expression whose deletion was sought was a useful specification of what was meant by serious misconduct. In reply to a request for clarification of the meaning of the existing text of paragraph (1) a representative of the Secretary-General indicated that the Office had not intended to establish two degrees of serious misconduct but had sought to include words that would give a notion of what was meant by the concept of serious misconduct. Having regard to these explanations, the Employers' members withdrew the amendment.

112. An amendment submitted by the Government member of the Netherlands, proposing to place paragraph (1) of this Point between Points 13 and 14, was referred to the Drafting Committee.

113. The Government member of the Netherlands submitted an amendment proposing to delete paragraph (2) of this Point, which was too detailed a matter for an international instrument. The amendment was supported by a Government member. It was opposed by the Employers' members, who preferred retaining the paragraph, but subject to an amendment they would submit to it. The amendment was also opposed by the Workers' members. The Government member of the Netherlands withdrew the amendment.

114. The Government member of the United Kingdom submitted an amendment seeking to insert at the beginning of paragraph (2) the words "In case of termination stated to be for reasons based on the operational requirements of the undertaking, establishment or service." While indicating that the amendment sought to reflect the approach adopted to this question in the United Kingdom, the amendment was withdrawn by its author.

115. The Government member of Japan submitted an amendment proposing to replace in paragraph (2) the words "should, for the purpose of seeking other employment, be entitled to" by the words "may, for the purpose of seeking other employment, be given, as far as practicable". The amendment was withdrawn.

116. The Employers' members submitted an amendment that sought to delete the words "without loss of pay" in paragraph (2). They considered that these words should not be included, since in many countries time off from work during the notice period was not remunerated. This matter should be left to each country to decide. The Workers' members opposed the amendment. Put to the vote, the amendment was rejected by 108,500 votes to 128,650, with 31,000 abstentions.

117. Point 17 was adopted without change.

Point 18

118. An amendment submitted by the Government member of the United Kingdom, seeking to delete this Point, was withdrawn.

119. The Workers' members submitted an amendment proposing to replace this Point by the following text:

A worker whose employment has been terminated should be entitled to receive a certificate from the employer specifying the dates of his engagement and termination of his employment and the type or types of work and specific duties on which he was employed, but containing nothing unfavourable to the worker.

They considered that the certificate of employment should mention the specific duties of the worker and that nothing unfavourable should be contained in it. The Employers' members opposed the amendment, since they felt that if a worker requested the employer to include in the certificate an evaluation of his conduct or work, the employer should be able to give a truthful evaluation. Put to the vote, the amendment obtained 110,050 votes in favour, 3,100 votes against, with 143,096 abstentions. The quorum of 124,620 not having been reached, the amendment was not adopted.

120. The Employers' members submitted an amendment proposing to replace the words "but containing nothing unfavourable to the worker unless the worker requests the employer to include an evaluation of his conduct or performance in the certificate" by the words "and any other particulars as required by national law or practice". The amendment was intended to take into account different national practices. The Workers' members felt that the certificate should not include any mention of the conduct of the worker. They therefore opposed the amendment. They supported, however, a further amendment, submitted by the Government member of India, which proposed to replace the words "unless the worker requests the employer to include an evaluation of his conduct or performance on the certificate" by the words "In addition, the worker may, on such request, be granted a certificate indicating an evaluation of his conduct or performance." The Employers' members accepted this proposal and withdrew their amendment. The amendment submitted by the Government member of India, subject to the words "a certificate" being replaced by "another certificate", was adopted.

121. An amendment submitted by the Government member of the United States, which sought to insert the words "in accordance with national law and practice" after the words "entitled to" was withdrawn.

122. The Government member of Japan submitted an amendment proposing to insert the words "for the purpose of seeking other employment" after the words "a certificate". The amendment was withdrawn.

123. An amendment submitted by the Government member of the Netherlands, seeking to place this Point between Points 13 and 14, was referred to the Drafting Committee.

124. Point 18, as amended, was adopted.

SEVERANCE ALLOWANCE AND OTHER INCOME PROTECTION

Point 19

125. The Workers' members submitted an amendment proposing to insert the word "actually" before the word "terminated", with a view to clarifying the text of this Point by specifying that it applied when the termination became effective. As the amendment seemed to apply more to the French and German texts than to the English text, the terms of which already expressed this idea, the matter was referred to the Drafting Committee and the amendment was withdrawn.

126. The Workers' members submitted an amendment that proposed inserting the words "and the level of wages" after the words "length of service", replacing "or" at the end of clause (a) by "and" and deleting (c). They explained that the amendment sought to indicate that severance allowance should vary with length of service and the level of wages of the workers and that unemployment insurance benefits should not be alternative to severance allowance but should be cumulative with such allowances. The Employers' members opposed the amendment, preferring the text of this Point which reflected the terms of Recommendation No. 119. Several Government members opposed the second part of the amendment on the grounds that many countries did not have unemployment insurance systems and could not implement a provision requiring both types of benefits. The Workers' members withdrew the second part of the amendment. The first part, namely the insertion of the words "and the level of wages" after the words "length of service" was adopted.

127. The Government member of the United States submitted the text of an amendment to paragraph (2), intended to express the meaning of this Paragraph in clearer terms and suggested that the matter should be referred to the Drafting Committee. It was so decided.

128. The Government member of Italy submitted an amendment proposing the deletion of paragraph (3). The Workers' members submitted an amendment with the same purpose. They considered that the allowance referred to in paragraph (1) (a) consisted of deferred wages or was an acquired right of the worker, which could not be lost in the event of serious misconduct or for any other reason. The Employers' members opposed the amendment, holding that an employer could not be required to pay severance allowance to a worker who was guilty of serious misconduct. Several Government members opposed the amendment. One Government member supported the amendment, on the grounds that severance allowances were considered by many countries as a condition of employment which could not be unilaterally changed. Put to the vote, the amendment obtained 110,050 votes in favour, 4,650 votes against, with 127,534 abstentions. The quorum of 124,620 not being reached, the amendment was not adopted.

129. An amendment submitted by the Government member of Zimbabwe, seeking to insert at the end of paragraph (3) the words "only where the proven misconduct clearly shows that the worker intended to cause the employer to dismiss him", was withdrawn.

130. Point 19, as amended, was adopted.

V. SUPPLEMENTARY PROVISIONS CONCERNING TERMINATION OF EMPLOYMENT FOR ECONOMIC, TECHNOLOGICAL, STRUCTURAL OR SIMILAR REASONS

CONSULTATION OF WORKERS' REPRESENTATIVES

Point 20

131. The Government member of the United States submitted an amendment which sought to replace paragraph (1) by the following text:

When the employer contemplates termination of employment for reasons of an economic, technological, structural or similar nature, and where required by national law and practice, the employer should consult the workers' representatives concerned as early as possible on matters directly related to the termination of employment and the effects thereof and co-operate in mitigating, as far as practical, the adverse effects of the termination on the workers involved.

In presenting this amendment, the Government member of the United States explained that it sought to promote consultation between employers and workers on problems directly related to termination, but that his Government did not wish to upset the codes of conduct that have been developed by other international agencies. This amendment was supported by the Employers' members. The Workers' members were opposed to it, considering that it reflected the reality and practice of only one country. Put to the vote, the amendment obtained 88,257 votes in favour, 0 votes against, with 146,500 abstentions. The quorum of 124,620 votes not having been reached, the amendment was not adopted.

132. The Workers' members presented an amendment proposing to insert, after the words "as early as possible" in paragraph (1), the words "and prior to any decision". The Workers' members explained that, in their opinion, the expression "as early as possible" was too general and that the importance for the workers lay in having consultations before any decision affecting their employment was taken. The Employers' members were opposed to this amendment, considering that the paragraph referred to an employer who contemplates terminations and that therefore the problem of decision did not arise at this stage. A Government member stated that he preferred an expression such as "before the termination is announced", while another Government member expressed his support for the amendment proposed by the Workers' members, saying that it clarified the text. Put to the vote, the amendment obtained 121,950 votes in favour, 0 votes against, with 104,607 abstentions. The quorum of 124,620 votes not having been reached, the amendment was not adopted.

133. An amendment was presented by the Workers' members, proposing to delete the words "the selection of workers whose employment is to be terminated" in paragraph (1). This amendment was adopted.

134. The Workers' members then submitted another amendment seeking to insert the words "including finding alternative employment" in paragraph (1). In presenting this amendment, they stated that it was important that consultation with a view to finding alternative employment should take place if one were really seeking to mitigate the effects of termination. The Employers' members posed the question as to whether this amendment would not give the impression that only the employer was responsible for finding alternative employment for the workers

concerned. After an exchange of views regarding the implications of the wording, the amendment was adopted, subject to a drafting change in the French text.

135. The Committee then examined an amendment submitted by the Workers' members which proposed to delete paragraph (2). The Workers' members justified their amendment by arguing that consultation with workers' representatives should not be subject to limitations. The Employers' members opposed this amendment, stating that this paragraph should be maintained. A Government member, drawing attention to the fact an EEC directive provides for similar limitations, favoured maintaining the Office text. Put to the vote, the amendment was adopted by 112,900 votes to 95,449, with 21,700 abstentions.

136. An amendment submitted by the Employers' members seeking to delete paragraph (3) having been withdrawn, the Committee examined the amendment proposed by the Government member of the United States. This amendment sought to replace the words "in good time" in paragraph (4) by the words "in a reasonable time", and to delete the words "all relevant" before "information". In presenting this amendment, the Government member of the United States pointed out that the expression "all relevant information" was too broad, with reference to information to be provided to workers' representatives. This amendment was supported by the Employers' members. The Workers' members opposed it. The Employers' members then proposed the following text: "all information concerning the reasons for the contemplated terminations". The Workers' members were opposed to this subamendment as well. A Government member also opposed this subamendment, emphasising that, in his opinion, the word "relevant" was important. Put to the vote, this amendment as subamended obtained 80,972 votes in favour, 3,100 against, with 137,415 abstentions. The quorum of 124,620 votes not having been reached, the amendment was not adopted.

137. The Government member of India submitted an amendment seeking to delete, in paragraph (4), the words from "including" to "carried out", and to replace them with the words "in connection with the contemplated termination; the extent and nature of such information to be made available may be determined by the methods of implementation referred to in Point 5". In presenting this amendment, the Government member of India considered that it should be left to the national public authorities to determine the type of information that had to be provided. This amendment was supported by the Employers' members. The Workers' members, preferring the Office text, were opposed to this amendment. Put to the vote, this amendment obtained 80,972 votes in favour, 0 votes against, with 145,450 abstentions. The quorum of 124,620 not having been reached, the amendment was not adopted.

138. The Workers' members proposed an amendment seeking to insert in between "including" and "the reasons for termination", in paragraph (4), the words "a statement in writing giving". In their opinion, if workers' representatives were to participate effectively in consultations in order to avert, or mitigate the effects of, terminations, it would be necessary for them to have at their disposal and to study a written statement of the reasons for termination. A Government member declared himself in favour of this amendment. The Employers' members expressed their opposition to this amendment. Put to the vote, the amendment

obtained 109,550 votes in favour, 0 votes against, with 113,522 abstentions. The quorum of 124,620 not having been reached, the amendment was not adopted.

139. The eight Government members of the member countries of the European Community presented an amendment seeking to add a new paragraph (5) with the following text: "For the purpose of these provisions, the words 'the workers' representatives concerned' should be interpreted to mean workers' representatives recognised as such by national law and practice." The Government member of France explained that the goal of this amendment was to define what was meant by workers' representatives in order that real, and not formal, consultation might take place. She pointed out that the amendment was taken from Article 3 of Convention No. 135. This amendment was adopted.

140. Point 20, as amended, was adopted.

NOTIFICATION TO THE COMPETENT PUBLIC AUTHORITY

Point 21

141. The Employers' members submitted an amendment seeking to delete the end of the sentence after the word "possible", and to replace it by the words "in accordance with national laws and practice". These members explained that the goal of this amendment was to make the text somewhat more flexible so that the employer should be requested to provide to the competent public authority that information which was required by the national laws and practice. The Workers' members were opposed to this amendment. Put to the vote, it obtained 80,445 votes in favour, 10,850 votes against, with 128,150 abstentions. The quorum of 124,620 not having been reached, the amendment was not adopted.

142. The Workers' members submitted an amendment proposing to delete paragraph (2). In introducing this amendment, they pointed out that this paragraph sought to limit the requirement for notification to those cases where the number of workers affected by the terminations reached a specified number and that workers in small undertakings should benefit from the same protection as the others. The Employers' members and a Government member declared themselves in favour of retaining this paragraph. Put to the vote, this amendment obtained 103,350 votes in favour, 7,750 against, with 109,368 abstentions. The quorum of 124,620 not having been reached, the amendment was not adopted.

143. The Employers' members submitted an amendment seeking to insert the following words in paragraph (2): "the undertaking or establishment concerned by the proposed terminations employs a specified number of workers and in which...". The Employers' members explained that the goal of this amendment was to take into account the employment situation in small undertakings. The Workers' members stressed that protection should be provided for the most vulnerable workers, particularly those employed in small undertakings. Put to the vote, the amendment obtained 69,037 votes in favour, 3,100 votes against, with 142,100 abstentions. The quorum of 124,620 not having been reached, the amendment was not adopted.

144. The Government member of the United States presented an amendment proposing to replace paragraph (3) by: "Where appropriate, the competent public authority should provide assistance in accordance with national law when one or both parties request assistance in resolving problems raised by the terminations contemplated." The Government member of the United States was of the opinion that the text of the amendment did not obligate the government to provide assistance but assured that the assistance was provided only when the parties wanted it, and would be what they wanted. The amendment was supported by the Employers' members, who proposed a subamendment to delete the words "one or". The Workers' members were opposed to the amendment as subamended. Put to the vote, the amendment obtained 77,114 votes in favour, 0 votes against, with 142,100 abstentions. The quorum of 124,620 not having been reached, the amendment was not adopted.

145. Point 21 was adopted without change.

MITIGATING THE EFFECTS OF TERMINATION

Point 22

146. Point 22 was adopted without change.

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Point 2 (cont.)

147. The Committee then decided to vote on the question of the form of the instruments which had been postponed until after the end of the discussion on Point 22. The Committee considered the amendments submitted on Point 2 by the Government members of the United States and Japan, and by the Employers' members, proposing that the instrument in question should take the form of a Recommendation, instead of a Convention supplemented by a Recommendation. Put to the vote jointly, these amendments obtained 128,650 votes in favour, 137,950 votes against, with 1,550 abstentions. The amendments were rejected. Following the vote, the Employers' members requested a record vote. The three amendments were rejected by 130,200 votes to 148,800, with 1,550 abstentions.

148. Following the vote on the form of the instruments, the Employers' member from Venezuela noted that since 1974 in his country there had been a law relating to unjustified terminations which incorporated different concepts approved by the Committee. This law had resulted in a high turnover of personnel, absenteeism and lack of discipline at work. He felt that developing countries were in need of measures that could help them in the field of employment, and not those liable to worsen the situation. Consideration should be given to the negative effects that might result from the adoption of a Convention which hampered the management of the undertaking.

149. Point 2 was adopted without change.

Point 5 (cont.)

150. The Committee then examined Point 5 concerning the methods of implementation, whose discussion had been postponed because of their close ties with the form of the instruments. Four amendments, more or less similar, had been proposed regarding this Point, respectively by the Employers' members and the Government members of India, the United States and Japan. These amendments sought to reformulate the text so that effect could be given to the provisions of the instrument by the different methods already listed in the Office text, and to add at the end of the sentence: "as may be appropriate under national circumstances". The representative of the Secretary-General explained that the Office text followed the usual formula on this subject and that the proposed text had been drafted on the hypothesis that a Convention would be adopted. The Workers' members indicated that they preferred the Office text. The four amendments were withdrawn.

151. The Government member of the German Democratic Republic proposed an amendment which sought to specify that the provisions of the Convention should be given effect by national law or regulations. This member felt that legislation should have priority over the other methods. The Workers' members expressed their preference for the Office text. This amendment was not seconded.

152. Point 5 was adopted without change. The Committee decided to postpone until later the discussion of the other amendments seeking to transfer Points and Paragraphs to the Proposed Conclusions with a view to a Recommendation.

PROPOSED CONCLUSIONS WITH A VIEW TO A RECOMMENDATION

I. METHODS OF IMPLEMENTATION

Point 23

153. The Workers' members proposed an amendment seeking to replace the word "may" by the word "should" in the first line. After some discussion, and in answer to a request for clarification, the representative of the Secretary-General explained that in using the term "may", a list of methods of implementation was provided from which a choice was to be made, and that the term "should" was used in making a positive recommendation as to what should be done. Following these explanations, the Workers' members withdrew their amendment. Another amendment, submitted by the Workers' members seeking to delete the words "or in such other manner consistent with national practice as may be appropriate under national circumstances", was withdrawn after the representative of the Secretary-General stated that this was normal terminology.

154. Point 23 was adopted without change.

II. SCOPE AND DEFINITIONS

Point 24

155. The Government member of the United Kingdom raised the question whether this Point was appropriate for inclusion in a Recommendation. Since no amendments had been submitted to it, Point 24 was adopted without change.

Point 25

156. The Government member of Japan submitted an amendment proposing to replace paragraph (2) by the following: "The safeguards of paragraph (1) should be left to be determined by the methods of implementation referred to in Point 23." The Workers' members opposed the amendment. The Employers' members supported it, pointing out the diversity of national conditions. Put to the vote, the amendment obtained 110,515 votes in favour, 7,750 votes against, with 137,950 abstentions. The quorum of 124,620 not having been reached, the amendment was not adopted.

157. The Workers' members proposed inserting the word "solely" after the words "such contracts" in paragraph (2) (a). Put to the vote, the amendment obtained 108,500 votes in favour, 0 votes against, with 158,100 abstentions. The quorum of 124,620 votes not having been reached, the amendment fell.

158. The Government member of the Federal Republic of Germany submitted an amendment seeking to modify paragraph (2) (a) so as to read "owing to the nature of the work to be effected, the express and free wish of the worker or the circumstances...". This amendment was intended to allow fixed-term contracts when this was at the express and free wish of the worker, for example, for summer work in the case of students. The Employers' members supported the amendment, subject to possible drafting changes. One Government member expressed the view that international standards were important on this subject particularly because reliance on the free will of the parties may not be adequate to protect the worker. In reply to a request from a Government member, the representative of the Secretary-General indicated that the words "or the circumstances under which it is to be effected" might be read so as to cover the kind of situations referred to. Having regard to these explanations, the Government member of the Federal Republic of Germany withdrew the amendment.

159. The Employers' members proposed replacing, in paragraph (2) (b), the words "on one or more occasions" by the word "repeatedly", since one or two renewals of a fixed-term contract should not be sufficient to transform the contract into one of indeterminate nature. The Workers' members opposed the amendment. Put to the vote, the amendment was rejected by 108,500 votes to 116,250, with 43,400 abstentions.

160. The Government members of Denmark and the Federal Republic of Germany submitted an amendment proposing to replace clause (c) of paragraph (2) by the following text: "considering such a contract, other than in cases mentioned in clause (a) above, to be a contract of employment of indeterminate duration". The amendment was supported by the Employers' and Workers' members. The amendment was adopted.

161. Point 25, as amended, was adopted.

III. STANDARDS OF GENERAL APPLICATION
PROCEDURES PRIOR TO OR AT THE TIME OF TERMINATION

Point 26

162. An amendment submitted by the Government member of Japan, proposing the deletion of this Point, was withdrawn.

163. The Workers' members submitted an amendment to insert the word "written" before the word "warning". They considered that this would help to avoid disputes arising over whether the required warning had been given. The Employers' members opposed the amendment, considering the words "appropriate warning" to be sufficient. Several Government members supported the amendment, on the grounds that a warning leading to termination was a serious matter and should be given in writing. Another Government member felt that this was not necessary, since the burden of proof would be on the employer in case of appeal and he would have to prove that warning had been given. A requirement of written warning would only involve an additional formalistic requirement. Put to the vote, the amendment was adopted by 134,850 votes to 116,250, with 21,700 abstentions.

164. Point 26, as amended, was adopted.

Point 27

165. An amendment submitted by the Workers' members proposing to insert the word "written" before the word "warning", was adopted.

166. The Government member of the United States submitted an amendment seeking to insert the following text as a second paragraph:

The employer, with the consultation of workers' representatives, may develop programmes and policies for assisting workers in meeting the rules and operational requirements of the enterprise so that they may continue in employment while they are resolving personal difficulties through, for example:

- (a) participation in a programme of rehabilitation from alcohol or drug addiction;
- (b) special financial counselling or arrangements for repayment of burdensome indebtedness;
- (c) mutually acceptable changes in working schedules so that the workers can meet family responsibilities for care of a member of the worker's family;
- (d) counselling, education, training or other measures to assist workers experiencing difficulties in meeting changing job requirements.

The Government member of the United States proposed retaining the first part of the amendment, as far as "personal difficulties", and deleting the particular examples given, which might remain in the record for discussion next year. The Workers' members were in agreement with the intent of the amendment, but had some difficulties with the drafting. The Employers' members felt that the amendment was too technical for an international instrument and suggested that the amendment be withdrawn and reconsidered next year. A Government member supported the amendment. The Workers' members stated that in view of what had been said they had no objection to postponing discussion of this amendment until next year. The Government member of the United States withdrew the amendment, subject to reconsideration of the question next year.

167. Point 27, as amended, was adopted.

Point 28

168. The Government member of Japan submitted an amendment to replace this Point by the following text:

The question whether the employer should consult workers' representatives before a final decision is taken on individual cases of termination of employment should be left to be determined by the methods of implementation referred to in Point 23.

The amendment was not seconded.

169. The Workers' members submitted an amendment to replace the words "may be required to" by the word "should". A Government member supported the amendment, considering that the term "should" was necessary if the provision was to have any meaning. The Employers' members opposed the amendment, recalling that other international labour Recommendations had used the term "may". Put to the vote, the amendment was adopted by 125,150 votes to 1,550, with 148,800 abstentions.

170. Point 28, as amended, was adopted.

Point 29

171. The Workers' members submitted an amendment seeking to insert at the end of this Point the words "stating his reasons for the termination". They felt that it was necessary for the employer to communicate his reasons for the termination at the time of notifying the decision to terminate. The amendment was supported by a Government member. The Employers' members opposed the amendment. Put to the vote, the amendment obtained 116,250 votes in favour, 6,200 votes against and 147,250 abstentions. The quorum of 124,620 not having been reached, the amendment was not adopted.

172. Point 29 was adopted without change.

PROCEDURE OF APPEAL AGAINST TERMINATION

Point 30

173. The Workers' members submitted an amendment proposing to delete the word "unjustified", as they considered that at the time of instituting the appeal, it could not be known whether the termination would be found to be unjustified. In reply to a request for clarification of the meaning of the original text of this Point, the representative of the Secretary-General indicated that the intention was to refer to conciliation in connection with appeal against termination of employment on the ground that it was unjustified. Having regard to these explanations, the amendment was withdrawn.

174. Point 30 was adopted without change.

Proposed New Point

175. The Workers' members submitted an amendment that had been postponed when considering Point 14 (2), which referred to the need for the worker to be informed of the means of appeal at his disposal. The Government member of France submitted a subamendment, proposing to replace the amendment by the following text:

Efforts should be made by the public authorities, the workers' representatives and the organisations of workers and employers to ensure that the workers are well informed of the possibilities of appeal at their disposal.

The amendment, as subamended, was adopted.

Point 31

176. The Government members of the United States and Australia and the Employers' members submitted identical amendments, proposing to delete this Point. The Government member of the United States expressed the view that Point 16 covers all that need be said in an international instrument and that this provision should be deleted. The Workers' members opposed the amendments, declaring that a worker should be deemed innocent and maintain his full rights until found guilty. The Employers' members considered that it was often not practical to continue employing a worker whose employment had been terminated, pending a final court decision on the matter. The extensive delays in such procedures were well known. Procedures of these kinds might well make employers hesitant to hire additional workers and would thus contribute to unemployment. In reply to a request from the Government member of the Federal Republic of Germany, a representative of the Secretary-General indicated that the present text of Point 31 (2) had sought to present, as examples, three ways in which provision for suspension of termination of employment might be limited; these were alternative possibilities and member countries were not being asked to limit suspension to all three cases cumulatively. A Government member referred in particular to the problems that suspension of termination would pose, in case of termination for serious misconduct or for economic reasons. In the latter case, suspension of termination might present considerable difficulties. Put to the vote, the amendments obtained 110,050 votes in favour, 6,200 votes against and 150,350 abstentions. The quorum of 124,620 not having been reached, the amendments were not adopted.

177. The Workers' members submitted an amendment proposing to replace paragraph (1) by the following text: "In case of appeal by a worker against the termination of his employment pursuant to Point 14, the employment relationship should be continued until decision by the competent body of appeal." A subamendment submitted by a Government member, seeking to replace the words "should be continued until decision by the competent body of appeal" by the words "may continue after a provisional decision until the competent body of appeal hands down its final decision", was not seconded. The Employers' members opposed the amendment. Several Government members opposed the amendment, pointing out that it went far beyond the initial conception in the present text of Point 31, which left it up to national laws or regulations to decide whether termination should be suspended. Put to the vote, the amendment obtained 103,850 votes in favour, 4,650 votes against and 161,200 abstentions. The quorum of 124,620 not having been reached, the amendment was not adopted.

178. The Government member of India submitted an amendment to replace in paragraph (1) the words "provide that" by the words "may prescribe conditions under which" and that paragraph (2) should be deleted. The Workers' members

opposed the amendment. The Employers' members supported the first part of the amendment, but not the second part. The amendment was withdrawn.

179. The Workers' members submitted an amendment to delete the words "inter alia" in the English text of paragraph (2) and to delete clauses (b) and (c) of this paragraph. They felt that this would simplify the text. Differing interpretations were given by different members of the original text of this paragraph and of the amendment. After an interruption of the discussions, the Workers' members withdrew their amendment and it was agreed to replace paragraph (2) by the following text: "Suspension of the effects of termination pursuant to paragraph (1) may be limited to cases specified by national laws or regulations."

180. Point 31, as amended, was adopted.

Point 32

181. An amendment submitted by the Government member of Japan, proposing to delete this Point, was withdrawn.

182. The Government members of the Netherlands, the United Kingdom and Denmark submitted an amendment that sought to replace this Point by the following text:

In proceedings under Point 14, the bodies referred to in that Point should be empowered to investigate the facts and circumstances of the case so as to be able to form a judgement regarding whether termination was justified.

The amendment was withdrawn.

183. The Employers' members submitted an amendment seeking to replace this Point by the following text:

(1) In appeal proceedings under Point 14, the allocation of the burden of proof should be in accordance with national law and practice.

(2) The bodies referred to in Point 14 should be empowered to investigate the facts and circumstances of the case so as to be able to form a judgement regarding whether termination was justified.

The Employers' members were of the view that the amendment provided greater flexibility than the existing text of this Point. One Government member pointed out that a paragraph on the subject imposing the burden of proof on the employer was included in the Proposed Conclusions with a view to a Convention and that the present amendment would provide a lower standard. Having regard to the previous decision of the Committee on Point 15, paragraph (2), the Employers' members withdrew the amendment, indicating that they would return to the question at the second discussion.

184. Having regard to the previous decision by the Committee, the Government member of the United States withdrew an amendment seeking to replace the words "to this end" by the words "in accordance with national law and practice"; in clause (a) to replace the words "for a valid" by the words "indeed for the stated reasons" and to delete the final "or"; and in clause (b) to replace the word "justified" by the words "a proper penalty or course of action".

185. The Workers' members submitted an amendment to delete "/or" at the end of clause (a). Put to the vote, the amendment was adopted by 53,460 votes to 660, with 60,720 abstentions.

186. Put to the vote, Point 32, as amended, was rejected by 50,820 votes to 58,740, with 2,640 abstentions.

SEVERANCE ALLOWANCE

Point 33

187. The Employers' members proposed the deletion of this Point, which they considered to be too technical and to be already covered by Point 19. The Workers' members opposed the amendment. Put to the vote, the amendment obtained 44,800 votes in favour, 5,280 votes against and 62,040 abstentions. The quorum of 53,064 not having been reached, the amendment was not adopted.

188. The Government member of the Netherlands submitted an amendment proposing to insert the words "where appropriate" after the words "should be entitled". She explained that in some countries severance allowance was not obligatory, and reliance was placed on unemployment insurance benefits to provide workers with income protection in case of loss of employment; severance allowance in the Netherlands would reduce the entitlement to unemployment benefits, which were not paid while other allowances were being received. The amendment was supported by a Government member and the Employers' members. The Workers' members opposed the amendment. Put to the vote, the amendment was adopted by 54,120 to 0, with 58,740 abstentions.

189. The Workers' members submitted an amendment proposing to insert the words "and wages" after the words "length of service", with a view to making clear that severance allowance varies with wages as well as length of service. The amendment was supported by the Employers' members. The amendment was adopted.

190. The Workers' members submitted an amendment to delete paragraph (2). They were of the view that the right to severance allowance should not be lost in case of serious misconduct. Having regard to the fact that a similar amendment had not been adopted in connection with Point 19, paragraph (3), the amendment was withdrawn.

191. The Workers' members submitted an amendment to delete paragraph (3), since they believed that entitlement to severance allowance should not depend upon the reason for the termination. The Employers' members and several Government members considered that the present text of this paragraph provided greater flexibility and opposed the amendment. Several Government members supported the amendment. Put to the vote, the amendment obtained 49,500 votes in favour, 1,980 votes against, and 61,380 abstentions. The quorum of 53,064 not having been reached, the amendment was not adopted.

192. An amendment submitted by the Government member of Zimbabwe, proposing to replace in paragraph (3) the words "may be limited by" by the words "may not be withheld from", was withdrawn. This amendment was moved by the Workers' members. Put to the vote, the amendment obtained 46,860 votes in favour, 660 votes against and 63,360 abstentions. The quorum of 53,064 not having been reached, the amendment was not adopted.

193. Point 33, as amended, was adopted.

194. The Committee then turned to a discussion of the amendments that had been postponed.

Point 6 (cont.)

195. An amendment that had been submitted by the Government member of the United States, seeking to delete paragraph (5), was withdrawn, having regard to the Committee's decision to propose Conclusions with a view to a Convention supplemented by a Recommendation.

Amendments Proposing the Transfer of Different Points to the Proposed Conclusions with a View to a Recommendation

196. The Committee then turned to a discussion of a number of amendments that sought to transfer various Points to the Proposed Conclusions with a view to a Recommendation.

197. The Government member of the United Kingdom submitted an amendment to transfer Point 9 to the Proposed Conclusions with a view to a Recommendation. He considered that while the principle contained in Point 8 was appropriate for a Convention, Point 9 provided a detailed list of matters that was more appropriate to a Recommendation. The amendment was supported by the Employers' members, who had decided to support all such amendments, since in principle they favoured inclusion of all Points in a Recommendation. The Workers' members opposed the amendment, since the matters covered by this Point had been the subject of other ILO Conventions. Several Government members opposed the amendment, considering that the matters covered in this Point merited inclusion in a Convention. The Employers' members felt that if other Conventions covered these matters, there was no need to include them in a new Convention. A Government member considered on the contrary that repetition in a proposed instrument on the specific subject of termination of employment could be useful. The Workers' members expressed the view that Point 9 complemented Point 8, which was general in terms, with a list of reasons deemed not to be valid. Put to the vote, the amendment obtained 46,200 votes in favour, 3,960 votes against, and 62,040 abstentions. The quorum of 53,064 not having been reached, the amendment was not adopted.

198. The Government members of Belgium, Denmark, the Federal Republic of Germany, Italy and Luxembourg submitted an amendment to transfer clauses (e) and (g) of Point 9 to the Proposed Conclusions with a view to a Recommendation. The Government member of Denmark stated that clauses (a)-(d) and (f), which were already reflected in other international labour Conventions, should be included in a Convention, while clauses (e) and (g) which were new matters should be included in a Recommendation. The amendment was adopted.

199. The Government member of the United Kingdom submitted an amendment to transfer Point 10 to the Proposed Conclusions with a view to a Recommendation. He felt that this Point should be treated in the same way as

clauses (e) and (g) of Point 9. The Workers' members opposed the amendment. Put to the vote, the amendment obtained 50,820 votes in favour, 660 votes against and 64,680 abstentions. The quorum of 53,064 not being reached, the amendment was not adopted.

200. The Government member of Japan submitted an amendment to Point 11, paragraph (1), to the Proposed Conclusions with a view to a Recommendation. The Government member of Japan was of the view that this Paragraph related to a matter of procedure which varied among countries and which was best treated in a Recommendation. The Workers' members and several Government members opposed the amendment. One Government member supported the amendment. Put to the vote, the amendment obtained 50,160 votes in favour, 660 votes against, and 66,660 abstentions. The quorum of 53,064 not having been reached, the amendment was not adopted.

201. The Government member of Japan submitted an amendment to transfer Point 11, paragraph (2), to the Proposed Conclusions with a view to a Recommendation. Put to the vote, the amendment obtained 48,840 votes in favour, 660 votes against and 66,660 abstentions. The quorum of 53,064 not having been reached, the amendment was not adopted.

202. The Government member of Japan submitted an amendment to transfer Point 12 to the Proposed Conclusions with a view to a Recommendation, since this Point was too detailed for inclusion in a Convention. One Government member also considered this to be a matter of detail, inappropriate for inclusion in a Convention. The Workers' members opposed the amendment. Put to the vote, the amendment obtained 50,160 votes in favour, 0 votes against and 64,680 abstentions. The quorum of 53,064 not having been reached, the amendment was not adopted.

203. The Government member of Japan submitted an amendment to transfer Point 13 to the Proposed Conclusions with a view to a Recommendation, considering this to be too detailed a matter for inclusion in a Convention. The Workers' members opposed the amendment. Put to the vote, the amendment obtained 49,500 votes in favour, 660 votes against and 63,360 abstentions. The quorum of 53,064 not having been reached, the amendment was not adopted.

204. The Government member of Japan submitted two amendments that had been postponed for consideration in connection with amendments to transfer Points to the Proposed Conclusions with a view to a Recommendation. The first proposed deletion of Point 14, paragraph (2); the second proposed insertion in the Proposed Conclusions with a view to a Recommendation of the following text: "A worker who considers that his employment has been unjustifiably terminated may be deemed to have waived his right to appeal against the termination of his employment if he has not so appealed within a reasonable period of time thereafter." The Government member of Japan indicated that the aim of these two amendments was to transfer this paragraph to the Proposed Conclusions with a view to a Recommendation, with an essentially drafting change involving inclusion of words taken from paragraph (1) of the same Point. After some discussion regarding the procedure to be followed, the Government member of Japan withdrew the amendment to save time.

205. The Government member of Japan submitted an amendment to transfer Point 15 to the Proposed Conclusions with a view to a Recommendation, because of the detailed nature of this Point. On a proposal by the Employers' members, the Committee decided to consider this amendment as referring to Point 15, as amended, and to decide on each of its three paragraphs separately. As regards paragraph (1), the amendment, put to the vote, obtained 46,830 votes in favour, 0 votes against and 64,680 abstentions. The quorum of 53,064 not having been reached, the amendment was not adopted in respect of paragraph (1) of Point 15. As regards the new paragraph (2), the amendment, put to the vote, obtained 52,140 votes in favour, 0 votes against, and 64,020 abstentions. The quorum of 53,064 not having been reached, the amendment was not adopted in respect of new paragraph (2). As regards paragraph (3) (former paragraph (2)), the amendment, put to the vote, obtained 48,840 votes in favour, 0 votes against and 64,020 abstentions. The quorum of 53,064 not having been reached, the amendment was not adopted in respect of paragraph (3).

206. Amendments submitted by the Government member of Japan, with a view to transferring Points 16 and 17 to the Proposed Conclusions with a view to a Recommendation, were withdrawn.

207. An amendment submitted by the Government member of Sweden, with a view to transferring Point 18 to the Proposed Conclusions with a view to a Recommendation, was withdrawn.

208. The Employers' members proposed transferring Point 19 to the Proposed Conclusions with a view to a Recommendation. They considered the provisions contained in this Point as too detailed to be included in a Convention. The Workers' members opposed the amendment. Put to the vote, the amendment obtained 47,520 votes in favour, 0 votes against, and 65,340 abstentions. The quorum of 53,064 not having been reached, the amendment was not adopted.

209. An amendment submitted by the Government member of Japan to transfer Point 20 was withdrawn. The Government member of the United States submitted an identical amendment. The Government members of the member countries of the European Community supported the amendment, because of the adoption by the Committee of an amendment that had deleted paragraph (2) of this Point; that paragraph had allowed limiting application of this Point to termination of a minimum number of workers in an undertaking. Without that paragraph, this Point was inconsistent with the Directive on Collective Redundancies adopted by the Council of the European Communities. The member countries of the European Community would seek to reintroduce this paragraph during the second discussion. Put to the vote, the amendment obtained 52,455 votes in favour, 0 votes against, and 58,740 abstentions. The quorum of 53,064 not having been reached, the amendment was not adopted.

IV. SUPPLEMENTARY PROVISIONS CONCERNING TERMINATION OF EMPLOYMENT FOR ECONOMIC, TECHNOLOGICAL, STRUCTURAL OR SIMILAR REASONS

Point 34

210. The Government member of Zimbabwe submitted an amendment seeking to delete the words "without prejudice to the efficient operation of the undertaking, establishment or service". In submitting this amendment, he stressed that efficient operation was not a well defined notion and that, as a result, this notion could always be invoked for justifying terminations. This amendment was supported by the Workers' members. Put to the vote, the amendment obtained 46,860 votes in favour, 660 votes against, and 64,620 abstentions. The quorum of 53,064 not having been reached, the amendment was not adopted.

211. Point 34 was adopted without change.

CONSULTATIONS ON MAJOR CHANGES IN THE UNDERTAKING

Point 35

212. The Government member of Zimbabwe submitted an amendment seeking to replace paragraph (1) with a text which emphasised the need for consultation with workers' representatives when the employer contemplated important technological and structural changes, particularly concerning the introduction or non-introduction of changes and the effects they were likely to have, as well as the measures for averting their negative effects. In submitting this amendment, the Government member of Zimbabwe considered that unemployment could be exacerbated in cases where the employers had not made the necessary changes and that, in a general manner, consultations should take place when the employer wanted or did not want to take certain actions which would negatively affect the employment of the workers. The amendment was supported by the Workers' members. Following a brief discussion on the nature of the technological changes, the amendment was put to the vote. The amendment obtained 47,120 votes in favour, 660 votes against and 64,340 abstentions. The quorum of 53,064 not having been reached, the amendment was not adopted.

213. The Workers' members submitted an amendment which sought to delete the word "substantial" in paragraph (1). In submitting this amendment, they pointed out that it would be very difficult to estimate what was meant by the word "substantial". The Employers' members, preferring the Office text, were opposed to this amendment. Put to the vote, the amendment was adopted by 53,460 votes to 44,220, with 14,520 abstentions.

214. The Employers' members submitted an amendment designed to change the latter part of the third line of paragraph (1) as follows: "the employer should consult the workers concerned, or their representatives, as early as possible". In their opinion, this amendment had the advantage of being in line with the text that had been adopted on another Point. After a short discussion, the Employers' members withdrew this amendment. The Committee then examined an amendment, submitted by the Workers' members, which sought to insert in paragraph (1)

the words "before the introduction of such changes". In submitting this amendment, the Workers' members remarked that workers should be consulted well in advance when changes had to take place in an undertaking. The Employers' members were opposed to this amendment, considering that it did not add anything significant to the text. Put to the vote, the amendment obtained 52,140 votes in favour, 9 votes against and 54,435 abstentions. The quorum of 53,064 not having been reached, the amendment was not adopted.

215. The Government member of France submitted an amendment seeking to introduce a new paragraph at the end of Point 35 as follows: "For the purpose of the present provisions, the words 'the workers' representatives concerned' should mean the representatives recognised as such by national law and practice." The Government member of France submitted his amendment making reference to arguments that he had already developed during the discussion of Point 20. The Workers' members then proposed to add the words "in conformity with Convention No. 135". The Employers' members expressed their agreement with this amendment as subamended. The amendment, as subamended, was adopted.

216. Point 35, as amended, was adopted.

MEASURES TO AVERT OR MINIMISE TERMINATIONS

Point 36

217. The Employers' members submitted an amendment seeking to delete Point 36. They considered that the listing contained in this Point was too general and incomplete and that this Point was superfluous with regard to the other Points already adopted. The Workers' members did not share this opinion and preferred the Office text which provided useful specifications. Put to the vote, the amendment obtained 38,850 votes in favour, 4,620 votes against and 58,020 abstentions. The quorum of 53,064 not having been reached, the amendment was not adopted.

218. An amendment was submitted by the Government member of the Federal Republic of Germany which sought to delete the words "restriction of hiring". In submitting this amendment, the Government member of the Federal Republic of Germany considered that restriction of hiring could in some manner be discriminatory against the unemployed and that this provision, if it were to be maintained, would allow governments to adopt such discrimination in their legislation. In supporting this amendment the Employers' members evoked the case of certain undertakings which had experienced a decline in production and which had to change their activities. These undertakings would be forced to retrench their workforce. The terminated workers would not necessarily be suited for transfer to the new department that the undertaking intended to develop. In such a case, restriction of hiring would go against the need of the undertaking in question to convert itself. The Workers' members stated that they did not share this opinion. They pointed out that, where the undertaking had to convert itself, the workers could be retrained and thus maintained in their employment. A Government member submitted a subamendment seeking to add, after the word "hiring", the words "in the same profession". This subamendment was not

seconded. Another Government member expressed confusion with regard to this text which, in his opinion, was too detailed for an international standard. Put to the vote, this amendment obtained 46,830 votes in favour, 0 votes against and 61,380 abstentions. The quorum of 53,064 not having been reached, the amendment was not adopted.

219. The Government member of Australia submitted an amendment whose goal was to add, after the word "work", the words "with a commensurate decrease in salary or wage". In submitting this amendment, he explained that if hours of work were reduced without a reduction in wages, there would be an increase in labour costs which could not be supported by certain undertakings. Certain Government members and the Workers' members were opposed to this amendment. A Government member indicated that since the Office text was general, it was not necessary to provide too many precisions. In his opinion, it was up to each country to decide whether it was necessary or not to reduce wages. On a point of clarification, the representative of the Secretary-General explained that in drafting the text the Office had intended to indicate a choice of possible measures rather than measures that were to be taken. Put to the vote, the amendment obtained 48,840 votes in favour, 660 votes against and 63,360 abstentions. The quorum of 53,064 not having been reached, the amendment was not adopted.

220. Point 36 was adopted without change.

Point 37

221. An amendment submitted by the Government member of Australia, that sought to delete this Point, was withdrawn.

222. The Government member of the United States submitted an amendment to replace the word "considered" by the word "clear". In his view, recourse to temporary reduction of working hours should be used only sparingly, when there was clear evidence that the difficulties confronted by the undertaking were of a temporary nature; otherwise there might be a tendency to keep workers in employment in situations where this would be unproductive. The Workers' members as well as the Employers' members opposed the amendment, preferring the existing text. The amendment was withdrawn.

223. The Workers' members submitted an amendment proposing to delete the word "partial" before "compensation". They considered that compensation for normal hours not worked in the event of a temporary reduction of working hours might be partial or complete, depending on the circumstances. This was a matter that should be negotiated between the parties. The text of this Point should not prejudice the outcome. The Employers' members opposed the amendment. It was agreed by the Committee that deletion of the word "partial" would not be intended to imply that total compensation had to be paid. Put to the vote, the amendment obtained 98,040 votes in favour, 1,290 votes against and 117,390 abstentions. The quorum of 103,716 not having been reached, the amendment was not adopted.

224. The Employers' members submitted an amendment to delete the words "by the employer" in this Point. They felt that in the typical situation in which a

need to have recourse to reduction of normal hours of work arose, the undertaking would not be able to afford to pay compensation for the hours of work lost, which should be covered by public funds such as unemployment insurance funds. The Workers' members opposed the amendment. The Government member of France submitted a subamendment to this amendment, which sought to replace the words "by the employer or from public funds such as unemployment insurance funds" by the following: "The methods of compensation and the financing of compensation for the loss of wages would be ensured in accordance with the methods of implementation referred to in Point 23." The subamendment was supported by several Government members. It was opposed by the Workers' members and a Government member. Put to the vote, the subamendment obtained 95,460 votes in favour, 0 votes against and 129,000 abstentions. The quorum of 103,716 not having been reached, the subamendment was not adopted. The Government member of Uganda submitted another subamendment, seeking to replace the words "by the employer or from public funds such as unemployment insurance funds" by the words "from unemployment insurance funds". The subamendment was opposed by the Workers' members and several Government members. It was supported by the Employers' members. Put to the vote, the subamendment obtained 87,720 votes in favour, 6,450 votes against and 129,000 abstentions. The quorum of 103,716 not having been reached, the subamendment was not adopted. The amendment submitted by the Employers' members was then put to the vote. It obtained 86,430 votes in favour, 0 votes against and 139,320 abstentions. The quorum of 103,716 not having been reached, the amendment was not adopted.

225. The Government member of India submitted an amendment to insert at the end of this Point the words "where such public funds already exist", having regard to the fact that such funds did not exist in most developing countries. A Government member and the Employers' and Workers' members felt that the existing text of this Point already allowed for this fact, by requiring only that "consideration should be given" to these possibilities. Having regard to these explanations, the Government member of India withdrew the amendment.

226. Point 37 was adopted without change.

CRITERIA FOR SELECTION FOR TERMINATION

Point 38

227. The Workers' members submitted an amendment seeking to delete the words "wherever possible" in paragraph (1). They felt that the criteria for selecting workers to be affected by terminations for economic reasons should in all cases be determined in advance. The amendment was supported by one Government member, given the importance of this question. The Employers' members opposed the amendment and considered the existing text to be more flexible. Put to the vote, the amendment obtained 95,460 votes in favour, 0 votes against and 135,450 abstentions. The quorum of 103,716 not having been reached, the amendment was not adopted.

228. The Employers' members submitted an amendment which sought to insert the words "in accordance with national law and practice" at the end of

paragraph (1). They withdrew this amendment in favour of another amendment submitted by the Government member of France, which proposed replacing paragraph (2) by the following text: "these criteria, as well as their order and relative weight, should be determined by the methods of implementation referred to in Point 23". The Government member of Italy opposed this amendment, and instead proposed that paragraph (2) be modified by grouping clauses (c)-(e) and adding the words "and other criteria which made it difficult for a worker to accept the possibility of accepting proposals for redeployment or mobility". This proposal was not seconded. The amendment submitted by the Government member of France was supported by the Workers' members who had submitted a similar amendment. It was adopted. The other amendments that had been submitted to clause (a) were withdrawn or fell.

229. Point 38, as amended, was adopted.

PRIORITY OF REHIRING

Point 39

230. The Government member of Japan submitted an amendment to insert the words "to the extent possible" between "should" and "be given priority of rehiring". He considered that this principle was valid in countries where the system of lay-off prevailed, but not elsewhere. Some flexibility therefore seemed to be required in this Point. The Employers' members submitted an identical amendment. The Workers' members and a Government member opposed the amendment. Another Government member supported the amendment stating that priority of rehiring might affect mobility of labour which was particularly necessary at times of technological change, for example, by encouraging workers to remain unemployed until their old jobs reappeared. Several Government members expressed concern that the obligation to rehire might conflict with the rules governing placement by public employment agencies. In answer to a request for clarification, the Secretariat indicated that the principle sought to be set forth in this Point was usually implemented through an obligation placed upon the employer, by national law or by collective agreement, to offer workers whose employment had been terminated job openings that become available. This did not impinge upon the responsibilities or rules governing public employment agencies. It would be for each country to determine in its laws or practices how such an obligation would be co-ordinated with the system of public employment services. Put to the vote, the amendments obtained 99,330 votes in favour, 2,580 votes against, and 125,130 abstentions. The quorum of 103,716 not having been reached, the amendments were not adopted.

231. The Workers' members submitted an amendment to delete in paragraph (1) the words "with comparable qualifications". The Workers' members considered that workers could be retrained in order to be able to qualify for new job openings and should thus be entitled to rehiring for jobs where the qualifications were not comparable. The Employers' members opposed the amendment. Put to the vote, the amendment obtained 90,300 votes in favour, 0 votes against and

129,000 abstentions. The quorum of 103,716 not having been reached, the amendment was not adopted.

232. The Government member of France submitted an amendment to insert at the end of paragraph (1) the words "providing that they had indicated the desire to be rehired within a given period from the time of their separation from the undertaking". Workers might prefer to obtain training and take up a new job, rather than to return to their previous employment. Thus, it would be appropriate to require a worker to give some indication of his intentions, within a given period after his termination. The amendment was supported by another Government member and the Workers' and Employers' members, and was adopted.

233. The Government member of France submitted an amendment seeking to replace paragraphs (3) to (5) by the following text:

The criteria for priority of rehiring, the question of retention of rights, particularly seniority rights, in case of rehiring, as well as provisions relating to the wages of rehired workers, should be decided according to the methods of implementation mentioned in Point 23.

The Government member of France felt that these matters should be subject to the methods of implementation mentioned in Point 23, including negotiation between the parties. Put to the vote, the amendment was adopted by 118,680 to 0, with 104,490 abstentions. With the adoption of this amendment, several other amendments to paragraphs (3) to (5) of this Point fell.

234. Point 39, as amended, was adopted.

MITIGATING THE EFFECTS OF TERMINATION

Point 40

235. The Government member of the Federal Republic of Germany submitted an amendment proposing to delete the words "where possible with the collaboration of the employer and the workers' representatives concerned". In reply to a request for clarification of the meaning of the existing text, the Secretariat stated that the intention had not been to impinge upon the role of public employment services. Having regard to these explanations, the amendment was withdrawn.

236. The Workers' members submitted an amendment seeking to delete the words "where possible" in paragraph (1) of this Point, before the words "with the collaboration of the employer and the workers' representatives", and to delete the words "as early as possible after being notified of these terminations or being requested to do so". Several Government members opposed the deletion of the words "where possible" from the text, as they felt that this provided a degree of flexibility necessary to the public employment agencies who were the primary agencies responsible for placement. These agencies could not be subject to an obligation to collaborate with the employer and the workers' representatives. In response to a request for clarification, the representative of the Secretary-General indicated that this Point had sought to introduce a degree of tripartite participation in the search for ways of mitigating the effects of terminations; some flexibility had been left due to the difficulty of imposing strict obligations in this matter, where

public employment services had the predominant role. Having regard to these explanations, the Workers' members withdrew the part of their amendment proposing the deletion of the words "where possible". Put to the vote, the second part of the amendment obtained 90,300 votes in favour, 1,290 votes against, and 134,160 abstentions. The quorum of 103,716 not having been reached, the amendment was not accepted.

237. The Government member of India submitted an amendment to insert the words "to the extent national resources permit" after the word "assist" in paragraph (1). He explained that India had very heavy unemployment and that workers losing their employment had to compete on equal terms with the existing unemployed. Public agencies could not bear the burden that would be imposed upon them by this Point. The Workers' members were of the opinion that the existing text was already quite flexible. The Employers' members agreed. The amendment was withdrawn.

238. The Workers' members submitted an amendment to delete, in paragraph (2), the words "where possible". Several Government members opposed the amendment. The amendment was withdrawn.

239. The Employers' members submitted an amendment to insert the words "and consistent with national law and practice" after the words "where possible" in paragraph (2). The amendment was withdrawn, having regard to the fact that Point 23 applied to this Point.

240. The Workers' members submitted an amendment to insert in paragraph (3) the word "suitable" before the words "alternative employment". The amendment was adopted.

241. Point 40, as amended, was adopted.

Point 41

242. The Workers' members submitted an amendment proposing to delete the words "appropriate to national circumstances". They considered that these words were not very useful. One Government member and the Employers' members felt that these words were unnecessary, having regard to Point 23 which also applied to this Point. The amendment was adopted.

243. The Workers' members submitted an amendment to alter the start of paragraph (2) to read "The competent public authority and the employers". The Employers' members opposed the amendment, since they were convinced that it would be very difficult for employers to bear such a burden. Put to the vote, the amendment obtained 91,590 votes in favour, 0 votes against, and 136,740 abstentions. The quorum of 103,716 not having been reached, the amendment was not adopted.

244. Point 41, as amended, was adopted.

V. EFFECT ON EARLIER RECOMMENDATION

Point 42

245. The Government member of India submitted an amendment to replace the word "supersede" by the word "supplement". In reply to a request regarding the relationship between Recommendation No. 119 and the proposed instruments, the representative of the Secretary-General indicated that the proposed instruments would cover almost all the Points covered previously by Recommendation No. 119 and that it would be confusing to have several instruments covering the same subject-matter. A country not able to implement the proposed instrument could, if it did not ratify a Convention, give effect only to those provisions they were able to apply.

246. Point 42 was adopted without change.

Adoption of the Report, the Proposed Conclusions and the Resolution

247. At its fourteenth sitting the Committee adopted its report, subject to some changes requested by various members. It also adopted the Proposed Conclusions appended to this report.

248. The Committee discussed the draft resolution to place on the agenda of the next Ordinary Session of the Conference an item entitled "Termination of Employment at the Initiative of the Employer". The Government member of the United States submitted an amendment to delete the third paragraph and the reference to a Convention and a Recommendation in the fourth paragraph. This amendment was supported by the Employers' members and opposed by the Workers' members and several Government members. The Government member of Canada proposed as a compromise the deletion only of the reference to a Convention and a Recommendation in the fourth paragraph. This proposal was accepted by the Government member of the United States and the Employers' members. Put to the vote, the proposal was rejected by 56,580 votes to 57,270, with 4,140 abstentions. The Committee adopted the resolution, which is appended.

249. The Employers' members expressed reservations regarding the resolution, stating that it should in no way prejudice the decision that the Conference would take in 1982 on the form of the instrument.

250. The present report together with the Proposed Conclusions and the resolution are submitted to the Conference for consideration.

Proposed Conclusions Submitted by the Committee

Form of the International Instruments

1. International instruments should be adopted concerning termination of employment at the initiative of the employer.

2. The instruments should take the form of a Convention supplemented by a Recommendation.

Proposed Conclusions with a View to a Convention**I. PREAMBLE**

3. The Preamble should refer to the existing international standards contained in the Termination of Employment Recommendation, 1963.

4. The Preamble should note that since the adoption of the Termination of Employment Recommendation, 1963, significant developments have occurred in the law and practice of many member States that have made it appropriate to adopt new international standards on the subject, particularly having regard to the serious problems in this field resulting from the economic difficulties and technological changes experienced in recent years in many countries.

II. METHODS OF IMPLEMENTATION

5. The provisions of the Convention should, except in so far as they are otherwise made effective by means of collective agreements, arbitration awards or court decisions or in such other manner as may be consistent with national practice, be given effect to by laws or regulations.

III. SCOPE OF THE INSTRUMENT AND DEFINITIONS

6. (1) The Convention should apply to all branches of economic activity and to all employed persons.

(2) The extent to which the provisions of the Convention should apply to the following categories of employed persons may be determined by the methods of implementation referred to in Point 5:

- (a) workers engaged under a contract of employment for a specified period of time or a specified task;
- (b) workers serving a period of probation or a qualifying period of employment, determined in advance and of reasonable duration;
- (c) workers engaged on a casual basis for a short period.

(3) In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof categories of employed persons whose terms and conditions of employment are governed by special arrangements, which as a whole provide protection which is at least equivalent to that afforded under the Convention.

(4) In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof other limited categories of employed persons in respect of which special problems of a substantial nature arise.

(5) Each Member which ratifies this Convention should list in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraphs 3 and 4 of this Point, giving the reasons for such exclusion, and should state in subsequent reports the position of its law and practice regarding the categories excluded, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.

7. For the purpose of the Convention the terms "termination" and "termination of employment" should mean termination of employment at the initiative of the employer.

IV. STANDARDS OF GENERAL APPLICATION

Justification for Termination

8. The employment of a worker should not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.

9. The following, inter alia, should not constitute valid reasons for termination:

- (a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;
- (b) seeking office as, or acting or having acted in the capacity of, a workers' representative;
- (c) the filing in good faith of a complaint or the participation in a proceeding against an employer involving alleged violation of laws or regulations;
- (d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
- (e) absence from work during maternity leave.

10. Temporary absence from work because of duly certified illness or injury should not constitute a valid reason for termination, unless the operational requirements of the undertaking, establishment or service make it necessary to replace the worker concerned on a permanent basis.

Procedure Prior to or at the Time of Termination

11. (1) The employment of a worker should not be terminated for reasons related to the workers' conduct or performance before he is afforded a hearing by the employer at which he is given an opportunity to defend himself against the allegations made.

(2) A worker should be entitled to be assisted at such a hearing by another person; this right may be limited, by the methods of implementation referred to in Point 5, to assistance by another worker in the undertaking or a trade union representative.

12. The employer should be deemed to have waived his right to terminate the employment of a worker for misconduct if he has failed to do so within a reasonable period of time after he has knowledge of the misconduct.

13. (1) A worker who has been notified of termination of employment or whose employment has been terminated should be entitled to receive, on request, a written statement from his employer of the reason or reasons for the termination.

(2) The provisions of the preceding paragraph need not be applied in the case of collective termination for the reasons mentioned in Points 20 and 21, subject to the observance of the procedure therein described.

Procedure of Appeal against Termination

14. (1) A worker who considers that his employment has been unjustifiably terminated should be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator.

(2) In cases where termination has already been authorised by the competent administrative authority the exercise of the right of appeal may be varied according to national law and practice.

(3) A worker may be deemed to have waived his right to appeal against the termination of his employment if he has not so appealed within a reasonable period of time thereafter.

15. (1) The bodies referred to in Point 14 should be empowered to examine the reasons given for the termination and the other circumstances relating to the case and to render a decision on whether the termination was justified.

(2) The burden of proving that the termination was for a valid reason should rest on the employer.

(3) In cases of termination stated to be for reasons based on the operational requirements of the undertaking, establishment or service, the bodies referred to in Point 14 should be empowered to determine whether the termination was indeed for these reasons, but the extent to which they should also be empowered to decide whether these reasons are sufficient to justify that termination should be left to the methods of implementation referred to in Point 5.

16. If the bodies referred to in Point 14 find that termination is unjustified and if they cannot declare the termination invalid and/or propose reinstatement of the worker in accordance with national law and practice, they should be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate.

Period of Notice and Certificate of Employment

17. (1) A worker whose employment is to be terminated should be entitled to a reasonable period of notice or compensation in lieu thereof, unless he is guilty of serious misconduct of such a nature that it would be unreasonable to require the employer to continue his employment during the notice period.

(2) During the period of notice the worker should, for the purpose of seeking other employment, be entitled to a reasonable amount of time off without loss of pay, taken at times that are convenient to both parties as agreed by them.

18. A worker whose employment has been terminated should be entitled to receive, on request, a certificate from the employer specifying the dates of his engagement and termination of his employment and the type or types of work on which he was employed, but containing nothing unfavourable to the worker; on request, the worker may also be given another certificate indicating an evaluation of his conduct or performance.

Severance Allowance and Other Income Protection

19. (1) A worker whose employment has been terminated should be entitled to—

- (a) a severance allowance or other separation benefits, increasing with length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions; or
- (b) benefits from unemployment insurance or assistance or other forms of social security, such as old-age or invalidity benefits, under the normal conditions to which such benefits are subject; or
- (c) a combination of such allowance or benefits.

(2) A worker who does not fulfil the qualifying conditions for unemployment insurance or assistance under a scheme of general scope need not be paid any allowance referred to in paragraph (1) (a) or (c) of this Point solely because he is not receiving a benefit under paragraph (1) (b).

(3) In case of termination for serious misconduct of the kind mentioned in Point 17 (1), the allowance or benefits referred to in paragraph (1) (a) of this Point may be withheld.

V. SUPPLEMENTARY PROVISIONS CONCERNING TERMINATION OF EMPLOYMENT FOR ECONOMIC, TECHNOLOGICAL, STRUCTURAL OR SIMILAR REASONS

Consultation of Workers' Representatives

20. (1) When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer should consult the workers' representatives concerned as early as possible on all appropriate questions, including measures to be taken to avert or minimise the terminations, and measures to mitigate the adverse effects of any terminations on the workers concerned including finding alternative employment.

(2) The employer should notify the workers' representatives concerned with a view to the consultations referred to in paragraph (1) sufficiently before carrying out the terminations to allow effective consultations to take place.

(3) To enable the workers' representatives concerned to participate effectively in the consultations referred to in paragraph (1), the employer should supply them in good time with all relevant information, including the reasons for the

terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out.

(4) For the purposes of this Point the words "the workers' representatives concerned" mean workers' representatives recognised as such by national law or practice, in conformity with the Workers' Representatives Convention, 1971.

Notification to the Competent Public Authority

21. (1) When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, he should notify the competent public authority thereof as early as possible, giving all relevant information, including a written statement of the reasons for the terminations, the number and categories of workers liable to be affected and the period over which the terminations are intended to be carried out.

(2) National laws or regulations may limit the applicability of paragraph (1) to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.

(3) Where appropriate, the competent public authority should assist the parties in seeking solutions to the problems raised by the terminations contemplated.

(4) The employer should notify the competent public authority of the terminations referred to in paragraph (1) a minimum period of time before carrying out the terminations, such period to be specified by national laws or regulations.

Mitigating the Effects of Termination

22. In the event of termination of employment for reasons of an economic, technological, structural or similar nature, the placement of the workers affected in suitable alternative employment as soon as possible, with training or retraining where appropriate, should be promoted by means suitable to national circumstances.

Proposed Conclusions with a View to a Recommendation

I. METHODS OF IMPLEMENTATION

23. The provisions of the Recommendation may be applied by national laws or regulations, collective agreements, works rules, arbitration awards or court decisions or in such other manner consistent with national practice as may be appropriate under national circumstances.

II. SCOPE AND DEFINITIONS

24. Points 6 and 7 of these Conclusions should apply equally to the Recommendation.

25. (1) There should be adequate safeguards against recourse to contracts of employment for a specified period of time the aim of which is to avoid the

protection resulting from implementation of the Convention and Recommendation.

(2) To this end, for example, one or more of the following safeguards may be provided:

- (a) limiting recourse to such contracts to cases in which, owing to the nature of the work to be effected or the circumstances under which it is to be effected, the employment relationship cannot be of an indeterminate duration;
- (b) deeming such contracts, other than in cases mentioned in the previous clause, to be contracts of employment of indeterminate duration;
- (c) deeming a contract of employment for a specified period of time, when renewed on one or more occasions, to have the same effects as a contract of employment of indeterminate duration.

III. STANDARDS OF GENERAL APPLICATION

Justification for Termination

26. In addition to the grounds referred to in Point 9, the following should not constitute valid reasons for termination:

- (a) age, subject to national law and practice regarding retirement at or after the age normally qualifying for an old-age benefit;
- (b) absence from work due to compulsory military service or other civic obligations.

Procedure Prior to or at the Time of Termination

27. The employment of a worker should not be terminated for misconduct of a kind that under national law or practice would justify termination only if repeated on one or more occasions unless the employer has given the worker appropriate written warning.

28. The employment of a worker should not be terminated for unsatisfactory performance unless the employer has given the worker appropriate instructions and written warning and the worker continues to perform his duties unsatisfactorily after a reasonable period of time for improvement has elapsed.

29. The employer should consult workers' representatives before a final decision is taken on individual cases of termination of employment.

30. The employer should notify a worker in writing of a decision to terminate his employment.

Procedure of Appeal against Termination

31. Provision may be made for recourse to a procedure of conciliation before or during a procedure of appeal against unjustified termination of employment.

32. Efforts should be made by public authorities, the workers' representatives and the organisations of workers and employers to ensure that the workers are fully informed of the possibilities of appeal at their disposal.

33. (1) National laws or regulations may provide that, in case of appeal by a worker against the termination of his employment pursuant to Point 14, the effects of termination may be suspended, pending decision by the competent body on the appeal.

(2) Suspension of the effects of termination pursuant to paragraph (1) may be limited to cases specified by national laws or regulations.

Severance Allowance

34. (1) Irrespective of the availability of social security benefits, a worker whose employment has been terminated should be entitled where appropriate to a severance allowance or other separation benefits, increasing with length of service and the level of wages and paid directly by the employer or by a fund constituted by employers' contributions.

(2) In case of termination for serious misconduct of the kind mentioned in Point 17 (1), the severance allowance or other separation benefits may be withheld.

(3) Entitlement to severance allowance or other separation benefits may be limited to workers whose employment is terminated for economic, technological, structural or similar reasons.

IV. SUPPLEMENTARY PROVISIONS CONCERNING TERMINATION OF EMPLOYMENT FOR ECONOMIC, TECHNOLOGICAL, STRUCTURAL OR SIMILAR REASONS

35. All parties concerned should seek, with the assistance of the competent public authorities where appropriate, to avert or minimise as far as possible termination of employment for reasons of an economic, technological, structural or similar nature, without prejudice to the efficient operation of the undertaking, establishment or service, and to mitigate the adverse effects of any termination of employment for these reasons on the worker or workers concerned.

Consultations on Major Changes in the Undertaking

36. (1) When the employer contemplates the introduction of major changes in production, programme, organisation, structure or technology that are likely to entail terminations, the employer should consult the workers' representatives concerned, as early as possible, inter alia, on the introduction of such changes, the effects they are liable to have and the measures for averting or mitigating the adverse effects of such changes.

(2) To enable the workers' representatives concerned to participate effectively in the consultations referred to in paragraph (1) the employer should supply them in good time with all relevant information on the major changes contemplated and the effects they are likely to have.

(3) For the purposes of this Point the words "the workers' representatives concerned" mean the workers' representatives recognised as such by national law or practice, in conformity with the Workers' Representatives Convention, 1971.

Measures to Avert or Minimise Terminations

37. The measures which should be considered with a view to averting or minimising terminations of employment for reasons of an economic, technological, structural or similar nature, might include, inter alia, restriction of hiring, spreading the workforce reduction over a certain period of time to permit natural reduction of the workforce, internal transfers, training and retraining, voluntary early retirement with appropriate income protection, restriction of overtime and reduction of normal hours of work.

38. Where it is considered that a temporary reduction of normal hours of work would be likely to avert or minimise terminations of employment due to temporary economic difficulties, consideration should be given to partial compensation for loss of wages for the normal hours not worked, by the employer or from public funds such as unemployment insurance funds.

Criteria for Selection for Termination

39. (1) The selection of workers whose employment is to be terminated for reasons of an economic, technological, structural or similar nature should be made according to precise criteria, which should be established wherever possible in advance, and which give due weight both to the interests of the undertaking, establishment or service and to the interests of the workers.

(2) These criteria, their order or priority and their relative weight, should be determined by the methods of implementation referred to in Point 23.

Priority of Rehiring

40. (1) Workers whose employment has been terminated for reasons of an economic, technological, structural or similar nature should be given priority of rehiring if the employer again hires workers with comparable qualifications, subject to their having expressed a desire, within a given period from the time of their leaving, to be rehired.

(2) Such priority of rehiring may be limited to a specified period of time.

(3) The criteria for the priority of rehiring, the question of retention of rights—particularly seniority rights—in case of rehiring, as well as the terms governing the wages of rehired workers, should be decided according to the methods of implementation referred to in Point 23.

Mitigating the Effects of Termination

41. (1) With a view to promoting pursuant to Point 22 the placement in alternative employment of workers affected by termination of employment for reasons of an economic, technological, structural or similar nature, the competent public authority, where possible with the collaboration of the employer and the workers' representatives concerned, should assist the workers affected, as early as possible after being notified of these terminations or being requested to do so, in the search for suitable alternative employment and where appropriate in obtaining training or retraining to this end.

(2) Where possible, the employer should assist the workers affected in the search for suitable alternative employment, for example through direct contacts with other employers.

(3) In assisting the workers affected in obtaining suitable alternative employment or training or retraining, regard may be had to the Human Resources Development Convention and Recommendation, 1975.

42. (1) With a view to mitigating the adverse effects of termination of employment for reasons of an economic, technological, structural or similar nature, consideration should be given to providing income protection in addition to that provided for in Point 19, income protection during any course of training or retraining and partial or total reimbursement of expenses connected with training or retraining and with finding and taking up employment which requires a change of residence.

(2) The competent public authority should consider providing financial resources to support in full or in part the measures referred to in paragraph (1).

V. EFFECT ON EARLIER RECOMMENDATION

43. This Convention and Recommendation should supersede the Termination of Employment Recommendation, 1963.

Discussion by the Conference in Plenary Sitting

The report of the Committee on Termination of Employment and the Conclusions proposed therein were discussed by the Conference in plenary sitting on 22 June 1981.

In submitting the report, Mr. Tsomondo (Government delegate, Zimbabwe; Reporter of the Committee on Termination of Employment) indicated that the Committee had before it the Termination of Employment Recommendation, 1963 (No. 119), as well as an outline of the responses of the international community on the question of the revision of that Recommendation. The aim of the Committee had been to institutionalise the views and values of the different governments, employers' and workers' organisations on the issue of termination of employment in a form that took into account the various national aspirations. The Proposed Conclusions were the specific form of the various national aspirations on the subject. The proposed instruments, namely a Convention supplemented by a Recommendation, were international in spirit but national in form and operation. They were a harmonious blending of three elements: first, the universal principles that underlay any employment relationship, which had therefore to be taken into account at the dissolution of that relationship; second, the specific institutions for implementing these universal principles; and, third, the procedures for the implementation of the dissolution. The international aspect of the proposed instruments consisted of the few but basic and universal principles of justice and equity, which the Committee recognised as not capable of being confined within or outside any national boundaries. These principles therefore represented what each country was doing, or should have been doing, at this stage of the world's social,

political and economic evolution. Apart from the recognised universal principles, there were the institutions for implementing these ideals. Both the proposed Convention and the proposed Recommendation left it entirely up to each nation to take measures for implementation within its own tradition and practice, subject only to two conditions: first, that there be institutions in one form or another, such as courts, government departments, tribunals, arbitrators, to see to it that the universal principles relative to termination were given concrete expression; and, second, that such institutions be impartial in character. No attempt had therefore been made to prescribe the form or structure of the institutions that had to supervise this most sensitive area of the production relationship—termination of employment. The third aspect of the proposed instruments consisted of the procedures for the handling of the termination processes. The variety of procedures for implementing the universal principles was unlimited, yet there might be procedures that could be inherently unjust and destructive of the principles they were supposed to implement. In such rare cases, the instruments listed those few procedural exceptions that could only be harmful to the attainment of even elementary appearances of justice. In all other respects, each sovereign State had been left to define its own procedures as it saw fit. In conclusion, the Reporter commended the Proposed Conclusions as essentially a description of the contemporary belief and practice of the international community.

Mr. Gygas (Employers' adviser, Switzerland; Vice-Chairman of the Committee on Termination of Employment) referred to Part II (c) of the Declaration of Philadelphia which he believed to be still very topical:

Believing that experience has fully demonstrated the truth of the statement in the Constitution of the International Labour Organisation that lasting peace can be established only if it is based on social justice, the Conference affirms that—

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- (c) all national and international policies and measures, in particular those of an economic and financial character, should be judged in this light and accepted only in so far as they may be held to promote and not to hinder the achievement of this fundamental objective.

The Conference had before it Proposed Conclusions with a view to the adoption of a Convention and Recommendation concerning termination of employment at the initiative of the employer. The Employers considered that the reports submitted to the Conference and consequently to the Committee were the fruit of an excellent job of research and study. However, the texts proposed by the Office for consideration were extremely lengthy and complex. Practically nothing was left out in the study of this problem. But in an international instrument it was the major principles that had to be defined and not matters of detail. Now, there were an enormous number of details given in these reports, some of which were not very applicable and others inapplicable in many countries. An international instrument should be capable of general application, otherwise it would remain a dead letter. The Employers did not believe that they had come to Geneva to draft instruments which would gather dust in the drawers of the ILO or in the drawers of some ministry and which could not be applied because there was no general consensus. The Employers considered that the text, as examined and prepared, could be improved; indeed, it had to be thoroughly reviewed and reformulated. A Convention must be a kind of canvas on which many touches of paint could be put,

according to the practice of individual States. A good deal could be said in this connection as regards the text of the Convention. In particular, the Convention applied rules governing dismissal to all employment contracts, whether for a specified or an unspecified period of time, although, legally, employment contracts for a specified period of time came to an end *ipso facto* at the end of the contract. There could therefore be no question, for any reason whatsoever, of deeming them to be contracts for an unspecified period of time. It was also proposed to apply this Convention to contracts for a trial period or casual labour. This went much too far. While certain rules might be applied within the framework of a Recommendation but not within that of a Convention, several points need to be clarified. Consideration might be given to covering contracts for an unspecified period of time in a flexible way. The problems which the instrument posed for individual contracts and individual dismissal might be examined. There was also perhaps matter for consideration in connection with collective dismissals. However, the whole question had to be approached with great flexibility. He considered that the text before the Conference was much too restrictive, whether it was a Convention or a Recommendation. It was also much too technical. Individual States had to be left the freedom to decide how the instrument should be applied. The Conference, while it should be ready to improve the text of Recommendation No. 119 of 1963, should remain very flexible. The text proposed for approval had to be very thoroughly overhauled. For these reasons, the Employers would vote against these texts. Employers', Workers' and Government representatives had serious responsibilities to ensure that an instrument could be applied. It was useless to prepare a text which would never be ratified. In the vote in the Committee on the form to be taken by the instruments, 17 Governments had been in favour of a Recommendation alone, 29 against a Recommendation and there was 1 abstention. This represented 47 votes, while there were 67 Government members. The Employers were in favour of a Recommendation alone and the Workers were in favour of the two instruments. When deciding on the form and the content, especially the content, of an instrument, it was absolutely essential, if the members wanted to do a serious job, that each one should take a position for or against or should abstain, but that the views of everybody should be made known. The Employers' group would ask for a vote on the Proposed Conclusions. At this particular stage, the Employers could not accept the texts in their present form. Serious thought needed to be given to these issues for next year's session, in particular to the problems which arose in all countries, so that next year a text acceptable to a great majority of States, to the Employers and to the Workers could be produced.

Mr. Mehta (Workers' delegate, India; Vice-Chairman of the Committee on Termination of Employment) indicated that the Workers' group was in favour of adopting this report. A large number of amendments had been proposed but very few had received the necessary support. The text proposed in the Office report was therefore adopted with only a few modifications. The Workers' group felt strongly not only that the contents of Recommendation No. 119 should be updated but also that its form should be changed. Many developments had taken place in national law and practice regarding the content of protection in case of termination of employment at the initiative of the employer. Other international standards which provided protection against termination of employment had been adopted during this period. It should therefore not be difficult to find a common denominator of

minimum protection which could be used as the basis of a consensus. In the Workers' opinion, the Proposed Conclusions reflected these fundamental principles. The Workers' group felt that these proposals did not go far enough. However, they were aware that at international fora it was difficult to get all they wanted. They therefore accepted these proposals as a fair compromise of all the views that were expressed in the Committee. There was urgent need for this Convention. Due to recession and technological changes, even the developed countries were facing problems of massive redundancies and consequent unemployment, problems of which hitherto only the developing countries were painfully aware. It was therefore very necessary that legislation be provided to protect the workers against arbitrary discharge and dismissal and to provide them with alternative employment or at least adequate compensation. The problem of unemployment required humane treatment. The old concept of the divine right of the employer to hire and fire, as and when he liked, had to give way to one that restrained him from exercising that right in an arbitrary manner. It was time for employers to realise that changing times demand a new attitude to the concept of employer-employee relationships, and to moderate their opposition to all progressive measures.

Mr. Weinberg (Employers' adviser, United States) thought that a special word was appropriate on behalf of the United States business community with respect to this particular proposal, because of the impact that this could have on the far-ranging United States investments throughout the world, which have in the past been a significant instrument for development. He could think of no greater disincentive to investment than this particular document. It was for this reason that there was nearly complete unanimity in the Employers' group not only on particular paragraphs but on the totality of the instrument—that is, complete unanimity in opposition. All legitimate businessmen realised that proper and fair treatment of their workforce was the wisest policy. He was not speaking in a moral sense; this was only good and effective business. Employers could not run an effective profit-making enterprise without a stable workforce. This was evident. But employers had to have the flexibility to control their operations. This proposal severely curtailed that flexibility. A few examples could be given. The burden of proof with respect to a termination was shifted to the employer. An employer had to prove that a valid reason had occurred for a termination to take place. The valid reasons were specified in this document, going far beyond the national law of most countries. And, if the worker wished to contest the termination, in effect an adversary procedure had been established. This effectively told the employer that he had to be extremely cautious before a termination could occur on an individual level, because, no matter what he did, it would be brought to litigation in terms that were established that were not in his interest. With respect to mass terminations, the document proposed a system of consultation with workers' representatives quite similar to what has already been proposed before the Commission of the European Communities. This has already been opposed by the representatives of European employers, as well as by the United States business community through the United States Council. In addition, the document proposed a system for priority of rehiring. This section in particular read as if it were part of an international collective bargaining agreement. Those countries that already had legislation similar to this were experiencing a decline in capital formation. Part of this was a result of United States and other employers' knowing before they went

into a country that, in effect, their hands would be tied behind their backs. The greatest support for job security—and that, essentially, was the objective of this document—was capital formation and the ability for employers to obtain an adequate return on their investment. Job security was not a product of labour codes and restrictions on management, although to some extent they were necessary. But once they crossed the bridge of discouraging investment, job security suffered because the jobs would not be created in the first place, or those that had been created would move elsewhere. This bridge had been crossed with this proposal.

Mr. Peterson (Government adviser, United States) observed that the common objective of the Committee in considering the subject of termination of employment at the initiative of the employer had been first to improve the stability and quality of employment through sound dismissal policies, and, second, to strengthen the systems of protection of individual and group rights. The United States believed that in the final analysis this was best accomplished through less government intervention in the free market-place, in attacking the root causes of employment and economic problems, rather than just coping with short-term factors or symptoms. The most important contribution that they could make to global economic health was to revitalise whole economies, to restore non-inflationary growth and to stimulate productive private investment. Indeed, he believed that job creation, rather than job termination, was in their mutual long-term interests. In producing sound dismissal policies his Government believed that only a Recommendation could continue to enjoy the universal influence accorded to Recommendation No. 119, adopted in 1963. Only by providing for considerable flexibility in the means of implementation would an ILO instrument obtain wide acceptance and influence, given the great variety in legal traditions, national legislation and collective bargaining systems in existence. Here again the key was to be found in reliance on private arrangements to solve private controversies, and in the creation of an environment of private co-operation rather than adversarial confrontation. The report adopted by the Committee accurately reflected its deliberations, though his Government disagreed with its emphasis on a proposed Convention. He hoped that the documents to be prepared by the Secretariat before the 1982 discussion would truly reflect the differences of opinion expressed in the course of the debate. In the interim, he urged a tripartite review of the validity of these 1981 proposals, a reassessment of the appropriateness of the proposed instruments, and consideration of whether or not these provisions would in fact accomplish their desired ends, when measured against the particularity of individual national systems, laws and understandings. He looked forward to taking part in that dialogue.

Mr. Händler (Government delegate, Federal Republic of Germany) very much welcomed the fact that this Conference should be considering the important question of protection against dismissal of workers. In his country this subject was one which had considerable political topicality. The appeal by the Employers' delegate that all delegations should consider the subject very carefully was appropriate and in his country was certainly valid. In his country particular attention was paid to the rules that governed the legal consequences of unjustified dismissals. Here there were two possibilities; either the employer was bound to reinstate a worker who was unjustly dismissed, or the employer was required to pay him compensation in the event of unjustified dismissal. According to the

experience of his country, the interests of the worker were better guaranteed when the employer was bound to re-employ a worker who had been unjustly dismissed. In any case, there was a need to have carefully balanced solutions in order to make use of all the possibilities that should be offered in modern legislation. He would welcome it very much if this particular question could be taken up again next year and gone into in greater detail, because he had the impression that the present text in this field was open to improvement.

Mr. Gouliaev (Government adviser, USSR) proposed that the documents submitted by the Committee be supported and that a decision be taken in favour of international instruments in the form of a Convention supplemented by a Recommendation. Having regard to the very serious worsening of the problem of employment, particularly among young people, and the growth of unemployment, it would be most timely for the International Labour Organisation to adopt a new international instrument on this question. Recommendation No. 119 adopted in 1963 had played a positive role. However, with the worsening of the problem of employment and the growth of unemployment it had become essential to increase the rights of workers to employment. According to the International Labour Office, within two years the number of unemployed would increase considerably. The adoption of a Convention supplemented by a Recommendation would contribute to combating unemployment and it would be a concrete step by the International Labour Organisation towards the achievement of the objectives which the ILO had itself proclaimed, that is, to guarantee full employment by the year 2000. He was convinced that the adoption of such a decision by the Conference would provide workers with better legal guarantees and the right to work which was recognised by international standards of the United Nations and even by the constitutions of a number of States.

Mr. Ahmad (Workers' delegate, Pakistan) associated himself with what had been said by the spokesman of the Workers' group. The subject-matter of the proposals concerned the basic rights of the workers—that is, those workers who put their lives into an enterprise and were devoted to the well-being and development of that industry or undertaking. They certainly had a right in this age of freedom to know why their services were being dispensed with. This was the age of reason. The Proposed Conclusions with a view to a Convention outlined the justifications for a worker's employment to be terminated. The employer was required only to give a written statement of the reason the worker's services had been dispensed with. The age of master and servant had gone. This was the age of social partners in which workers, employers and governments all contributed. The worker, being a very vital and important part of production, certainly had a right to know why his services had been dispensed with. This was also in accordance with the principle of social justice, because the sense of belonging and of participating was equally required for the development of any undertaking. Where this element was negated, that spirit was denied. This new standard set out to promote that principle. Since 1963 there had been a need to adopt these measures, in conformity with the ILO Constitution and the Declaration of Philadelphia. The workers had a basic right to have a Convention on the subject. This report should be adopted and next year a Convention and a Recommendation had to be adopted. This Convention should be applicable to all types of workers, including public servants who were in government employment, who should not be open to arbitrary dismissal.

Mr. Abdul Latiff (Government delegate, Malaysia; Chairman of the Committee on Termination of Employment) referred to the report of the Committee on Termination of Employment, which had been submitted to the Conference by the Reporter. As stated by the Reporter, the Committee had completed its detailed discussion on the topic, point by point, and had proposed a Convention supplemented by a Recommendation, in spite of divergent views on the form of the instruments. The subject under discussion by the Committee was indeed complex and intricate, but its very nature provided the necessary stimulation to overcome successfully the challenges confronting the Committee. An instrument related to termination of employment at the initiative of the employer was particularly significant at a time when the world's history was punctuated with political instability, economic recession and unprecedented unemployment, both in developed and developing nations. In such difficult times workers throughout the world needed greater security from the economic uncertainties surrounding their tenure of employment. With the growing scarcity of jobs, workers increasingly need protection, particularly against termination of employment at the initiative of the employer. Accordingly, the discussions did not cover other methods of termination, such as termination by the worker or by mutual agreement. Many countries had in recent years focused considerable attention on security of employment. The law and practice in this area varied from country to country, depending on their economic and political structures and level of development. It was not surprising, therefore, that divergences of perception emerged during the discussions. The numerous amendments introduced by the members of the Committee illustrated the seriousness with which they viewed this instrument, while the numerous meetings held in the late evenings were evidence of the importance given by the members of the Committee to being associated with well thought out and deliberated instruments.

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There being no further speakers in the discussion and no objection being raised, the Conference adopted the report.

The Proposed Conclusions, put to the vote as requested by the Employers, were adopted by 232 votes in favour, 58 against, with 13 abstentions.

The Conference also adopted the resolution to place on the agenda of the next ordinary session of the Conference an item entitled "Termination of employment at the initiative of the employer".

During the closing speeches of the Conference, on 24 June 1981, Mr. Oechsli (Employers' delegate, France; Chairman of the Employers' group) stated that the Conclusions on termination of employment at the initiative of the employer had created apprehensions in the Employer ranks. Of course, the Employers fully understood that differences of opinion should be overcome by democratic votes and they accepted being defeated when it came to the count. But when one of the constituent groups of the ILO was systematically defeated with regard to essential points, a problem existed and cast doubt on the credibility of ILO standards. The Employers at this Conference had never systematically opposed the drafting of Conventions and Recommendations and most of these instruments had been adopted with their support. These difficulties had, of course, something to do with

the material conditions in which delegates had had to work. When a committee was faced with more than 200 amendments, had more than 200 members and had to work in the conditions he had alluded to, there simply was no time for negotiation and the search for compromise. When votes were taken without any attempt to understand the motives of the other side, one could not hope to obtain results which would do justice to the legitimate preoccupations of each. This was no longer tripartism because tripartism consisted of social dialogue. Perhaps the way in which Conference discussions were prepared should also be reviewed. The report contained only the replies of a minority of governments. In fact, the preliminary consultations were no longer suitable for a Conference as big as this. He had felt obliged to make these comments because of his attachment to the ILO and its standard-setting activities and hoped that they would be understood in this sense and in good faith.

CHAPTER II

PROPOSED TEXTS

The texts of the proposed Convention and proposed Recommendation at the end of this chapter are based on the Conclusions adopted by the Conference following the first discussion at its 67th Session. Apart from the changes in presentation, several drafting changes have been introduced which are commented on below. The commentary also refers to certain substantive matters in connection with the proposed texts.

In preparing their comments, governments may also wish to take into account the various statements made in the discussions at the Conference in plenary sitting, including the closing sitting, reproduced in Chapter I.

Proposed Convention

With respect to drafting matters, Point 6 (2) of the Conclusions adopted by the Conference makes provision for the possible exclusion from the Convention of certain categories of employed persons. The wording of this provision was derived from similar provisions in certain other international labour Conventions, providing that the extent to which the instrument should apply to the persons concerned was to be determined by national methods of implementation. As the discussions of the Committee on Termination of Employment made clear, certain of its members had difficulties with the drafting of this provision. It has accordingly been thought appropriate to redraft this provision to express more directly the intent to authorise member States to exclude the categories of employed persons concerned from all or some of the provisions of the proposed instrument (see Article 2, paragraph 2, of the proposed Convention); this has also been done in the proposed Recommendation (Paragraph 2 (2)).

Point 14 (2) of the Conclusions is the result of an attempt by the Drafting Committee of the Committee on Termination of Employment to clarify the drafting of an amendment adopted by the Committee. The purpose of that amendment was to ensure that in countries with systems of prior authorisation of termination, the right of appeal against termination could be varied where a termination was authorised. It has been thought appropriate to redraft this provision in a somewhat more general manner, to refer to authorisation by the competent authority (whether an administrative or other authority) and to refer to variation of the application of the provision in the proposed instrument regarding the right of appeal, rather than to variations of the exercise of the right of appeal (Article 10, paragraph 2, of the proposed Convention).

Point 16 of the Conclusions, which embodies another amendment adopted by the Committee, concerns the remedies available to the competent bodies if they find termination to be unjustified. Under this provision, as understood by the Office, the competent bodies need not be empowered to declare such a termination to be invalid or to order or propose reinstatement, but if they are not so empowered or if being so empowered they do not find it possible so to act, they

must be empowered to order the payment of adequate compensation or other appropriate relief. The drafting of this provision has been modified in order better to express this intention, by a fuller statement of the conditions that would oblige a Member to empower the bodies to order compensation. The word "cannot" has been replaced by the words "are not empowered or do not find it possible" and the reference to proposing reinstatement has been expanded to include ordering and proposing reinstatement, since of those countries making provision for reinstatement most provide that it may be ordered by the competent body, while few provide for it to be proposed. These changes do not affect the obligation imposed by the provision, which concerns the power to order compensation, but give a more complete statement of the powers in the absence of which the obligation will apply (see Article 12 of the proposed Convention).

Point 17 (1) of the Conclusions refers to serious misconduct of such a nature that it would be unreasonable to require the employer to continue the worker in his employment during the notice period. This was accepted by the Committee on the understanding that this provision did not distinguish between two categories of serious misconduct, but that it essentially defined the concept of serious misconduct itself as used in the instrument. The wording of this provision has been slightly modified to make this clear (see Article 13, paragraph 1, of the proposed Convention).

Point 17 (2) of the Conclusions refers to time off from work "taken at times that are convenient to both parties as agreed by them". The words "as agreed by them" have been deleted as redundant, agreement between the parties being implicit in the determination of times that are convenient to both (see Article 13, paragraph 2, of the proposed Convention).

Point 19 (3) of the Conclusions refers to the withholding of severance allowance or other separation benefits in case of serious misconduct. The drafting of that provision could be read either as directly authorising employers to withhold such allowances under such circumstances or as authorising national methods of application to make provision for the loss of entitlement to such allowances. Since in some countries such allowances are payable even in case of serious misconduct, while in others they may be withheld in case of serious misconduct, it would seem more appropriate to conceive of this provision as authorising national methods of implementation to provide for a loss of entitlement to severance allowance. The provision has been reworded to make this clear (Article 15, paragraph 3, of the proposed Convention).

In Point 21 (1), (3) and (4) of the Conclusions the expression "competent public authority" has been shortened to "competent authority", since the word "public" seems to be redundant (See Article 17, paragraphs 1, 3 and 4 of the proposed Convention).

Several major changes of substance were made to the Conclusions proposed by the Office during the discussion at the 67th Session of the Conference.

One of these relates to the burden of proof in cases of appeal against termination of employment. Point 32 of the Conclusions proposed by the Office, contained in the proposed Conclusions with a view to a Recommendation, had provided that in appeals proceedings, a worker should not bear the burden of proving that the termination was unjustified and that this could be effected either by placing the burden on the employer to prove that the termination was for a valid

reason or by empowering the competent appeals body to investigate the facts and circumstances of the case. This Point was replaced by a provision included in the Conclusions with a view to a Convention (Point 15 (2) thereof), which places the burden of proving that the termination was for a valid reason on the employer (see Article 11, paragraph 2, of the proposed Convention).

The second major change concerns the remedies to which recourse may be had by the competent appeals body if it finds a termination to be unjustified. Point 16 of the Conclusions proposed by the Office had provided for the competent bodies to be empowered, if they found reinstatement to be practicable, to nullify the termination or order reinstatement and to order payment of compensation if they found reinstatement not to be practicable. This Point was replaced by Point 16 of the Conclusions, which provides for these bodies to be empowered to order the payment of compensation if they cannot declare the termination to be invalid or propose reinstatement. As redrafted for the reasons explained above, it is included in Article 12 of the proposed Convention.

The third major change consisted of the deletion of Point 20 (2) of the Proposed Conclusions of the Office, which authorised member States to limit the obligation to consult workers' representatives in case of terminations for reasons of an economic, technological, structural or similar nature to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.

The fourth major change consisted of the insertion of a new provision as Point 32 of the Conclusions adopted by the Conference requiring efforts to be made by public authorities, the workers' representatives and the organisations of workers and employers to ensure that workers are fully informed of the possibilities of appeal at their disposal (Paragraph 11 of the proposed Recommendation).

Proposed Recommendation

Paragraph 2 (2) of the proposed Recommendation, regarding possible exclusions from the scope of the instrument, is patterned on Article 2, paragraph 2, of the proposed Convention. The comments above regarding the drafting of that provision apply also to this subparagraph. This subparagraph refers to the possibility of excluding certain kinds of employment relationships, such as those established for a specified period or of a casual nature. Since it refers to the nature of the employment relationship, it has been thought appropriate to include a provision in the proposed Recommendation authorising their exclusion. On the other hand, it has not been thought necessary to include in the proposed Recommendation provisions similar to those included in Article 2, paragraphs 3 and 4, of the proposed Convention, which refer to the possible exclusion of workers whose terms and conditions of employment are governed by special arrangements which as a whole provided protection at least equivalent to that afforded under the Convention and other limited categories of workers in respect of which special problems of a substantial nature arise. As in any case the Recommendation cannot become binding, Members would be free to exclude from its provisions, if they were applied, such categories of workers.

The drafting of clause (c) of Point 25 (2) of the Conclusions, concerning contracts of employment for a specified period of time, when renewed on one or

more occasions, has been aligned with that of clause (b) (see Paragraph 3 (2) (c) of the proposed Recommendation).

Point 34 (2) of the Conclusions, which makes provision for withholding of severance allowance in case of termination for serious misconduct, has been redrafted in the same way, and for the same reasons, as the similar provision in the proposed Convention (see above) (see Paragraph 13 (2) of the proposed Recommendation).

Proposed Convention concerning Termination of Employment at the Initiative of the Employer

The General Conference of the International Labour Organisation,
Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-eighth Session on 2 June 1982,
and

Noting the existing international standards contained in the Termination of Employment Recommendation, 1963, and

Noting that since the adoption of the Termination of Employment Recommendation, 1963, significant developments have occurred in the law and practice of many member States on the questions covered by that Recommendation, and

Considering that these developments have made it appropriate to adopt new international standards on the subject, particularly having regard to the serious problems in this field resulting from the economic difficulties and technological changes experienced in recent years in many countries,

Having decided upon the adoption of certain proposals with regard to termination of employment at the initiative of the employer, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this day of June of the year one thousand nine hundred and eighty-two the following Convention, which may be cited as the Termination of Employment Convention, 1982:

PART I. METHODS OF IMPLEMENTATION, SCOPE AND DEFINITIONS

Article 1

The provisions of this Convention shall, in so far as they are not otherwise made effective by means of collective agreements, arbitration awards or court decisions or in such other manner as may be consistent with national practice, be given effect by laws or regulations.

Article 2

1. This Convention applies to all branches of economic activity and to all employed persons.

2. A Member may exclude the following categories of employed persons from all or some of the provisions of this Convention:

- (a) workers engaged under a contract of employment for a specified period of time or a specified task;
- (b) workers serving a period of probation or a qualifying period of employment, determined in advance and of reasonable duration;
- (c) workers engaged on a casual basis for a short period.

3. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof categories of employed persons whose terms and conditions of employment are governed by special arrangements, which as a whole provide protection that is at least equivalent to the protection afforded under the Convention.

4. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof other limited categories of employed persons in respect of which special problems of a substantial nature arise.

5. Each Member which ratifies this Convention shall list in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraphs 3 and 4 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice regarding the categories excluded, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.

Article 3

For the purpose of this Convention the terms “termination” and “termination of employment” mean termination of employment at the initiative of the employer.

PART II. STANDARDS OF GENERAL APPLICATION

DIVISION A. JUSTIFICATION FOR TERMINATION

Article 4

The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.

Article 5

The following, inter alia, shall not constitute valid reasons for termination:

- (a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;
- (b) seeking office as, or acting or having acted in the capacity of, a workers' representative;

- (c) the filing in good faith of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations ;
- (d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin ;
- (e) absence from work during maternity leave.

Article 6

Temporary absence from work because of duly certified illness or injury shall not constitute a valid reason for termination, unless the operational requirements of the undertaking, establishment or service make it necessary to replace the worker concerned on a permanent basis.

DIVISION B. PROCEDURE PRIOR TO OR AT THE TIME OF TERMINATION

Article 7

1. The employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is afforded a hearing by the employer at which he is given an opportunity to defend himself against the allegations made.

2. A worker shall be entitled to be assisted at such a hearing by another person ; this right may be limited, by the methods of implementation referred to in Article 1 of this Convention, to assistance by another worker in the undertaking or a trade union representative.

Article 8

The employer shall be deemed to have waived his right to terminate the employment of a worker for misconduct if he has failed to do so within a reasonable period of time after he has knowledge of the misconduct.

Article 9

1. A worker who has been notified of termination of employment or whose employment has been terminated shall be entitled to receive, on request, a written statement from his employer of the reason or reasons for the termination.

2. The provisions of paragraph 1 of this Article need not be applied in the case of collective termination for the reasons referred to in Articles 16 and 17 of this Convention, if the procedure provided for therein is followed.

DIVISION C. PROCEDURE OF APPEAL AGAINST TERMINATION

Article 10

1. A worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator.

2. Where termination has been authorised by a competent authority the application of paragraph 1 of this Article may be varied according to national law and practice.

3. A worker may be deemed to have waived his right to appeal against the termination of his employment if he has not exercised that right within a reasonable period of time after termination.

Article 11

1. The bodies referred to in Article 10 of this Convention shall be empowered to examine the reasons given for the termination and the other circumstances relating to the case and to render a decision on whether the termination was justified.

2. The burden of proving that the termination was for a valid reason shall rest on the employer.

3. In cases of termination stated to be for reasons based on the operational requirements of the undertaking, establishment or service, the bodies referred to in Article 10 of this Convention shall be empowered to determine whether the termination was indeed for these reasons, but the extent to which they shall also be empowered to decide whether these reasons are sufficient to justify that termination shall be determined by the methods of implementation referred to in Article 1 of this Convention.

Article 12

If the bodies referred to in Article 10 of this Convention find that termination is unjustified and if they are not empowered or do not find it possible, in accordance with national law and practice, to declare the termination invalid and/or order or propose reinstatement of the worker, they shall be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate.

DIVISION D. PERIOD OF NOTICE AND CERTIFICATE OF EMPLOYMENT

Article 13

1. A worker whose employment is to be terminated shall be entitled to a reasonable period of notice or compensation in lieu thereof, unless he is guilty of serious misconduct, that is, misconduct of such a nature that it would be unreasonable to require the employer to continue his employment during the notice period.

2. During the period of notice the worker shall, for the purpose of seeking other employment, be entitled to a reasonable amount of time off without loss of pay, taken at times that are convenient to both parties.

Article 14

A worker whose employment has been terminated shall be entitled to receive, on request, a certificate from the employer specifying the dates of his engagement and termination of his employment and the type or types of work on which he was

employed, but containing nothing unfavourable to the worker; on request, the worker may also be given another certificate providing an evaluation of his conduct or performance.

DIVISION E. SEVERANCE ALLOWANCE AND OTHER INCOME PROTECTION

Article 15

1. A worker whose employment has been terminated shall be entitled to—
 - (a) a severance allowance or other separation benefits, increasing with length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions; or
 - (b) benefits from unemployment insurance or assistance or other forms of social security, such as old-age or invalidity benefits, under the normal conditions to which such benefits are subject; or
 - (c) a combination of such allowance and benefits.

2. A worker who does not fulfil the qualifying conditions for unemployment insurance or assistance under a scheme of general scope need not be paid any allowance or benefit referred to in paragraph 1, subparagraph (a) or (c), of this Article solely because he is not receiving a benefit under paragraph 1, subparagraph (b).

3. Provision may be made by the methods of implementation referred to in Article 1 of this Convention for loss of entitlement to the allowance or benefits referred to in paragraph 1, subparagraph (a), of this Article in case of termination for serious misconduct as defined in Article 13, paragraph 1, of this Convention.

PART III. SUPPLEMENTARY PROVISIONS CONCERNING TERMINATION OF EMPLOYMENT FOR ECONOMIC, TECHNOLOGICAL, STRUCTURAL OR SIMILAR REASONS

DIVISION A. CONSULTATION OF WORKERS' REPRESENTATIVES

Article 16

1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer shall consult the workers' representatives concerned as early as possible on all appropriate questions, including measures to be taken to avert or minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.

2. The employer shall notify the workers' representatives concerned with a view to the consultations referred to in paragraph 1 of this Article sufficiently before carrying out the terminations to allow effective consultations to take place.

3. To enable the workers' representatives concerned to participate effectively in the consultations referred to in paragraph 1, the employer shall supply them in good time with all relevant information, including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out.

4. For the purposes of this Article the term “the workers’ representatives concerned” means the workers’ representatives recognised as such by national law or practice, in conformity with the Workers’ Representatives Convention, 1971.

DIVISION B. NOTIFICATION TO THE COMPETENT AUTHORITY

Article 17

1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, he shall notify the competent authority thereof as early as possible, giving all relevant information, including a written statement of the reasons for the terminations, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out.

2. National laws or regulations may limit the applicability of paragraph 1 to cases in which the number of workers whose termination of employment is contemplated is at least a specific number or percentage of the workforce.

3. Where appropriate, the competent authority shall assist the parties in seeking solutions to the problems raised by the terminations contemplated.

4. The employer shall notify the competent authority of the terminations referred to in paragraph 1 of this Article a minimum period of time before carrying out the terminations, such period to be specified by national laws or regulations.

DIVISION C. MITIGATING THE EFFECTS OF TERMINATION

Article 18

In the event of terminations of employment for reasons of an economic, technological, structural or similar nature, the placement of the workers affected in suitable alternative employment as soon as possible, with training or retraining where appropriate, shall be promoted by means suitable to national circumstances.

Proposed Recommendation concerning Termination of Employment at the Initiative of the Employer

The General Conference of the International Labour Organisation,
Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-eighth Session on 2 June 1982,
and

Having decided upon the adoption of certain proposals with regard to termination of employment at the initiative of the employer, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Termination of Employment Convention, 1982,

adopts this day of June of the year one thousand nine hundred and eighty-two the following Recommendation, which may be cited as the Termination of Employment Recommendation, 1982:

I. METHODS OF IMPLEMENTATION, SCOPE AND DEFINITIONS

1. The provisions of this Recommendation may be applied by national laws or regulations, collective agreements, works rules, arbitration awards or court decisions or in such other manner consistent with national practice as may be appropriate under national conditions.

2. (1) This Recommendation applies to all branches of economic activity and to all employed persons.

(2) A Member may exclude the following categories of employed persons from all or some of the provisions of this Recommendation:

- (a) workers engaged under a contract of employment for a specified period of time or a specific task;
- (b) workers serving a period of probation or a qualifying period of employment, determined in advance and of reasonable duration;
- (c) workers engaged on a casual basis for a short period.

3. (1) There should be adequate safeguards against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from the Termination of Employment Convention, 1982, and this Recommendation.

(2) To this end, for example, provision may be made for one or more of the following:

- (a) limiting recourse to contracts for a specified period of time to cases in which, owing to the nature of the work to be effected or to the circumstances under which it is to be effected, the employment relationship cannot be of an indeterminate duration;
- (b) deeming contracts for a specified period of time, other than in the cases referred to in clause (a) of this subparagraph, to be contracts of employment of indeterminate duration;
- (c) deeming contracts for a specified period of time, when renewed on one or more occasions, to be contracts of employment of indeterminate duration.

4. For the purpose of this Recommendation the terms "termination" and "termination of employment" mean termination of employment at the initiative of the employer.

II. STANDARDS OF GENERAL APPLICATION

Justification for Termination

5. In addition to the grounds referred to in Article 5 of the Termination of Employment Convention, 1982, the following should not constitute valid reasons for termination:

- (a) age, subject to national law and practice regarding retirement at or after the age normally qualifying for an old-age benefit;

- (b) absence from work due to compulsory military service or other civic obligations.

Procedure Prior to or at the Time of Termination

6. The employment of a worker should not be terminated for misconduct of a kind that under national law or practice would justify termination only if repeated on one or more occasions, unless the employer has given the worker appropriate written warning.

7. The employment of a worker should not be terminated for unsatisfactory performance unless the employer has given the worker appropriate instructions and written warning and the worker continues to perform his duties unsatisfactorily after a reasonable period of time for improvement has elapsed.

8. The employer should consult workers' representatives before a final decision is taken on individual cases of termination of employment.

9. The employer should notify a worker in writing of a decision to terminate his employment.

Procedure of Appeal against Termination

10. Provision may be made for recourse to a procedure of conciliation before or during appeal proceedings against unjustified termination of employment.

11. Efforts should be made by public authorities, workers' representatives and organisations of workers and employers to ensure that workers are fully informed of the possibilities of appeal at their disposal.

12. (1) National laws or regulations may provide that, in case of appeal by a worker against the termination of his employment pursuant to Article 10 of the Termination of Employment Convention, 1982, the effects of termination may be suspended, pending decision by the competent body on the appeal.

(2) Suspension of the effects of termination pursuant to subparagraph (1) of this Paragraph may be limited to cases specified by national laws or regulations.

Severance Allowance

13. (1) Irrespective of the availability of social security benefits, a worker whose employment has been terminated should be entitled where appropriate to a severance allowance or other separation benefits, increasing with length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions.

(2) Provisions may be made by the methods of implementation referred to in Paragraph 1 of this Recommendation for loss of entitlement to the allowance or benefits referred to in subparagraph (1) of this Paragraph in case of termination for serious misconduct as defined in Article 13, paragraph 1, of the Termination of Employment Convention, 1982.

(3) Entitlement to severance allowance or other separation benefits may be limited to workers whose employment is terminated for economic, technological, structural or similar reasons.

III. SUPPLEMENTARY PROVISIONS CONCERNING TERMINATION OF EMPLOYMENT FOR ECONOMIC, TECHNOLOGICAL, STRUCTURAL OR SIMILAR REASONS

14. All parties concerned should seek, with the assistance of the competent authorities where appropriate, to avert or minimise as far as possible termination of employment for reasons of an economic, technological, structural or similar nature, without prejudice to the efficient operation of the undertaking, establishment or service, and to mitigate the adverse effects of any termination of employment for these reasons on the worker or workers concerned.

Consultations on Major Changes in the Undertaking

15. (1) When the employer contemplates the introduction of major changes in production, programme, organisation, structure or technology that are likely to entail terminations, the employer should consult the workers' representatives concerned as early as possible, inter alia, on the introduction of such changes, the effects they are likely to have and the measures for averting or mitigating the adverse effects of such changes.

(2) To enable the workers' representatives concerned to participate effectively in the consultations referred to in subparagraph (1) of this Paragraph, the employer should supply them in good time with all relevant information on the major changes contemplated and the effects they are likely to have.

(3) For the purposes of this Paragraph the term "the workers' representatives concerned" means the workers' representatives recognised as such by national law or practice, in conformity with the Workers' Representatives Convention, 1971.

Measures to Avert or Minimise Terminations

16. The measures which should be considered with a view to averting or minimising terminations of employment for reasons of an economic, technological, structural or similar nature might include, inter alia, restriction of hiring, spreading the workforce reduction over a certain period of time to permit natural reduction of the workforce, internal transfers, training and retraining, voluntary early retirement with appropriate income protection, restriction of overtime and reduction of normal hours of work.

17. Where it is considered that a temporary reduction of normal hours of work would be likely to avert or minimise terminations of employment due to temporary economic difficulties, consideration should be given to partial compensation for loss of wages for the normal hours not worked, by the employer or from public funds such as unemployment insurance funds.

Criteria for Selection for Termination

18. (1) The selection of workers whose employment is to be terminated for reasons of an economic, technological, structural or similar nature should be made according to precise criteria, which should be established wherever possible in advance, and which give due weight both to the interests of the undertaking, establishment or service and to the interests of the workers.

(2) These criteria, their order of priority and their relative weight, should be determined by the methods of implementation referred to in Paragraph 1 of this Recommendation.

Priority of Rehiring

19. (1) Workers whose employment has been terminated for reasons of an economic, technological, structural or similar nature, should be given priority of rehiring if the employer again hires workers with comparable qualifications, subject to their having, within a given period from the time of their leaving, expressed a desire to be rehired.

(2) Such priority of rehiring may be limited to a specified period of time.

(3) The criteria for the priority of rehiring, the question of retention of rights—particularly seniority rights—in case of rehiring, as well as the terms governing the wages of rehired workers, should be determined according to the methods of implementation referred to in Paragraph 1 of this Recommendation.

Mitigating the Effects of Termination

20. (1) With a view to promoting, pursuant to Article 18 of the Termination of Employment Convention, 1982, the placement in alternative employment of workers affected by termination of employment for reasons of an economic, technological, structural or similar nature, the competent authority, where possible with the collaboration of the employer and the workers' representatives concerned, should assist the workers affected, as early as possible after being notified of these terminations or being requested to do so, in the search for suitable alternative employment and where appropriate in obtaining training or retraining to this end.

(2) Where possible, the employer should assist the workers affected in the search for suitable alternative employment, for example through direct contacts with other employers.

(3) In assisting the workers affected in obtaining suitable alternative employment or training or retraining, regard may be had to the Human Resources Development Convention and Recommendation, 1975.

21. (1) With a view to mitigating the adverse effects of termination of employment for reasons of an economic, technological, structural or similar nature, consideration should be given to providing income protection in addition to that provided for in Article 15 of the Termination of Employment Convention, 1982, income protection during any course of training or retraining and partial or total reimbursement of expenses connected with training or retraining and with finding and taking up employment which requires a change of residence.

(2) The competent authority should consider providing financial resources to support in full or in part the measures referred to in subparagraph (1) of this Paragraph.

IV. EFFECT ON EARLIER RECOMMENDATION

22. This Recommendation and the Termination of Employment Convention, 1982, supersede the Termination of Employment Recommendation, 1963.