International Labour Conference

Provisional Record

Eighty-eighth Session, Geneva, 2000

20

Fourth item on the agenda: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95)

Report of the Committee on Maternity Protection

1. The Committee was originally composed of 196 members (95 Government members, 41 Employer members and 60 Worker members). To achieve equality of voting strength, each Government member entitled to vote was allotted 2,379 votes, each Employer member 5,978 votes and each Worker member 3,822 votes. The composition of the Committee was modified ten times during the session and the number of votes attributed to each member adjusted accordingly.[1]

2. The Committee elected its Officers as follows:

Chairperson: Ms. A. Andersen (Government member, Denmark) at its first sitting;

[1] The modifications were as follows:

(a) 1 June: 198 members (98 Government members with 2,379 votes each, 39 Employer members with 5,978 votes each and 61 Worker members with 3,822 votes each);

(b) 2 June (morning): 192 members (99 Government members with 2,072 votes each, 37 Employer members with 5,544 votes each and 56 Worker members with 3,663 votes each);

(c) 2 June (afternoon): 191 members (99 Government members with 185 votes each, 37 Employer members with 495 votes each and 55 Worker members with 333 votes each);

(d) 3 June: 185 members (104 Government members with 799 votes each, 34 Employer members with 2,444 votes each and 47 Worker members with 1,768 votes each);

(e) 5 June: 180 members (105 Government members with 1,394 votes each, 34 Employer members with 4,305 votes each and 41 Worker members with 3,570 votes each);

(f) 6 June: 172 members (108 Government members with 341 votes each, 31 Employer members with 1,188 votes each and 33 Worker members with 1,116 votes each);

(g) 7 June: 167 members (107 Government members with 30 votes each, 30 Employer members with 107 votes each and 30 Worker members with 107 votes each);

(h) 8 June: 155 members (107 Government members with 140 votes each, 20 Employer members with 749 votes each and 28 Worker members with 535 votes each);

(i) 9 June: 152 members (107 Government members with 494 votes each, 19 Employer members with 2,782 votes each and 26 Worker members with 2,033 votes each).

(j) 12 June: 144 members (107 Government members with 312 votes each, 13 Employer members with 2,568 votes each and 24 Worker members with 1,391 votes each).

Vice-Chairpersons: Ms. A. Knowles (Employer member, New Zealand); and Ms. U. Engelen-Kefer (Worker member, Germany) at its first sitting;

Reporter: Ms. L. Samuel (Government member, Cyprus) at its eighth sitting.

3. At its eighth and ninth sittings, the Committee appointed a Drafting Committee composed of the following members: Ms. C. Fall (Government member, Senegal), Mr. M. Teleki (Employer member, Switzerland), Ms. A. Knowles (Employer member, New Zealand), Ms. J. Beresford (Worker member, New Zealand), Ms. M. Monrique (Worker member, France), and the Reporter of the Committee, Ms. L. Samuel (Government member, Cyprus).

4. The Committee held 21 sittings. The Committee had before it Reports IV(1), IV(2A) and IV(2B), prepared by the Office on the fourth item of the agenda of the Conference: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95) (second discussion).

Introduction

5. The representative of the Secretary-General presented Reports IV(1), IV(2A) and IV(2B), which had been prepared by the Office to serve as a basis for the Committee's second discussion on maternity protection. The first discussion, which had taken place in June 1999, had led to the adoption of conclusions. On the basis of these and in accordance with article 39 of the Standing Orders of the Conference, the International Labour Office had prepared and transmitted to the governments of member States, and through them to national organizations of employers and workers, Report IV(1) which contained a draft Convention and a draft Recommendation on maternity protection. Comments were received from 84 member States in time to be included in Report IV(2A). Many of those included responses from employers' and workers' organizations. A further 16 replies were received too late to be included in the report. The texts of the proposed Convention and proposed Recommendation were published in a separate volume, Report IV(2B).

6. The representative of the Secretary-General then recalled the context in which the deliberations were taking place. Maternity protection was an issue of core importance that had been one of the first subjects of international labour standards. Since Convention No. 103 was adopted in 1952, women's employment patterns had changed greatly around the world. Women's economic activity rates had risen dramatically and women now tended to work throughout their childbearing years. Women contributed a higher proportion of family income than ever before. The importance of maternity protection for employed women had grown in consequence. Since the mid-1990s, the ILO had made a major effort to evaluate the relevance and effectiveness of international labour standards in order to ensure their suitability for today's world. The low level of ratification of Convention No. 103 and the identification of a number of technical obstacles to further ratification were among the concerns that had been taken into account in the Governing Body decision in March 1997 to revise the 1952 instruments.

7. While it had been clear from the replies that there was a shared commitment concerning the importance of maternity protection, there was nonetheless considerable divergence of views concerning the approach that should be used for ensuring that women's needs were met. Some stressed the importance of maximizing the number of ratifications, since when governments ratified a Convention they were obliged to take action to bring national laws and regulations into line with the requirements of the Convention, resulting in real improvements in protection. Others cautioned that concern for a widely ratified

Convention should not justify a lower level of protection. Opinions were also divided as to whether the new instruments should be concerned solely with maternity protection or whether they should deal more broadly with parental rights and responsibilities. Some expressed the desire to develop ratifiable instruments which offered substantial protection, were sufficiently forward-looking and paved the way for additional improvements at the national level according to the socio-economic conditions in each member State. There were concerns about the balance between standards of maternity protection and the costs of such protection, including effects on women's employment opportunities. Some fears had been expressed that the proposed Convention could represent a regressive step, a downgrading of protection for women workers and a weakening of measures for equal opportunities and treatment for women and men at work. In light of the genuine shared commitment to work towards a positive result, the representative of the Secretary-General did not believe that this had been the intention of the ILO's constituents. However, there were still substantial differences among constituents as to what would represent a positive result and how that common goal could be achieved. The Office hoped to see a text as strong as necessary to protect mother and child.

8. The representative of the Secretary-General then highlighted some of the principal differences between the proposed Convention and Convention No. 103, reviewed the comments received with regard to specific provisions and explained the reasons for which the Office had suggested some changes. With regard to the scope of the Convention, the draft Convention reflected the principle of broad coverage. Many comments agreed to allow exclusions of limited categories of workers or enterprises, but some governments and workers' organizations felt strongly that no exclusions should be possible, while other replies proposed a wider possibility of exclusions.

9. Concerning the inclusion of a period of compulsory leave, the representative of the Secretary-General noted that those who supported inclusion generally did so on health grounds, with some further arguing that the Convention should specify the minimum period of compulsory leave. Those opposed emphasized that such a provision was a potential obstacle to ratification in a number of countries. In some countries, compulsory leave was viewed as discriminatory, since it denied a woman=s freedom to exercise her right to take leave as she chooses. Whereas a slight majority of governments supported inclusion of this provision, few of them wanted the duration and distribution of such leave to be specified in the Convention. Employers' organizations rejected this provision, whereas many workers' organizations urged that six or more weeks of compulsory leave be specified in the Convention. The provision relating to the leave to be provided in the case of illness, complications or risk of complications arising out of pregnancy or confinement had given rise to extensive debate during the first discussion. Recognizing that national law and practice varied as to the type of leave provided in those circumstances, the draft text stated that the nature and maximum duration of such leave might be specified by the competent authority.

10. The Office had made extensive changes to Article 5 relating to benefits in light of the comments received. Two new paragraphs were drafted to address the level of benefits to be provided. The first would cover payment systems in which cash benefits were based on a woman=s previous earnings and were expressed as a percentage of those earnings or of the portion taken into account for the purpose of computing benefits. The text retained the benefit level of two-thirds previously set in subparagraph (a). The second new proposed paragraph would cover payment systems which applied other methods than a simple percentage of earnings to determine the level of cash benefits. The intention of new paragraph 4 was to ensure equivalent protection despite differences in payment systems. Different minimum standards for developing and developed countries were set by Article 6. While article 19(3) of the ILO Constitution provided that standards should be

framed with due regard to differences in conditions and levels of development among Members, many replies had expressed concerns about the setting of dual standards. Another important issue regarding benefits concerned their financing. A large number of employers' organizations had expressed their conviction that the new Convention should contain a provision precluding the individual liability of employers for the cost of benefits due to women employed by them. Such liability was seen as an undue burden on employers, especially in small firms, and as a potential source of discrimination.

11. The draft Convention provided a much longer period of protection from dismissal than Convention No. 103, although the protection would no longer be absolute. While there was broad agreement on the principle that a woman should be protected from dismissal on grounds related to pregnancy and childbirth, there was divergence concerning the period of protection and the burden of proof to establish if dismissal was related to these grounds. The draft Convention introduced a provision against discrimination on the grounds of maternity: no such provision existed in Convention No. 103. Some respondents considered that there should be no special protection against dismissal following the woman's return to work since this would discriminate against other workers, while a few proposed extending protection against dismissal to include the nursing period. While many governments supported the current text on the burden of proof, a few considered that the text offered insufficient flexibility to allow for different national systems or that the burden of proof should not necessarily rest solely with either the employer or the worker. The representative of the Secretary-General pointed out that the draft Convention contained a provision on non-discrimination in relation to maternity which had no parallel in Convention No. 103. She added that the provision on non-discrimination had been strengthened to make it clear that discrimination in employment included discrimination in access to employment.

12. The entitlement to nursing breaks had been transferred from the Proposed Conclusions with a view to a Recommendation following an extensive debate during the Committee's first discussion. There was still a debate on whether it should be placed in the Convention or Recommendation. Workers' organizations and many governments favoured its retention in the Convention, on the basis of the importance of breastfeeding for the health of mother and child. Employers' organizations and several Governments argued that nursing breaks should be dealt with only in the Recommendation, citing concerns about an open-ended entitlement to breaks, about cost implications especially for small enterprises, and about the risk that the provision would be a significant barrier to widespread ratification of the Convention. The Office had made some changes to this provision in response to the concerns, arguments and information expressed in the replies, but the requirement that nursing breaks should be counted as working time and remunerated in consequence had been retained in the new paragraph 2 of Article 9. The representative of the Secretary-General concluded by welcoming the non-governmental organizations which had expressed such interest in the issues being debated.

General discussion

13. The Employer Vice-Chairperson expressed the Employer members' belief that all the members of the Committee shared the common objective of achieving an instrument that would provide effective maternity protection in a form that could be widely embraced by the constituent Members of the ILO. It was important to arrive at a balanced outcome so that the limited acceptance and low ratification of Convention No. 103 might be rectified. As she had mentioned in her statement the previous year, while the Employer members had supported the report of the Committee as an interim report, they had been concerned that there had been a lack of balance both between the respective rights and the

responsibilities of women workers, employers and governments and between a principles-based approach and one based on prescription. She stressed that the responsibilities of ensuring protection to mother and child were shared, and so too were the rights. Just as all the responsibility of bearing and raising children should not fall on women alone, so too the rights should not accrue to women alone. Employers had a right to expect not to carry undue financial and compliance costs arising from maternity leave and governments had a right to set national policy in line with the economic and social expectations of the wider community.

14. She noted that the Director-General, in his Report on Decent Work to the Conference the previous year, had acknowledged that if the ILO was to ensure its relevance and reassert the usefulness of international standards, it needed to reinvigorate its efforts with new approaches. The Committee had before it an opportunity to begin that process and to move from the adoption of an overly prescriptive, "one-size-fits-all" instrument, capable of being ratified by very few countries, to the adoption of a meaningful instrument encompassing principles of maternity protection on which all the parties agreed, which would be attainable and ratifiable and which would serve as the basis for achieving real maternity protection for women.

15. The Employer members supported such a new approach to standard setting. They had proposed during the first discussion that the instrument state:

> Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, maternity leave and protection for all employed women

and then continue:

> As an indispensable means of protecting the health of any woman and her child, the woman's entitlement to a period of maternity leave, to protection from dismissal for reasons related to the pregnancy or maternity leave, with adequate means of supporting herself and her child, is the core element of this instrument.

It was essential that the Committee address the issue of ratification since it was precisely the low level of ratification of Convention No. 103 that had led the Governing Body to call for its revision. She emphasized in this regard that ratification of Conventions was not an end in itself. Rather, ratification was important because it would ensure real protection, since countries would commit themselves to bringing their domestic law in line with the Convention and to implementing its provisions in full and they would be required to report in accordance with article 22 of the Constitution of the ILO. The Employer members would strive to achieve an instrument that was not overly prescriptive – one which provided minimum standards, but would not prevent countries from doing better.

16. There was an enormous variety of enterprises within member States, from micro-enterprises and family businesses to large enterprises. It was important that the proposed Convention not be so restrictive that it would result in women losing their employment opportunities owing to the excessive costs of providing maternity protection, including the cost of providing leave, replacing a woman on leave and training her replacement. The Employer Vice-Chairperson insisted that employers were prepared to share the responsibility of maternity protection, but the proper balance amongst the social partners had to be achieved. In concluding, she cautioned that if the Committee failed to respond to the Director-General's challenge that the ILO's standard-setting procedure should remain relevant, it would have failed women and the ILO.

17. The Worker Vice-Chairperson considered that the first discussion had achieved the best possible outcome under difficult circumstances, and affirmed that the Worker members would do everything they could to ensure similar success during the second discussion. Emphasizing that maternity protection was not only a concern for women and children but for the future of society as a whole, she remarked that the purpose of the revision process was not simply to make adjustments in the light of changing social and economic conditions and to increase the number of ratifications. Rather, the main issue concerned the content of protection. The world was changing, frontiers were disappearing and competition was increasing, and workers were willing to cooperate constructively in this process. At the same time, they recognized that international labour standards could not regulate every detail. However, an instrument which was ratifiable by all member States but which was void of content was unacceptable, since it would have no real impact on national law and practice. There was thus a need to strike a balance between establishing general principles and ensuring real protection for workers. While maternity protection clearly involved costs that impacted on competition and job creation, such costs were necessary to protect the right of working women to bear children without being discriminated against. There were substantial economic and social grounds in favour of providing better maternity protection. Moreover, she noted, however, that the cost of maternity protection was relatively low as compared with other social benefits, such as pensions, and was often more limited in time.

18. Turning to the proposed texts, the Worker Vice-Chairperson said that the scope of the proposed instruments was too narrow, and in particular needed to include more clearly the informal sector, which was of crucial significance to the developing countries. There was also a need for compulsory postnatal leave, as provided for by Convention No. 103. While compulsory leave might not be as important for working women in the developed countries, this was not the case in the developing countries, where women workers were often under pressure from husbands and families to return to work as soon as possible for financial reasons. She also suggested that consideration be given to the possibility of maintaining the absolute prohibition on dismissal contained in Convention No. 103, without which many women would be unable to assert their rights. While placing the burden of proof on the employer was welcome, by itself it might still not adequately address the need for effective protection against dismissal in many developing countries. The Worker members also attached great importance to the provision of nursing breaks, which should take place within paid working time, and to protection against conditions that were hazardous to the health of pregnant workers or nursing mothers and their children.

19. In a statement presented by the Government member of Canada, the Government members of Austria, Australia, Belgium, Canada, Cyprus, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, the United Kingdom and the United States endorsed the views of the Governing Body that the revision of Convention No. 103 and Recommendation No. 95 should result in standards that could be more broadly ratified and which would take account of the progress achieved in a number of countries. They also stressed the importance of including health protection measures within the proposed Convention.

20. The Government member of Cyprus endorsed this viewpoint and said that maternity protection in her country was seen as an important obligation of the State and society. She believed that there was a need for instruments which would provide substantial protection without being overly prescriptive, would take account of women's own interests in the labour market and would not subtract from the real protection established by Convention No. 103.

21. The Government member of China stated that, since wide ratification was an important objective of this revision process, the new instruments should not contain too much detail. Account should be taken of differences in national law and practice, for example, with regard to population policy. Two important principles should be respected: the right to maternity should be protected and each country should have its own laws to ensure such protection.

22. The Government member of Brazil said that his country was one of the few which had ratified Convention No. 103. Many changes had taken place since ratification in 1965, with substantial protection now being provided to women workers under the Constitution. Measures included the provision of medical assistance, the prohibition of discrimination based on maternity, the provision of two half-hour nursing breaks a day and the banning of pregnancy testing for employment purposes.

23. The Government member of Kenya stressed the importance of maternity protection, the provision of which would directly or indirectly affect all members of society and have an impact on the economy, whether through taxation, infant mortality rates or health-care costs. However, the instruments should be flexible enough to take account of differences in levels of national development.

24. The Government member of Barbados, in emphasizing that revision should aim at making the instrument more ratifiable, believed that it should focus on core issues, including the provision of six weeks of compulsory postnatal leave, in the interests of health protection. Her country already provided many of the proposed benefits; however, although she supported the principle of breastfeeding breaks, she pointed out that such a provision would make it impossible for her country to ratify the proposed instrument at the present time.

25. The Government member of Japan noted the increasing role of women in the labour force and the concern expressed in some countries about falling birth rates. A revised Convention should be both practical and ratifiable, and avoid detailed provisions, such as those relating to benefits, breastfeeding and burden of proof, which might prove to be obstacles to ratification in some countries.

26. The Government member of Norway said that maternity protection at work involved certain basic rights of vital importance. However, the proposed texts did not pay sufficient attention to the health of pregnant and nursing mothers and to the hazards posed by the working environment. For this reason, it was essential to include an Article on health protection in the proposed Convention, and not just in the proposed Recommendation.

27. The Government member of Croatia said that her Government's position had not changed since the first discussion and her Government's reply to the first draft of the Convention and Recommendation contained in Report IV(2A). Although maternity protection was a key component in the struggle to provide decent work for all women, the proposed texts did not establish real protection since they allowed for a broad range of exceptions to the scope, an undefined period of compulsory leave and the payment of benefits other than through social insurance schemes and weak employment protection. Since Croatia was a party to Convention No. 102 as well, her Government did not consider the new Convention, as it was proposed, to be an instrument that could fall within the range of the social security Conventions developed after the adoption of Convention No. 102. The content of the proposed texts was focused on the right to maternity leave rather than maternity protection. She noted that the standard-setting process had been on the agenda of discussions at the ILO for some time, and believed that the outcome of the Committee's work would be significant in this respect.

28. The Government member of Ethiopia felt that the proposed text was a good basis for discussion and supported the adoption of a realistic Convention and Recommendation. She believed that the discussion should be focused on maternity protection and should avoid sensitive religious and cultural issues concerning parental rights and adoption. While attention should be given to the health of mother and child, she was concerned that nursing breaks could actually result in the reduction of women's employment prospects. The Convention should lay down minimum standards, with specific details being left up to national measures, to ensure wide ratification.

29. The Government member of Australia associated herself with the statement presented by the Government member of Canada. The first discussion had made some progress in revising the Convention, although there had been a number of disappointing aspects and the issues and concerns identified by the Governing Body had not always been brought to the fore. The Convention's low level of ratification stemmed from the fact that it was too prescriptive. A principles-oriented instrument was required that would be flexible, although she emphasized that minimum standards did not mean *minimal* standards. The outcome of maternity protection was important, while the means of achieving it should be left to member States, relying on the ILO supervisory machinery to ensure compliance.

30. The Government member of Chile linked the subject of maternity protection to basic human rights such as non-discrimination, the right to equal opportunity and treatment, gender equality and the right to life. In developing countries women were increasingly moving into the labour market and the provision of appropriate protection during pregnancy was a vital element in determining whether they remained in employment. The Convention should accordingly provide greater protection of the employment of women. Maternity was a social responsibility affecting not only mothers and fathers but society at large, and therefore state authorities or social security schemes should accept responsibility for the costs. She added that the Preamble of the proposed Convention should mention other important international instruments dealing with human rights.

31. The Government member of France said that the Office text was an excellent basis for discussion which he hoped would lead to a major breakthrough in strengthening maternity protection, especially as regards the health of mother and child and non-discrimination, and also in achieving broader ratification than Convention No. 103. On delicate issues such as the length and distribution of leave, or protection against dismissal, it was important to remain open-minded and to seek compromise solutions that would be favourable to all. One of the conditions for the success of the Committee's work was not to make the Convention a test of any change in the ILO's standards-setting policy, on which discussions under way within the Organization were still far from having reached their objective.

32. The Government member of Sweden regretted that the question of parental leave no longer appeared in the proposed texts. She recalled that during the first discussion her country had proposed an optional part in the Convention containing provisions on parental leave. While it had not attracted broad support, she was still interested in continuing the discussion. This optional part of the Convention would make for a more modern, forward-looking instrument, providing a standard that would indicate the course to be followed in the future. Referring to Article 3 of the UN Convention on the Rights of the Child, she stressed that the primary aim of introducing parental leave was the consideration of the child=s best interests. It was important to enable both parents to take leave since they both had a duty and a responsibility to raise their children. The Workers with Family Responsibilities Convention, 1981 (No. 156), did not contain any provisions on parental leave, unlike its accompanying Recommendation No. 165, so such provisions in a revision of Convention

No. 103 would not be a duplication. She emphasized that a Convention with a two-part structure as proposed would not impede ratification by any member State.

33. The Government member of the Netherlands endorsed the statement presented by the Government member of Canada. Furthermore, she stressed that the revision of Convention No. 103 should not lead to a lower level of protection. Social progress and development should be reflected in the revised Convention, and the way forward was to produce a Convention that was less prescriptive and more flexible.

34. The Government member of Trinidad and Tobago sought a Convention which all ILO member States could ratify and implement. It was also important to provide decent conditions of work for women. Her country provided maternity protection, but national legislation did not provide for nursing breaks and such a provision in the Convention would pose a problem for early ratification. She was nonetheless aware of the importance of such a provision and hoped that the Committee's deliberations would result in a consensus.

35. The Government member of Egypt stated that legislation in his country provided protection for children and working women who were pregnant or breastfeeding. He hoped that the deliberations would lead to a balanced Convention that was flexible and universally acceptable.

36. The Government member of Peru noted that while standards covering working women and maternity protection in her country dated from the beginning of the twentieth century, it had been a great challenge to provide protection to women at the workplace without creating a real or apparent obstacle to their employment. She noted that the challenge to protect women and maternity was greater in developing countries such as Peru in view of the higher birth rates. Similarly, she emphasized the special importance of protecting and promoting natural breastfeeding by the mother, in the light of studies which had confirmed its importance. Countries should therefore consider establishing national programmes of support for natural breastfeeding by the mother. She requested that account be taken of the fact that the purpose of the Committee's work was to propose minimum standards that could be improved by policies adopted by employers and through national legislation.

37. The Government member of Côte d'Ivoire believed that the proposed texts provided a good basis for discussion, although there was room for improvement to ensure a strong and progressive Convention that was sufficiently flexible to facilitate the maximum number of ratifications, especially in developing countries. Legislation in his country provided for extensive maternity protection, including rights for breastfeeding mothers. His Government was conscious of the importance of breastfeeding and he believed that ILO instruments should take account of scientific knowledge as a means of advancing social and economic development. WHO and UNICEF had drawn up an international Code of Marketing of Breastmilk Substitutes, which had been adopted in 1981, and ratified by all countries except one. This Code, based on the results of research, advocated exclusive breastfeeding for a period of between four to six months. ILO standards should seek their inspiration from this Code. He believed that four months of maternity leave was the minimum period likely to be of benefit to the woman, with less absenteeism due to sickness of the baby; it would also be of benefit to the baby, who would be better nourished and less vulnerable to infectious diseases, as well as to the enterprise and the employer, since they would benefit from a healthier social climate and increased productivity. Society as a whole could benefit, since the health of adults began with that of persons during their early years of life.

38. The Government member of Namibia endorsed the principles of protection from dismissal on the grounds related to a woman's pregnancy, the right to a fair and sustainable remuneration and the provision of adequate maternity leave. However, he was unable to support the extension of such principles to persons other than the women concerned.

39. The Government member of Argentina said that maternity protection was not just a matter of protection for working mothers, but a social asset which needed to be defended by governments and communities, leading to greater equality for humanity as a whole. She also expressed support for parental leave, since this would promote equality of access to employment, and wished to discuss leave for adoptive parents and for multiple births. Progress had already been made towards a Convention that would provide strong protection with greater flexibility.

40. The Government member of Canada, in expressing his support for the proposed revision, emphasized that it was important to avoid overly prescriptive provisions that would be an obstacle to ratification. The Convention should promote improved working conditions for women while still providing the flexibility that could accommodate different countries' varying levels of economic and social development.

41. The Government member of Lebanon endorsed the need for a flexible instrument that would take account of the different levels of economic and social development prevailing in different countries.

42. The Government member of the Libyan Arab Jamahiriya also expressed support for the proposed Convention and Recommendation, which were the result of long discussions last year. He added that the question of nursing breaks and facilities for this purpose was important. The Libyan Arab Jamahiriya had drawn up a new labour law which provided for extended maternity leave when a woman had more than one child. This law provided for the payment of cash benefits and medical benefits. It prohibited discrimination in employment on the grounds of pregnancy, as well as dismissal during maternity leave. Furthermore, nursing breaks were counted as working time.

43. The representative of UNICEF highlighted the advances in scientific knowledge of the needs of women and children and noted that exclusive breastfeeding could significantly reduce the incidence and severity of common illnesses among newborn children. The worldwide reduction of artificial feeding and improved breastfeeding practices could save an estimated 1.5 million children per year and reduce the mother's lifetime risks of breast and ovarian cancer and osteoporosis. UNICEF supported the right of working women to breastfeed as essential to the right of children to the highest attainable standard of health. The instruments produced by the Committee, which would influence the rights of working mothers around the world, should protect, respect and facilitate the rights of children and women and recognize the contribution of women to the welfare of families and the development of society. To this end, UNICEF suggested that the Convention provide 16 weeks' paid maternity leave, two half-hour remunerated breastfeeding breaks for up to one year and a safe, clean and private space for breastfeeding or expression of breast milk at the workplace. The Recommendation should provide for a least six months of paid maternity leave after birth, and one half-hour breastfeeding break for mothers of children between the ages of one and two years.

44. The representative of Zonta International, speaking on behalf of the Geneva NGO Working Group on Women's Employment and Economic Development, strongly advocated the adoption of a new Convention. The protection of maternity as a social function was the responsibility of the State and international guidance was necessary within a global economy to ensure equal protection for women workers. Citing the importance of equal

access to maternity protection in light of the emergence of new forms of employment relationships, she advocated the inclusion of protection of all women who work for pay, irrespective of their employment status, and emphasized that there should be no discrimination whatsoever against any female person or child. While regretting that it had not been proposed to increase the duration of maternity leave from its present level, she expressed support for the inclusion of a clause allowing for the extension of the period at the national level as a basis for realistic progress. She supported flexibility in provisions on compulsory leave, and suggested that a tripartite body at the national level, in consultation with national women's organizations, could determine whether a period of compulsory leave was necessary. She was concerned that the financing of maternity benefits was not addressed in the Office text and stressed that the proposed level of cash benefits should be considered the absolute minimum. While in principle maternity cash benefits should not be dealt with as sickness or unemployment benefits, the fact that women used such benefits in connection with maternity should not deprive them of eligibility at a later stage. Finally, she emphasized that the protection of the health of women and children before and after birth was central to maternity protection and should be included in the Convention.

45. The representative of the International Council of Nurses asserted the rights of all women and children to adequate maternity protection, including job security, non-discrimination, occupational health and safety, support for parents in child rearing, and the right of women to choose their primary health-care provider. Citing the provisions of the UN Convention on the Rights of the Child, she considered that the proposed Convention should increase maternity protection measures and noted with approval the inclusion in the Office text of the right of working women to remuneration for interruptions of work for the purpose of breastfeeding. Research had demonstrated the health and social advantages of infant breastfeeding, and many policies recommended breastfeeding for the first six months of life. The Committee should take these developments into account and aim for a legal framework to guarantee the right to breastfeed for at least six months without loss of pay, and to safe and hygienic facilities for breastfeeding and expressing breast milk. Women on maternity leave should be granted income protection of at least two-thirds of their wage, if not their full wage.

46. The representatives of the Maternity Protection Coalition said that an instrument on maternity protection would be a historical legacy for the empowerment of working women. They noted that in many countries in the African region there were high infant and maternal mortality rates and many children suffered from preventable diseases. Exclusive breastfeeding rates were generally low and an unacceptably high number of children died because they were not breastfed. Employers had an interest in promoting child health, since the absenteeism when mothers needed to look after sick babies resulted in low productivity. Women required adequate maternity leave to support breastfeeding and to be able to recuperate. On return to employment, they needed paid breastfeeding breaks and facilities which would not be expensive to provide. The Convention should therefore provide for at least four months' paid maternity leave after birth; two half-hour remunerated breastfeeding breaks daily for up to one year after birth; and a clean space at or near the workplace for breastfeeding and the expression of breast milk. The Recommendation should provide for maternity leave for at least six months after childbirth.

47. The representative of the International Women Count Network welcomed the opportunity to present the views of women otherwise rarely heard. Observing that women's unpaid work undertaken in addition to their paid work is often ignored, she said that maternity protection should include paid breastfeeding breaks as a means of helping to redress injustice towards working mothers. To ignore the contribution of women through childbearing and breastfeeding was to discriminate against them. She warned that the

Committee should avoid contributing to the global decline in breastfeeding, and instead help to reverse it. To this end, a Convention should provide protection for all working women, including those in the informal sector, unmarried women, and the mothers of adopted children; a minimum of two daily nursing breaks of at least half an hour for at least one year which should be counted as working time and paid; and the provision of a clean and comfortable space for breastfeeding with access to safe water. The Convention should further provide for six weeks of compulsory paid leave after childbirth; six months of paid maternity leave; a universal cash benefit entitlement, regardless of the number of children or duration of employment. Finally, protection against dismissal and other discrimination should be strengthened, including the right of pregnant women and nursing mothers not to be compelled to undertake work which posed a hazard to their health or that of their children.

48. The Government member of Papua New Guinea stated that her country looked forward to a major breakthrough and supported the revised instruments on maternity protection. The new instrument should recognize the social and economic conditions of member States and support the principles of non-discrimination in employment, health protection and maternity leave as well as the provision of cash and medical benefits. It should be flexible, balanced and capable of extensive ratification and implementation. Her Government attached a great deal of importance to maternity protection and to the need for a new Convention to secure the dignity of women workers and to accommodate the differing national situations and levels of development. The mechanisms for application, however, should be left to national laws and collective bargaining.

49. The Government member of Costa Rica observed that there seemed to be a broad consensus that maternity protection was essential for the development of society. The Committee's task was not to reduce the protection which was adequately provided in Convention No. 103 with regard to compulsory leave, cash benefits and health protection. Nor was it to reduce the number of women covered by the Convention, since the female labour force was constantly growing and, in countries with high levels of poverty, it had become clear that the eradication of poverty was directly linked to the employment of women. Nor should the Committee question the need for special protection from dismissal during pregnancy or the nursing period. It was important that the Committee agree on those aspects of protection that would constitute innovations in the area of minimum standards, such as parental leave. Flexibility could be provided in those areas that went beyond minimum standards. Finally, she felt that the low level of ratification of Convention No. 103 reflected the fact that public policy had only recently begun to take up gender equality issues.

50. The Government member of Jordan explained that maternity protection was essential to enable women to participate more fully in the world of work. Such protection, during a limited period, would ensure that the woman had the physical and mental rest needed before her return to work. The extension of the leave period to 16 weeks, however, could result in negative labour market effects for women and higher production costs for enterprises. Any instrument adopted should be sufficiently flexible to take account of the social context and level of development of each country.

51. The Government member of the Islamic Republic of Iran noted that although women's rights and gender equality had been recognized at the international and national level, women often lacked awareness of their rights, and this had constrained their effective realization. As a result, there had recently been a growing emphasis on the application and enforcement of law. Women's increased participation in the labour market and the discrimination they still faced in employment were evidence of the desirability and timeliness of adopting new instruments. In revising maternity protection standards, it was

important to achieve balance between the needs of women workers and the interests of employers, since increasing employers' obligations could heighten discrimination against women. Maternity protection should facilitate the combination of gainful employment and family life.

52. The Government member of Zimbabwe expressed his Government's support for a Convention and Recommendation. With regard to compulsory leave, he affirmed that the right of the mother should be respected. Experience had shown that mothers' preferences varied concerning the timing of leave, so mothers themselves should be the sole determinants of their best interests in this regard. The financing of maternity protection was also of great concern. In his country, current discussions in Parliament aimed to raise the level of cash benefits while ensuring, through the introduction of a contributory fund, that the employer would no longer bear the costs alone.

53. The Government member of New Zealand expressed his Government's support for a meaningful revision of the Maternity Protection Convention (Revised), 1952 (No. 103), which should contribute to both the elimination of discrimination against women in employment and the promotion of the health of women and their children. It should ensure reasonable levels of maternity protection, reflect common international practice and provide guidance for domestic law and practice. The instruments should be practicable, but contain a level of prescription which ensured integrity. They should furthermore provide appropriate guidance on the scope and level of maternity protection while recognizing the need to accommodate a wide range of national circumstances in order to achieve the desired outcomes. He cautioned, however, that the concern for ratifiability should not lead to a reduction in the protection provided.

54. The Government member of South Africa expressed her Government's support for the revision of Convention No. 103. She hoped that the resulting instruments would improve and strengthen the protection of working mothers, while taking into account family dynamics. She noted a number of issues of concern, notably the question of parental rights, adopted children and nursing breaks, and sought the views of other developing countries with regard to Article 6.

55. The representative of the World Health Organization stressed that pregnancy and childbirth were at the core of human development and that adequate attention to the health and well-being of the pregnant woman and her infant was a concern for society as a whole. Breastfeeding promoted child health and development and was an essential part of assuring a child's right to health. He presented the recent review by WHO of the available evidence on the health implications of maternity leave and maternity protection, which complemented previous information provided to ILO in 1951 and 1997. Concerning health in pregnancy, he stated that a woman should have the opportunity to attend at least four antenatal care visits and that provisions were needed for rest breaks or alternatively shorter working hours during pregnancy. The mother and her infant must be protected from noxious agents including physical agents (noise, radiation, extreme temperatures), chemical agents (such as lead and anaesthetic gases) and biological agents (viruses, bacteria and parasites). An assessment of workplace exposure to biological, chemical and physical hazards was required. Appropriate adjustments might be needed in the working conditions of pregnant women to minimize or eliminate risks. Pregnant women required a reduced physical workload; no night work during the second half of the pregnancy; and complete absence from work from week 34 to week 36 of the pregnancy depending on their health status and physical workload. During delivery the woman and child needed, as a minimum, a skilled birth attendant to manage normal childbirth, to prevent, recognize and manage complications and to transfer the woman to hospital if necessary. A period of absence from work after birth was of utmost importance to the health of mother and child.

The time needed depended on the woman's health before, during or after birth, as well as the health of the infant and whether or not the birth was complicated. Breastfeeding was a major determinant of infant health. WHO recommended that infants should be exclusively breastfed on demand from birth for at least four and, if possible, six months and should continue to be breastfed with complementary feeding until the age of 2 years or beyond. Thus, women needed at least 16 weeks of absence from work after delivery. Childcare facilities at or near the workplace were ideal for continuing breastfeeding after return to work. Where this was not possible, mothers needed clean, safe and private facilities, including the provision of clean water, where they could breastfeed or express and store breast milk. The minimum requirements to allow women to continue breastfeeding were two daily breaks of 30 minutes each, not taking into account time needed for transportation, for the first year of life of the breastfed child. In the event of complications during pregnancy, the mother and infant needed more extensive leave. He concluded that a Convention and Recommendation which included these provisions would have a major impact on the health of women and children worldwide.

Consideration of the proposed texts contained in Report IV(2B)

Proposed Convention concerning the revision of the Maternity Protection Convention (Revised), 1952 (No.103)

Title

56. The Government members of Argentina, Brazil, Chile, Costa Rica, Guatemala, Panama, Peru, Uruguay and Venezuela submitted an amendment to change the title of the proposed Convention to "Proposed Convention concerning maternity protection and the protection of the early infancy of the children of women workers". The Government member of Argentina proposed postponing the discussion of the amendment until the content of the Convention was determined. The Employer Vice-Chairperson said she could agree to postponing the discussion to a later time but expressed the Employer members' opposition to the extension of the title, since the Committee's mandate was to discuss maternity protection at work. She cautioned that expanding the title of the present Convention would lessen the clarity of focus required and noted the existence of the UN Convention on the Rights of the Child. The Worker Vice-Chairperson, while expressing sympathy for the amendment, supported discussion of it at a later stage. The consensus of the Committee was to postpone the discussion of the amendment.

Preamble

Preambular paragraphs 1 and 2

57. Preambular paragraphs 1 and 2 were adopted without change.

Preambular paragraph 3

58. The Government member of Croatia submitted an amendment to insert the word "partially" after the words "to revise", which was seconded by the Government member of Argentina. She then proposed postponement of the discussion, a motion supported by the Government member of Chile. The Employer Vice-Chairperson, while not opposing postponement, expressed the view that the work of the Committee consisted of the revision of the instrument in its entirety. The word "partially" made no sense. The Worker Vice-

Chairperson supported postponing the discussion of the amendment until a later stage. Further discussion was thus postponed.

59. The Worker Vice-Chairperson submitted an amendment to insert "in order to further promote equality of all women in the workforce and the health and safety of the mother and child, and" after the words "Recommendation, 1952", in order to ensure an explicit reference to these important considerations within the Preamble. The Government members of Brazil, Chile, Costa Rica, Croatia, Cuba, Cyprus, Egypt, France, Ghana, Portugal, Spain, Trinidad and Tobago and the United Kingdom supported the amendment.

60. The Employer Vice-Chairperson suggested merging the amendment proposed by the Worker members, with an amendment proposed by the Employer members to insert a new paragraph as follows:

> Emphasizing that maternity protection at work is an issue affecting society as a whole, and recognizing that maternity protection has to be harmonized with the needs and circumstances of enterprises and with the aim of promoting and improving the employment prospects of women, and

The merging of the two amendments would ensure that all important issues were addressed in the Preamble: maternity protection at work as an issue affecting society as a whole, the needs and circumstances of enterprises, and the need to promote and improve the employment protection and equality of women and the health and safety of women and children.

61. The Worker Vice-Chairperson could not accept the merging of the two amendments. She stated that in certain circumstances the needs of the enterprise and the aim of promoting and improving the employment prospects and health of women could not be harmonized. The priority should then be the protection of mother and child, and this should be reflected in the proposed Convention. Further, since the text already referred to economic issues, it was necessary to balance this reference by mentioning the social issue of equality and the health protection of mother and child.

62. The Employer Vice-Chairperson explained that the reference in preambular paragraph 3 to the "diversity in economic and social development of Members" was concerned with member States, and did not necessarily refer to the needs of enterprises. She proposed a subamendment to replace the word "harmonized" with "balanced". The Worker Vice-Chairperson suggested inserting the words "as well as the development of enterprises" after the word "Members". The Employer Vice-Chairperson could not accept this proposal, reiterating the need to balance the needs and circumstances of enterprises with ensuring employment prospects and equality for women. The Government member of the United Kingdom suggested that the phrase "the economic and social development of Members" already included the economic and social development of enterprises, an interpretation supported by the Government member of Cyprus.

63. After further expressions of support from Government members for the amendment submitted by the Worker members, the Employer Vice-Chairperson proposed a subamendment to add, "the different needs and circumstances of enterprises" after the words "recognize the diversity in economic and social development of Members". The purpose of the subamendment was to provide recognition that the needs and circumstances of enterprises were different from the economic and social development of a country as a whole. The subamendment would provide a balance between economic and social development, equality of women in the workforce and the health and safety of the mother and child, and the different needs and circumstances of enterprises. The Worker Vice-

Chairperson emphasized that the discussion was about the needs of women for maternity protection, not the needs of enterprises. The Preamble should relate to the framework of the Convention, which concerned maternity protection for women. Recognition in preambular paragraph 3 of the economic and social development of Members already took into account the needs and circumstances of enterprises.

64. In the interests of compromise and flexibility, the Government member of the United Kingdom referred to the earlier proposal to insert after "economic and social development of Members" the phrase "as well as the development of enterprises". The Government member of Argentina was opposed to this subamendment, because protection of maternity was a social matter that could not be made contingent on the needs and circumstances of enterprises. On the other hand, the Government members of Canada, Cyprus and New Zealand supported the subamendment. The Employer Vice-Chairperson pointed out that her concern was not the broad developmental needs of enterprises, but instead the differences in the specific needs and circumstances of enterprises.

65. The Government member of Chile expressed the view that an addition of a reference to the "needs and circumstances of enterprises" affected the substance of the proposed Convention. The purpose of the revision process was to accommodate different national systems of maternity protection and not to accept different levels of protection for various categories of enterprises. Maternity protection was a social responsibility involving fundamental values. Costs were not to be borne by employers but by governments, so it was irrelevant to refer to the development of enterprises in this context. The Government member of Mexico added that the proposed Convention was an international instrument to protect maternity, and was not intended to focus on the needs of enterprises. Employed women worked not only in private enterprises but also in the public sector, and self-employed women often made voluntary contributions to funds providing maternity benefits. The needs of all kinds of workers, including independent workers, should be considered. The Government member of Egypt considered that including the reference to enterprises would result in imbalance. The Worker Vice-Chairperson rejected the inclusion of wording that could lead to double standards.

66. The Employer Vice-Chairperson noted the Government members' observation that employers should not bear the cost of maternity protection, and made clear that employers did indeed incur costs. She then proposed a subamendment to add in preambular paragraph 3 the words "and enterprises" after "Members". The Worker Vice-Chairperson proposed as a compromise a new subamendment that would add instead the phrase "as well as the diversity of enterprises" after "Members". The Employer Vice-Chairperson agreed. The Government member of Croatia asked whether "diversity" referred to diversity among member States or diversity within a single member State. The Government member of Peru suggested replacing the word "enterprises" by "employers" as this would be more comprehensive in its scope. The Government member of Namibia suggested that there was no difference between diversity in an economy and diversity in enterprises. The Employer Vice-Chairperson explained that the reference was to diversity in size, in sectors, and in types of enterprises (such as micro-enterprises), not just in the private sector, but in government, charities, or any kind of enterprise. The amendment, as subamended by the Worker Vice-Chairperson, was accepted by the Committee.

Preambular paragraph 4

67. The Worker Vice-Chairperson introduced an amendment to delete preambular paragraph 4 and replace it with:

> Noting the provisions of the Universal Declaration of Human Rights (1948), the United Nations Convention on the Elimination of All Forms of Discrimination

Against Women (1979), the United Nations Convention on the Rights of the Child (1989), the Beijing Declaration and Platform for Action (1995), the International Labour Conference Declaration on Equality of Opportunity and Treatment for Women Workers (1975) and international labour Conventions and Recommendations aimed at ensuring equality of opportunity and treatment for men and women workers, in particular ILO Convention No. 156 concerning workers with family responsibilities, and

68. The Employer Vice-Chairperson sought clarification on the legal status of the provisions in the Preamble of the proposed Convention which referred to other international non-ILO instruments and how they could be used for interpretation purposes or by the supervisory bodies. The representative of the Legal Adviser stated that the Preamble did not form part of the substantive provisions of the Convention and as such could not give rise to binding legal obligations. The Preamble set the context and circumstances in which the Convention was adopted and formed part of the general context. For interpretation purposes, one would need to look to the substantive provisions themselves and their textual meaning. Only where the text was not clear and unambiguous would resort be made in the second instance to the preparatory work relating to the intentions of the authors of the text concerned. The Preamble would only be resorted to in the final analysis in accordance with the Vienna Convention on the Law of Treaties. Even then, the reference to the non-ILO instruments would be unlikely to have any significant impact on the interpretation of a substantive provision. In view of that clarification, the Employer members supported the Worker members' amendment. Commenting that the Worker members' amendment picked up the principles and substance of their amendment, the Government member of Chile withdrew a similar amendment, but noted that the Worker members' amendment did not refer to the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. The Government member of the United Kingdom supported the amendment proposed by the Worker members and suggested that it also refer to the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, a proposal which was accepted by the Employer Vice-Chairperson and the Worker Vice-Chairperson and adopted by the Committee.

69. In the light of the earlier discussion, an amendment by the Government members of Botswana, Ghana, Lesotho, Malawi, Namibia, Zambia and Zimbabwe to replace the word "many" by "other" was withdrawn.

70. Preambular paragraph 4 was adopted as amended.

Proposed new paragraph after preambular paragraph 4

71. The Government members of Argentina, Bolivia, Brazil, Chile, Costa Rica, Cuba, Dominican Republic, Guatemala, Mexico, Panama, Peru, Uruguay and Venezuela submitted an amendment to add the following paragraph after preambular paragraph 4:

> Considering that the circumstances of women at work, namely access to and stability in employment, are characterized by specific features, and that maternity is one of such specific and unique features, and that its protection is a fundamental human right;

The Government member of Costa Rica indicated that the purpose of the amendment was to clarify the position of women at work and to ensure that the specific conditions of women were reflected in the Preamble. The Employer Vice-Chairperson opposed the amendment, which she believed would not clarify or add to the provisions already contained in the text. The Worker Vice-Chairperson expressed her support for the amendment.

72. The Government member of Cyprus, while generally endorsing the substance of the proposal, said that it referred to aspects, such as access to and stability in employment, that were applicable to workers in general and not just to women, and that its inclusion would make the Preamble unnecessarily long. Similar views were expressed by the Government member of the Russian Federation. The Government member of Namibia opposed the amendment on the grounds that it added nothing new to what was already contained in preambular paragraph 3, a view which was echoed by the Government member of Rwanda. The Government member of Ghana supported the reference to fundamental human rights, but opposed the other parts of the amendment, which she said were already addressed elsewhere in the Preamble. The Government member of Chile pointed out that the amendment was not an unnecessary repetition, since it was intended to underscore the fact that maternity protection was one of the inherent rights of women workers which had historically been given scant attention. The Government member of Mexico added that it was important to include a reference to fundamental human rights in the Preamble, given the reference to diversity in economic and social development of Members in preambular paragraph 3. The Employer Vice-Chairperson reminded the Committee of the reference to the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up in preambular paragraph 4, and pointed out that establishing maternity protection as a fundamental human right lay outside the Committee's mandate. The Government member of Croatia added her support to this view.

73. Put to the vote, the amendment was defeated 20,165 votes in favour, 26,370 votes against, with 1,850 abstentions.

74. The Government members of Argentina, Brazil, Chile, Costa Rica, Dominican Republic, Guatemala, Panama, Peru, Uruguay and Venezuela submitted an amendment to add the following paragraph after preambular paragraph 4:

> Taking into account the need to provide full protection for pregnancy, the family, early childhood and the circumstances of women workers, which is the shared responsibility of government and society, and

In presenting the amendment, the Government member of the Dominican Republic explained that it sought to provide women workers with full maternity protection. The Government member of Argentina said that such protection should be made explicit and not end with a child's birth, and should include the family and the period of early childhood. Furthermore, many women workers were the victims of discrimination on the grounds of motherhood and the amendment aimed at providing for the shared responsibility of governments and society in preventing such discrimination. The amendment was endorsed by the Worker Vice-Chairperson.

75. The Employer Vice-Chairperson acknowledged that governments and society at large did have a shared responsibility, but said that the inclusion of provisions for the protection of the family and early childhood fell outside the scope of the Convention, which was about maternity protection at work, and that these matters were already addressed in other international instruments. She also believed that the reference to "the circumstances of women workers" was so broad as to void the Preamble of any real meaning. The Government member of Cyprus said she was not opposed to the substance of the amendment, but considered that its adoption at this stage was premature and might prejudice later provisions of the instrument.

76. The Government member of Romania, with the support of the Government member of Argentina, submitted a subamendment to delete the words "full" and "the family, early childhood" and to add at the end of the sentence the words "and the right to life is one of

the fundamental rights of the human person;". The Employer Vice-Chairperson expressed her support for the first two parts of the subamendment, but opposed the reference to the right to life, which she said was a separate issue that was not appropriate for the Preamble. The Government member of Romania consequently further subamended her proposal to remove the reference to the right to life as one of the fundamental rights of the human person, and this was accepted by the Government member of Costa Rica and the Worker members.

77. The amendment was adopted as subamended.

78. New preambular paragraph 5 was adopted as amended.

Article 1

79. The Government member of Barbados submitted an amendment, seconded by the Government member of Trinidad and Tobago, to replace Article 1 with the wording of Article 2 of Convention No. 103, as follows: "For the purpose of this Convention, the term "woman" means any female person, irrespective of age, nationality, race or creed, whether married or unmarried, and the term "child" means any child whether born of marriage or not." While she appreciated that the wording of the Office text was meant to apply to every case, she felt it was necessary to make clear exactly who was to be protected from discrimination, in particular unmarried mothers.

80. The Employer Vice-Chairperson sympathized with the intention underlying the amendment, but preferred the broader wording of the Office text, given the extensive debate on the issue at the first discussion. The Worker Vice-Chairperson also referred to the earlier debate and noted that there were divergent opinions on the matter and a clear commitment to respect cultural differences. While she preferred the Office text, she asked for clarification as to whether the concerns of the Government member of Barbados would be met by the present wording of the text.

81. The Government member of the Libyan Arab Jamihiriya said that the amendment, which was a return to the text originally proposed by the Office at the first discussion, would offend cultural and religious sensitivities. The new Office text was sufficiently clear and understandable to everyone. It had been arrived at after long discussions the previous year and it should not be necessary to repeat these discussions this year. Similar views were expressed by the Government member of Canada, who said that the Office text provided a good result after the lengthy debates during the first discussion. In the light of these comments, the amendment was withdrawn.

82. The Employer members proposed an amendment to insert at the beginning of Article 1 the words "Unless this Convention otherwise provides". The Employer Vice-Chairperson explained that its purpose was to clarify that the statement in paragraph 68 of the Report of the Committee on Maternity Protection adopted at the first discussion that the reference to "without discrimination whatsoever" would not preclude any exceptions that might be agreed on under Article 2 . If the Office could confirm that this was the case, she would withdraw the amendment.

83. The representative of the Legal Adviser, responding to the request for clarification by the Employer Vice-Chairperson, confirmed the opinion given to the Committee during the first discussion, indicating that Article 2 of the proposed Convention did expressly provide for the possibility to exclude from the scope of the Convention certain categories of workers or enterprises and that where such exclusions were made under the conditions provided for under that provision, they could not be considered discriminatory. Concerning the question

of adopted children, she noted that as currently drafted, the provisions of the proposed Convention did not confer any substantive rights on adopted children. On this understanding, the Employer members withdrew their amendment.

84. Article 1 was adopted without change.

Article 2

Paragraph 1

85. The Worker Vice-Chairperson submitted an amendment to replace the words "employed women" with "women workers including homeworkers". After drawing attention to the terminological difficulties of translating the narrow concept of an "employed woman" into the various languages, and in particular into German, she said that salaried employment accounted for only a small percentage of women workers throughout the world and did not reflect the realities in developing countries, where an increasing number of women were atypical workers, contract workers, homeworkers, workers in the informal sector and in disguised self-employment. Even in the developed countries more and more women were working without formal contracts of employment, and the use of the term "employed women" would lead, at least in the German and English texts, to their exclusion from the instrument. She recalled that such exclusions had been the subject of discussion at the recent Meeting of Experts on Workers in Situations Needing Protection, held at the ILO in May 2000. The tripartite conclusions of the Meeting of Experts had recognized that there existed a significant and expanding problem with disguised employment. These trends would accelerate unless international labour standards extended coverage to all workers. She emphasized that it was not her intention to extend the scope of the Convention to persons who were genuinely self-employed.

86. The Employer Vice-Chairperson opposed the amendment, for the same reasons set forth in paragraphs 72 to 85 of the report of the Committee on Maternity Protection adopted at the first discussion, in preference to the Office text, which clearly referred to an employment relationship between a woman and an employer. The proposed Convention dealt with the obligation of the employer to provide leave to employees, and required that employers should not discriminate against women employees on the basis of maternity. The term "women workers" as proposed in the amendment was too broad, since it would include women who worked without pay, self-employed women and others who had no express or implied contracts of employment with an employer. Such an extension of the scope would lead to uncertainty in the application of the instrument. The question of homeworkers therefore depended on the existence of an employment relationship. As regards disguised self-employment, she reminded the Committee that the Committee on Contract Labour had tried unsuccessfully to define a third category of workers, but in her view there were only those with and without contracts of employment. She concluded by saying that the obligations set out in the Convention could apply only where there was an employment relationship, whether or not social security benefits might apply to women other than employed women.

87. The Government member of Argentina supported the amendment in so far as it broadened and strengthened the process of providing full maternity protection as a responsibility of society as a whole and not just of employers. Many countries regulated maternity benefits through social insurance schemes, a situation which the amendment took into account, while the legislation of some countries excluded homeworkers from coverage. The Government member of Côte d'Ivoire also endorsed the amendment and pointed out that women workers often had no formal contracts of employment and needed protection, as in the case of those working in cooperatives or as apprentices in enterprises. The Government

member of Croatia also supported the amendment if the wording was intended to provide wider coverage than the term "employed women".

88. The Government member of Namibia, expressing his agreement with the views of the Employer members, said that it was unnecessary to refer to homeworkers, since the Office text already applied to "any female person without discrimination whatsoever". He also wondered how self-employed persons could be granted maternity leave. The Convention would make sense only in the context of an employer-employee relationship, although this did not necessarily have to be of a formal written kind. Similar views were expressed by the Government member of Nigeria. The Government member of Kenya noted that, while the underlying intentions of the amendment were commendable, it would pose problems of application, in so far as all women were workers, even at home. The Government member of Tunisia also preferred the Office text and said that the inclusion of homeworkers would make the instrument difficult to ratify. Furthermore, there was already another ILO instrument relating to homeworkers.

89. The Government member of Cyprus said that in the light of the outcome of the first discussion, the Office text applied to all employed women who had a contract of employment, i.e. it excluded self-employed persons but included homeworkers who had a contract of employment, whether express or implied. She also wondered whether the mention of homeworkers might not suggest that other forms of atypical employment were not covered by the instrument. For these reasons, she preferred the Office text. The Government member of Portugal, referring to the provision concerning maternity protection in the Home Work Convention, 1996 (No. 177), supported the amendment as regards the inclusion of homeworkers, but said that the extension of the scope to all women workers could cause difficulties of application. She therefore preferred the Office text, if homeworkers were included in the term "employed women".

90. The Government member of Chile said that various views had been expressed concerning different rights and principles, and that the amendment was an attempt to provide maternity protection that went far beyond the coverage of salaried women workers. Many changes had occurred in work organization and in the relationship between employers and employees, which posed a challenge for the new millennium that should be addressed in the proposed Convention. A Convention of lasting value would have to provide protection for all women that was closely related to their actual working conditions and based on the ILO concept of decent work. This meant addressing the situations of precarious employment and disguised self-employment and other forms of work not based on a formal contract of employment, where there was a clear dependency by the worker on the employer. Any new standard must reflect these new realities.

91. The Worker Vice-Chairperson reiterated that it was not her intention for the scope of the instrument to include persons who were genuinely and independently self-employed, and she requested clarification from the representative of the Legal Adviser concerning the meaning of the expression "employed women" and whether it included women performing atypical forms of dependent work.

92. The representative of the Legal Adviser stated that the term "employed women" covered all women in an employment relationship, irrespective of the form of the contract of employment, i.e. whether the contract of employment was oral or in writing, express or implied and irrespective of whether they were employed for wages or for salaries. It also covered homeworkers who were in an employment relationship. Concerning workers who were doing atypical forms of work and were in situations of dependency, or in disguised employment relationships, these workers would, depending on national laws and practice, be considered to be employed persons. One issue was that of application and enforcement

of applicable labour laws. The situation of these workers as well as those who fell outside the protection of labour legislation had recently been examined by the Meeting of Experts on Workers in Situations Needing Protection which was held from 15 to 19 May 2000. Considering these different situations, the amendment as subamended by the Worker members might well be broader in meaning than the expression "employed women" where the women workers concerned would not be considered to enjoy the benefit of the employment relationship. Some of the misunderstandings which arose with the expression "employed women" appeared to be related to the translation into the different languages: the expression in the French text was "femmes employées", in Spanish it was "mujeres empleadas" and in German "abhängig beschäftigten Frauen".

93. The Worker Vice-Chairperson observed that similar explanations had been given during the first discussion. While such explanations were helpful, she was nonetheless perplexed by the translation in German since the term that was used, "abhängig beschäftigten Frauen", referred only to salaried dependent employees and no one else. Similar translation problems affected the French and Spanish versions. Only the term "women workers" could solve this problem in all languages. The representative of the Legal Adviser pointed out that the French translation of the term in Report IV(2B) was "femmes employées", which was the correct translation of "employed women". Following a lack of support for the Worker members' amendment, it was withdrawn.

94. The Government members of Argentina, Brazil, Chile, Costa Rica, Guatemala, Panama, Peru, Uruguay and Venezuela submitted an amendment to replace the words "employed women" with "women workers". The Worker Vice-Chairperson proposed a subamendment, to replace the words "employed women" with the words "employed women including atypical forms of dependent work". The subamendment was accepted by the amendment's sponsors.

95. The Employer Vice-Chairperson recalled again that two years had been spent discussing contract labour only to come to the conclusion that either a contract of employment existed or it did not: there was no third category of workers. She warned the Committee that adding a reference to "atypical forms of dependent work" would create a challenge to the legislation existing in a vast number of countries. This completely new term would lead to great uncertainty and make the Convention unratifiable. The term "employed women" covered workers in an employment relationship and should apply to all employed women regardless of whether they worked at home or not.

96. The Worker Vice-Chairperson countered that there had been growing concern about workers who were not covered by the usual employer-employee relationship. The recent Meeting of Experts on Workers in Situations Needing Protection had dealt with that issue precisely because it had become apparent that legislation in many countries did not cover the new forms of work, usually referred to as "atypical" or "precarious" work. The Worker members' subamendment sought to adjust to this new reality and set a standard for the future.

97. The Government member of Poland agreed with the arguments put forward by the Employer Vice-Chairperson, since the Worker members' subamendment, if accepted, would create a major obstacle to broad ratification. The Government member of the Libyan Arab Jamahiriya noted that the same arguments were being put forward as for the amendment discussed previously. Conventions created obligations that required agreement between at least two parties. When one spoke of "employed women" there was a person at work and an employer of that person. A relationship, whether written or implied, had to exist. If the Committee were to adopt the term "workers" it would introduce an element of vagueness that could lead to confusion. He was in favour of a more specific term. The

Government member of Namibia reiterated his support for the Employer Vice-Chairperson's position. There was no clear definition of "atypical forms of dependent work", and the addition of that notion would only lead to a new debate on an issue that had not been resolved elsewhere.

98. The Government member of France stressed the importance of the debate in terms of the scope of future ILO Conventions. While fully supporting the representative of the Legal Adviser's explanation of "employed women", he noted the new element contained within the Worker members' subamendment, i.e. that the employment relationship could embrace different forms of work, including part-time, temporary and other forms of atypical work, all of which should be covered by the proposed Convention. The concept of dependency was a difficult legal notion, but it did not create a problem for France as used in the proposed subamendment, which he supported. The Government member of Portugal also supported the proposed amendment, as subamended by the Worker members.

99. The Worker Vice-Chairperson stated that the intention underlying the amendment was to cover women in disguised employment relationships. In view of the informal nature of the employment relationship these women were often uninformed of their rights, unable to defend them, and were inadequately protected. Such women should not bear the burden of proving the existence of an employment relationship with their employer. Examples of atypical forms of dependent work included home work, work for temporary employment agencies and contract labour, such as in the case of so-called "independent" truck drivers whose services were, in actual practice, used by only one company so that they were actually in a dependent employment relationship.

100. In response to requests for clarification from the Government member of Germany and the Employer Vice-Chairperson, the representative of the Legal Adviser explained that while it was not for her to define atypical forms of work, she understood the sense of the discussions to include forms such as home work, telework, temporary work and the various other forms of work organization which were evolving. Irrespective of the form of work, if an employment relationship existed or would be deemed to exist in accordance with national law and practice, because of the situation of dependency in which the work took place, women performing such work would fall within the scope of the Convention. She confirmed that the word "including" before "atypical forms of dependent work" was an important one and that it meant that in all circumstances an employment relationship was being considered, irrespective of the type of work being performed or where it took place. In the light of this very clear confirmation that in all instances an employed relationship must exist, the Employers' Vice-Chairperson agreed to the subamendment.

101. The amendment was adopted as subamended.

102. The Employer members withdrew their amendment to replace in the French text "employées" by "salariées", and in the Spanish text "empleadas" by "salariadas".

103. Article 2, paragraph 1, was adopted as amended.

Paragraph 2

104. The Government member of Guatemala introduced an amendment submitted by the Government members of Argentina, Brazil, Chile, Costa Rica and Guatemala to delete paragraph 2, on the basis that there was no justification for the exclusion of any categories of workers or enterprises from the application of the Convention. Identical amendments were submitted by the Worker members and the Government member of Croatia. The Worker Vice-Chairperson stressed that the Convention should have as broad a scope as

possible. It should be an improvement over Convention No. 103 in terms of the number of women covered. The Government member of Croatia affirmed that allowing exclusions would seriously reduce the protection of workers.

105. The Employer Vice-Chairperson strongly opposed deletion of the paragraph since it provided necessary flexibility. She pointed out that a Member wishing to make an exclusion was required to consult with representative employers' and workers' organizations, that only limited categories of workers or of enterprises could be excluded, that such exclusions could only be made when the application of the Convention to them would raise special problems of a substantial nature and that Members would be required to report on the measures taken with a view to progressively extending the provisions of the Convention to those categories. To delete this provision would adversely affect the ratifiability of the Convention, particularly with regard to developing countries. This provision gave a Member the ability to make appropriate decisions on the extent to which it could provide the best possible maternity protection within the limits set by national circumstances.

106. The Government members of Australia, Canada, Cyprus, Egypt, India, the Islamic Republic of Iran, Jordan, Lebanon, the Netherlands, New Zealand, Norway, Romania, Switzerland, the United Kingdom and the United States opposed the amendment. The flexibility provided in paragraph 2 would allow a greater number of countries to ratify the Convention. Overall protection would not be undermined by the safeguards established in the paragraph.

107. The amendments were rejected by a vote of 91,885 in favour, 126,242 votes against, with 3,995 abstentions.

108. An amendment was submitted by the Government members of Benin, Botswana, Côte d'Ivoire, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Libyan Arab Jamahiriya, Malawi, Mali, Namibia, Zambia and Zimbabwe to insert the word "most" before "representative". The Government member of Kenya explained that it was the wish of the African member States to ensure that women workers were not excluded from the application of the proposed Convention and therefore they considered it preferable to have the most representative organizations of employers and workers involved in the consultations.

109. The Employer Vice-Chairperson indicated that the Employer members could accept such an amendment. It would be up to the Member to determine which organizations were the most representative. Referring to the work of the Committee on Freedom of Association, the Worker Vice-Chairperson objected that governments should not be the ones to select the most representative organizations. She requested clarification from the Office on the implications of adding the word "most". The Government member of Cyprus pointed out that there were references both to the "representative organizations" and to "the most representative organizations" in different parts of the proposed text and cautioned that whatever wording was adopted, the Committee should strive for consistency throughout the instrument.

110. The Government member of Argentina did not consider that it was necessary to insist on consultation with the "most" representative organizations since that would exclude consultation with the smaller organizations of employers and workers. The Government member of Croatia contended that many, if not all representative organizations should be consulted, not just the "most" representative organizations. The Government member of the Russian Federation also supported the Office text as the most flexible.

111. In response to a request for clarification by the Government member of Namibia, the representative of the Legal Adviser explained that the two expressions were different and that the decision to use one or the other was usually intentional, and such distinctions could appear in the same instrument. The expression "most representative organizations of employers and workers" was to be found in article 3, paragraph 5, of the ILO Constitution and had been the subject of an advisory opinion of the Permanent Court of International Justice (Advisory Opinion No. 1). In that opinion, the Court stated that while the word "representative" was not defined, the most representative organizations were "those organizations which best represent the employers and the workers respectively. What these organizations are, is a question to be decided in the particular case, having regard to the circumstances in each particular country at the time when the choice falls to be made. Numbers are not the only test of the factor; other things being equal, the most numerous will be the most representative." It was normal to have the criteria for determining representativity to be set out in national law and practice. On the other hand, the "representative organizations of employers and workers" without the word "most" was broader and meant that more organizations which were representative, including sectoral ones or, for instance, women's organizations, would need to be consulted. A number of ILO Conventions used one or the other formula or both.

112. The Worker Vice-Chairperson encouraged the Committee to leave the Office text as it stood to ensure that representative organizations which cared about the interests of women were included in the consultations. The Government member of Kenya withdrew the amendment in light of the discussions.

113. The Government member of Croatia introduced an amendment to delete the words "or of enterprises" in an attempt to limit the exclusions that could be made under the proposed Convention. The Worker Vice-Chairperson supported the amendment. An important objective was to obtain coverage for all women in developing countries, most of whom worked in small enterprises. By making it possible to exclude whole categories of enterprises a huge number of women might be left without adequate protection. The Government member of Chile expressed concern that the Office text provided too much flexibility and too many exclusions.

114. The Employer Vice-Chairperson expressed strong opposition to the proposed amendment. The Employer members considered that there was a need for flexibility regarding the categories of enterprises to which exclusions could be extended in certain instances. A large number of countries provided exclusions for certain types of enterprises, such as family enterprises, agricultural enterprises and small-scale enterprises, and would be unable to ratify the proposed Convention if this possibility were removed. This important element of flexibility would enable developing countries to ratify the Convention and work towards widening coverage.

115. The Government members of Australia, Canada, Cyprus, Japan, New Zealand, Romania and the United States opposed the amendment on the grounds that it was reasonable and helpful to allow for the exclusion of limited categories of enterprises. Similar language was used in other Conventions. Moreover, paragraph 3 of Article 2 encouraged Members to move towards extending coverage. The Government member of the Libyan Arab Jamahiriya also opposed the amendment, reminding the Committee that the text was very precisely worded to provide that each Member which ratified the Convention "may" exclude limited categories of workers or enterprises, rather than that they "ought" to. Further, any exclusions must be restricted to "limited categories" and only used where the application of the Convention to the excluded category would raise "special problems of a substantial nature".

116. The Government members of Kenya and South Africa supported the amendment, emphasizing that the rationale of the Convention was to protect women at work in relation to maternity. To further limit it by allowing for the exclusion of categories of enterprises would result in the most vulnerable workers being unprotected. The Government member of Argentina cautioned that the Office text would expose many pregnant women to the risk of being treated as a kind of "merchandise" in certain enterprises. The Government member of Trinidad and Tobago reflected that in her country domestic workers were entitled to protection. The possibility to exclude limited categories of workers would render the Convention sufficiently flexible, without the need to include a provision for the exclusion of limited categories of enterprises.

117. The Employer Vice-Chairperson stressed that ratification of the Convention would not affect those countries which had laws of universal application. The aim of the Committee was to create minimum standards which would be sufficiently flexible. Retaining both exclusions, together with the consultation and reporting obligations, would provide the requisite flexibility. Imposing the highest standards in all areas of the Convention would expose many women to low levels of protection in those countries which could not ratify it. She observed that the discussion of the amendment provided an indication of how serious the Committee would be in recognizing the diversity of enterprises and the need for flexibility in the application of the Convention. For this reason, she requested a record vote.

118. Put to a record vote, the amendment was adopted by 115,855 votes in favour, 100,674 votes against, with 6,392 abstentions. [2]

119. The Employer Vice-Chairperson submitted an amendment to delete the words "when its application to them would raise special problems of a substantial nature." While acknowledging that such a provision appeared in 11 other Conventions, she believed it was unnecessary and would only create confusion and open up the interpretation of national legislation to third parties. The matter should be left to governments, in consultation with representative organizations of employers and workers concerned.

120. The Worker members strongly opposed the amendment which removed the framework limitation which had been arrived at only after lengthy debate at the first discussion.

[2] Details of the record vote with respect to Government members:

In favour = 41: Argentina, Austria, Barbados, Benin, Bolivia, Botswana, Brazil, Chile, Costa Rica, Côte d'Ivoire, Croatia, Czech Republic, Denmark, Ethiopia, Finland, Germany, Ghana, Greece, Guatemala, Ireland, Italy, Kenya, Lesotho, Madagascar, Malaysia, Mozambique, Namibia, Netherlands, Nigeria, Norway, Rwanda, Slovakia, South Africa, Spain, Swaziland, Sweden, Trinidad and Tobago, Uruguay, Venezuela, Zambia, Zimbabwe.

Against = 22: Australia, Bahrain, Belgium, Canada, China, Cyprus, Egypt, India, Islamic Republic of Iran, Japan, Jordan, Republic of Korea, Kuwait, Libyan Arab Jamahiriya, Papua New Guinea, Poland, Saudi Arabia, Sudan, Tunisia, United Arab Emirates, United Kingdom, United States.

Abstentions = 8: France, Mali, New Zealand, Niger, Pakistan, Portugal, Russian Federation, Switzerland.

Absent = 33: Algeria, Angola, Bahamas, Belarus, Bulgaria, Burkina Faso, Cameroon, Chad, Colombia, Cuba, Dominican Republic, El Salvador, Gabon, Honduras, Hungary, Iceland, Indonesia, Israel, Kiribati, Luxembourg, Malawi, Malta, Mexico, Morocco, Nicaragua, Peru, Philippines, Sri Lanka, Syrian Arab Republic, United Republic of Tanzania, Thailand, Turkey, Viet Nam.

121. The Government members of Austria, Belgium, Canada, Cyprus, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Switzerland, Sweden, the United Kingdom and the United States were opposed to the amendment. Following further lack of support from the Government members, the Employer members withdrew their amendment.

122. Article 2, paragraph 2, was adopted as amended.

New paragraph after paragraph 2

123. The Government member of Portugal introduced an amendment submitted by the Government members of Austria, France, Greece, Luxembourg and Portugal to add a new paragraph after paragraph 2, which she subamended in the light of the earlier debate to read as follows: "For the purposes of paragraph 2 above, part-time workers, as a category, may not be excluded as such from the scope of the Convention." The purpose of the proposal was to ensure that the increasing number of part-time employed women would be covered by the Convention. The Worker Vice-Chairperson shared the concerns of the sponsors and supported the subamendment.

124. The Employer Vice-Chairperson opposed the subamendment on the grounds that Members themselves should decide their own categories of exclusion, based on their particular circumstances, and that it was not for the Committee to prejudice or restrict that flexibility.

125. The Government member of Bolivia, in expressing his support for the subamendment, said that it would help to overcome the increasing discrimination suffered by part-time workers who became pregnant. The Government member of France also endorsed the proposal, on the grounds that part-time workers formed a special category that now accounted for a significant share of employment. Their exclusion would not be consistent with the philosophy of flexibility espoused by his Government. The subamendment also attracted the support of the Government members of Argentina, Chile, Costa Rica, Croatia, Mozambique and Venezuela.

126. The Government member of Cyprus, while not challenging the objective of the subamendment, said that she thought the inclusion of a specific group of persons might cast doubts on the possible exclusion of others. This view was endorsed by the Government member of Germany and the Government member of Namibia, who said that it was preferable to avoid any reference to specific categories. Opposition was also expressed by the Government member of Australia, who said that the issue of exclusion was addressed elsewhere in the instrument, a view echoed by the Government members of Papua New Guinea and Zimbabwe, as well as the Government members of Ghana, Indonesia and Nigeria.

127. Following further opposition from the Government members, the amendment, as subamended, was withdrawn.

128. The Employer Vice-Chairperson submitted an amendment to add a new paragraph as follows:

> A Member might, after consulting with the representative organizations of employers and workers concerned, exclude wholly or partly from the scope of the Convention workers who do not meet established eligibility criteria.

She explained that the purpose of the amendment was to recognize differences in national legislation and practice and that in many countries maternity leave and benefits were

provided only to women who met certain eligibility criteria, such as length of service. Such criteria were a recognition of the fact that holding a job open for a woman on maternity leave and providing training for her replacement represented a cost for employers. The amendment acknowledged practical realities and would help make the instrument ratifiable by the largest number of countries.

129. The Worker Vice-Chairperson strongly opposed the amendment on the grounds that it would allow large groups of women to be excluded from protection.

130. The Government members of Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Namibia, the Netherlands, New Zealand, Norway, Portugal, Spain, Switzerland, Sweden, the United Kingdom and the United States opposed the amendment, as did the Government member of Thailand, who said that the amendment was contrary to the principles of maternity protection. The Government member of Cyprus believed that it would establish too wide a discretion.

131. Following further opposition from the Government members, the Employer Vice-Chairperson withdrew the amendment, but reiterated her conviction that the amendment was merely an acknowledgement of what actually happened in practice pursuant to the establishment of eligibility criteria.

Paragraph 3

132. In the light of the earlier debate, identical amendments to delete paragraph 3, submitted by the Worker members, the Government members of Argentina, Brazil, Chile, Costa Rica and Guatemala, and the Government member of Croatia were withdrawn.

133. The Government member of Croatia submitted an amendment to delete the words "or of enterprises" since, as a result of an earlier amendment made to paragraph 2, they were no longer logically required.

134. The Employer Vice-Chairperson, the Worker Vice-Chairperson and the Government member of Canada agreed that it was a consequential amendment, and the amendment was therefore adopted.

135. The Employer Vice-Chairperson submitted an amendment, which she subamended, to replace the words "its first report" with the words "its reports", and to delete the last sentence of paragraph 3. The purpose of the amendment was to permit Members to exclude categories of workers not only by listing them in their first article 22 report on the application of the Convention, but in subsequent article 22 reports as well. This would give them more flexibility regarding the time period in which exclusions could be made.

136. The Worker Vice-Chairperson opposed the amendment in preference to the Office text, which provided Members with adequate time between ratification and submission of their first article 22 report to make a decision as to whether or not they wished to exclude any categories of workers.

137. The Government members of Austria, Belgium, Canada, Cyprus, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Switzerland, Sweden, the United Kingdom and the United States, opposed the amendment, as did the Government members of Argentina, Brazil, Chile, Costa Rica and Venezuela. The Government member of Cyprus also opposed the amendment in favour of the Office text which she said provided flexibility while at the

same time indicating a certain direction that Members could pursue when they were ready to do so.

138. In the light of the views expressed, the Employer members withdrew their amendment.

139. Article 2, paragraph 3, was adopted as amended.

140. Article 2 was adopted as amended.

New Article after Article 2

141. The Government members of Australia, Belgium, Canada, Cyprus, Finland, France, Germany, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, the United Kingdom and the United States submitted an amendment to add a new Article to read:

HEALTH PROTECTION

Each Member shall, after consultation with the representative organizations of employers and workers, adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work which has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother's health or that of her child.

142. The sponsors of the amendment considered that the protection of the health of the mother and her child was an inherent aspect of maternity protection and the proposed Convention should therefore include a provision of a general nature to that effect. More specific guidelines regarding health and safety could be placed in the proposed Recommendation.

143. The Employer Vice-Chairperson reminded the Committee that she had mentioned in her opening statement that the health of the mother and her child was also a matter of concern to the Employer members and that they accepted the direction of such a principles-based approach. She noted however that their willingness to accept such an amendment was contingent on the understanding that, during the discussion of the proposed Recommendation, recognition would be given to the consequences of women not being obliged to perform certain work.

144. The Worker Vice-Chairperson, in expressing her strong support for the amendment, said it marked a big step forward for women. However, since it was important not only to transfer women from hazardous workplaces, but also to ensure that employers kept workplaces free of hazards, she submitted a subamendment to insert after the word "ensure" the words "that workplaces are free of hazards for pregnant or breastfeeding women and".

145. The Employer Vice-Chairperson stressed the impracticality of such a proposal, which would lead to the closing down of vast numbers of operations where hazardous situations were an inherent factor of life, such as hospitals and steelworks. It would furthermore jeopardize the employment of women. It was impossible to expect workplaces to be free of all hazards. Several Government members, including the Government members of Bolivia, Canada, Croatia, Namibia and Thailand, expressed their opposition to the subamendment. Noting that she could understand the reasons for these objections, the Worker Vice-Chairperson proposed a further subamendment to insert after the word "ensure" the words "safe and healthy workplaces for pregnant and breastfeeding women

and". She emphasized that the intention of her subamendment was to ensure that workplaces where women worked were free of significant risks to their health, in line with the provision for the adaptation of conditions of work contained in Paragraph 7(2)(a) of the proposed Recommendation, which she believed should be made an obligation of the employer.

146. The Employer Vice-Chairperson maintained that the intent of the new subamendment remained the same and that many workplaces could not be made safe for pregnant women and would have to be closed down. The Government member of Cyprus also opposed the subamendment, which might discourage employers from hiring women. She also pointed out that the provision in the proposed Recommendation referred to a woman worker's conditions of work, and not the entire working environment. The Government member of New Zealand said that he understood the spirit of the subamendment, but considered it to be impractical. Following further opposition from the Government members of Ireland and the Republic of Korea, the Worker Vice-Chairperson withdrew the subamendment.

147. The Government members of Argentina, Bolivia, Brazil, Chile, Costa Rica and Venezuela submitted a further subamendment to change the words "not obliged to" to "do not" and to delete the word "significant". The Employer Vice-Chairperson opposed the proposal, since the provision of personal protective equipment and safe apparatus could enable a woman to continue working if she chose to do so. If risks were inherent, there should be no blanket prohibition. She also pointed out that the word "significant" was widely accepted as indicating a measurable level of what would constitute a health risk and referred to its use in the Occupational Safety and Health Convention, 1981 (No. 155). The Worker Vice-Chairperson concurred with the opinion of the Employer members in opposing the subamendment. The Government member of Chile stressed that the intention of the sponsors had been to establish the responsibility of the employer to protect the health of the worker but, in view of the lack of support, withdrew the subamendment.

148. The Government member of Croatia did not consider the words "are not obliged" to be strong enough. She requested clarification as to whether the wording of the proposed amendment would imply that a woman who chose to work in a dangerous area when she was pregnant or breastfeeding would be permitted to do so. The Employer Vice-Chairperson responded in the affirmative, stressing again that protective clothing and apparatus would minimize the risk. The Worker Vice-Chairperson noted that their understanding of the proposed amendment was that a pregnant or breastfeeding woman could not be forced to do hazardous work.

149. With the support of the Employer members and Worker members, the amendment to include a new Article after Article 2 was adopted.

Article 3

150. The Employer Vice-Chairperson submitted an amendment to delete Article 3 and replace it with the following text:

> Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, maternity leave and protection for all employed women.

151. She reminded the Committee that the intention of the discussions was to move away from an overly prescriptive instrument towards a principles-based approach. She said her amendment set the scene for a workable instrument that was not based on a "one-size-fits-

all" formula but which looked at what measures each government actually took to promote maternity leave and protection.

152. Expressing her opposition to the proposal, the Worker Vice-Chairperson said that it would water down the entire instrument. For the instrument to be meaningful, it needed to contain certain minimum requirements such as those set forth in the Office text.

153. The Government members of Austria, Belgium, Canada, Cyprus, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Switzerland, Sweden, the United Kingdom and the United States, opposed the amendment. The Government member of Zimbabwe said it was important to retain certain minimum requirements, a view shared by the Government member of Cyprus. The Government member of Senegal said that the amendment would disregard the efforts made during the first discussion, while the Government member of Namibia believed it would lower the minimum standards of Convention No. 103. Following further opposition from the Government members of Barbados, Mozambique, Namibia, Nigeria, Senegal, South Africa, Trinidad and Tobago, Zambia and Zimbabwe, the Employer members withdrew their amendment.

Paragraph 1

154. The Government members of Argentina, Brazil, Chile, Costa Rica, Guatemala and Venezuela submitted an amendment to replace "12" with "17". In introducing the proposal, the Government member of Brazil said that it was aimed at protecting the health of the child. He referred to findings of scientists and psychologists on the beneficial effects for children of remaining for a longer period with their mother after birth, and the recommendation of the World Health Organization that children be fed breast milk for at least the first four months of life. On the basis of this body of evidence, 17 weeks of maternity leave should be provided for in the proposed Convention.

155. The Employer Vice-Chairperson opposed the amendment. She reminded the Committee that in the first discussion they had sought flexibility by establishing a minimum standard of 12 weeks. That decision had been made in the light of extensive discussions of national law and practice, and there had been no developments since which warranted a change to the period of maternity leave. Office Report IV(2A) showed that 70 member States provided for maternity leave of 12 weeks or less, and retaining this period of leave would help ensure ratification and provide a realistic minimum for those countries which did not have the resources or ability to provide more than 12 weeks of maternity leave. She emphasized that the Convention did not prevent countries from providing for a longer period of leave.

156. The Worker Vice-Chairperson expressed the hope that the Committee could improve on the period of maternity leave that was set by Convention No. 103 nearly 50 years previously, at least on a step-by-step basis. The Worker members supported the interests of women, children and families and therefore endorsed the amendment. The Government members of Austria and Zambia echoed the views of the Worker members.

157. The Government member of Indonesia opposed the amendment on the grounds that it would jeopardize the employment of women. The Government member of the United States also expressed opposition, referring to the Office commentary on page 51 of Report IV(2A) which noted that only slightly more than 40 per cent of ILO member States provided maternity leave of 14 weeks or more. Providing for maternity leave of 17 weeks in the Convention would thus impact on the ability of many member States to ratify it. The Government member of the Republic of Korea expressed support for this position.

The Government members of Benin, Botswana, Côte d'Ivoire, Cyprus, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Libyan Arab Jamahiriya, Malawi, Mali, Namibia, Portugal, Papua New Guinea and Zambia, and Saudi Arabia and Bahrain also opposed the amendment. The Government member of Namibia pointed out that Convention No. 103 was being revised because it had not been ratified by a majority of member States. He doubted whether increasing the period of maternity leave would enable the revised Convention to be more widely ratified than its predecessor.

158. The Government member of Argentina drew the attention of the Committee to the number of countries which provided for maternity leave of 17 weeks or longer. He suggested that the standard for the International Labour Organization should be the best existing legislation, rather than that of countries with lower levels of social development. The Government member of Croatia also supported the amendment, stating that the high level of maternity protection in her country had not dissuaded employers from hiring women.

159. In view of the lack of support, the amendment was subsequently withdrawn by its sponsors. An amendment submitted by the Government member of Croatia to replace "12" with "16" was also withdrawn following lack of support.

160. An amendment was submitted by both the Worker members and the Government members of Austria, Germany, Greece, Italy, Luxembourg and Portugal to replace "12" with "14". The purpose of the amendment was to provide a suitable period of maternity leave which was essential to the physical and psychological health of the mother and child. A period of 12 weeks was too short to achieve these goals.

161. The Worker Vice-Chairperson said that the role of the Committee was not to water down a very important standard, but to improve on Convention No. 103 and to ensure it was more widely applied in the member States. She referred to Governing Body document GB.256/3/3 of May 1993, which stated that it would be reasonable for a new maternity protection Convention to incorporate slightly improved standards and expressly referred to the potential to extend the period of maternity leave from 12 to 14 weeks. Given that 12 weeks had been established in the Maternity Protection Convention, 1919 (No. 3), it would be a poor result more than 80 years later if it were not possible to at least slightly increase the protection. Many countries provided for maternity leave of 14 weeks or more in their legislation, including not only highly industrialized countries, but countries of the developing world.

162. The Employer Vice-Chairperson referred to the concern of the Governing Body that there had been insufficient ratification of Convention No. 103 and stated that this was the primary reason why the subject of maternity leave and protection was on the agenda of the International Labour Conference. Further, the Office had analysed the comments of governments and organizations of employers and workers in Report IV(2A) and had concluded that, in the light of the comments received, no change regarding the length of leave was suggested. She said it was imperative to produce a Convention which was workable and would have a practical effect on women, which could be achieved on the basis of a minimum standard to which all countries could aspire. The Convention should not establish a standard so high that it prevented ratification, decreased employment opportunities for women, and failed to recognize national diversity. The Government member of Indonesia also opposed the amendment.

163. The Government member of the Russian Federation stated that in principle he could support the amendment, since it involved an addition of only two weeks to the period of leave contained in the Office text. The Government members of France and Spain supported the amendment, as did the Government member of Zimbabwe and the

Government member of the Netherlands, who said that there had been substantial developments since 1919 concerning the need to protect the health of children and pregnant women. The Government member of Croatia also supported the amendment as representing a small step forward since 1919. She noted that significant progress had been made since then in international and national standards that applied to both men and women, but there had not been comparable progress in texts that referred only to women.

164. Put to a vote, the amendment was adopted by 111,061 votes in favour, 97,478 votes against, with 6,392 abstentions.

165. Article 3, paragraph 1, was adopted as amended.

Paragraph 2

166. Article 3, paragraph 2 was adopted without change.

Paragraph 3

167. The Employer Vice-Chairperson submitted an amendment to delete the paragraph, which she said was entirely superfluous in a minimum standard instrument. A country could exceed the period of maternity leave provided for in the Convention if it so wished, but a requirement to deposit with the Director-General a further declaration of the extension of the period of maternity leave was not appropriate.

168. The Worker Vice-Chairperson stressed that flexibility did not function in only one direction, but should also serve the interests of enhancing the provisions of the proposed instrument. She therefore opposed the amendment, as did the Government members of Croatia and Poland.

169. Following a lack of support from Government members, the amendment was withdrawn by its sponsors.

170. The Employer members submitted an amendment to move paragraph 3 to the Recommendation, on the grounds that aspirational or permissive provisions would be more appropriate there, either as a separate provision or along with the other reporting provisions.

171. The Worker Vice-Chairperson opposed this proposal for the same reasons as in the case of the previous amendment.

172. The Government member of Namibia sought clarification from the Office as to the form such a declaration should take. The representative of the Legal Adviser explained that a declaration was a document normally accompanying an instrument of ratification or independent of such an instrument which set out the particulars required by the provisions of a Convention. The declaration should clearly indicate the standard in respect of which the international obligation was accepted and which tended to be set out in the national legislation. This should be done in a way which clearly indicated the minimum being specified for the purposes of the Convention. Regarding the form of such a declaration, no particular form was required. This might take the form of a simple letter or a more formal instrument. What was important was that the person who submitted the declaration was one who was authorized to bind the State. Concerning the declarations referred to in paragraphs 2 and 3 of Article 3 of the proposed Convention, the declaration provided for in paragraph 2 was obligatory and had to be submitted at the time of submission of the instrument of ratification. The declaration provided for by paragraph 3, unlike that

required by paragraph 2, was not mandatory. The text provided that "Each Member *may* subsequently deposit … a further declaration …" (emphasis added). Countries which had satisfied the Convention had a discretion to submit a further declaration where they had extended the period of leave beyond what was indicated in an earlier declaration.

173. The Government member of Cyprus observed that the amendment would have been necessary had the period of maternity leave provided for in the Convention been 12 weeks. She felt it was now unimportant whether the paragraph was contained in the Convention or Recommendation. Following lack of support from Government members, the amendment was withdrawn by its sponsors.

174. Article 3, paragraph 3, was adopted without change.

Article 3, paragraph 4

175. The Government member of Croatia introduced an amendment to replace the words "determined by each Member after consulting the representative organizations of employers and workers and" with the words "in no case less than two weeks before the presumed date of childbirth and eight weeks after the actual date of childbirth,". She reminded the Committee of the lengthy debates on the issue of compulsory leave during the first discussion. Her Government considered that it was necessary to maintain a minimum prescriptive period of leave in the proposed Convention. In light of the Committee's decision to extend the minimum entitlement to maternity leave from 12 to 14 weeks, it seemed reasonable to extend the compulsory postnatal period by two weeks as well.

176. The Employer Vice-Chairperson argued that the length of compulsory leave should be decided by each Member after consultation with the representative organizations of employers and workers. Each country was free to establish a compulsory period of leave appropriate to its circumstances, but setting the period in the proposed Convention could deter ratification by countries which did not have such a prescribed period. The appropriate way to proceed was to allow each country to determine the period after consultation and with due regard for the health of mother and child.

177. The Worker Vice-Chairperson explained that, while the Worker members agreed with the intention of the proposed amendment, they preferred the formulation of their own proposed amendment. The Government member of Croatia subsequently withdrew her proposed amendment.

178. The Government member of Chile introduced an amendment submitted by the Government members of Argentina, Brazil, Chile, Costa Rica, Guatemala, Panama, Peru, Uruguay and Venezuela to replace the paragraph with "Maternity leave shall include a period of compulsory postnatal leave of at least six weeks." Recent economic trends had led to a marked increase in service sector jobs. Jobs were becoming less risky for the health of mothers and their unborn children, which allowed for greater flexibility in the prenatal period of maternity leave. Studies had shown, however, that the period after birth was extremely important for the physical and psychological health of the mother and child. Furthermore, it was important to promote breastfeeding. Since in some countries trade unions were unable to defend effectively the rights of women to an adequate period of compulsory postnatal leave through negotiations, it was important to establish a six-week period in legislation.

179. The Employer Vice-Chairperson voiced the Employer members' opposition to the proposed amendment, which was far too prescriptive, provided no flexibility and would deter ratification. She noted that in a number of countries compulsory leave could be

considered discriminatory, as it limited a woman's right to choose. She indicated that the Employer members could support an amendment that had not yet been discussed, submitted by the Government members of Canada, Denmark, Finland, Ireland, New Zealand, Norway, Sweden and the United Kingdom. That amendment did not specify a fixed period, but would allow governments to decide on the length of compulsory leave after consultation.

180. The Worker Vice-Chairperson noted that the Worker members' proposed amendment had the same objective of six weeks of compulsory postnatal leave but allowed more room for agreement between governments and the representative organizations of employers and workers. This was important in light of the cultural diversity and differences in socio-economic situations among Members.

181. The Government member of Argentina pointed out that Convention No. 103 established a minimum of six weeks and the reports prepared by the Office indicated that a large majority of countries already had six or more weeks of compulsory leave after birth. He expressed concern that the Committee's revision of this Convention could reduce the protection already provided, a view shared by the Government member of Croatia. However, following a lack of support from Government members, the amendment was withdrawn.

182. The Worker members submitted an amendment to replace the existing text with the following:

> With due regard to the protection of the health of the mother and the health of the child, maternity leave shall include a period of six weeks' compulsory leave after childbirth, unless otherwise agreed at the national level by governments and the representative organizations of employers and workers.

183. The Employer Vice-Chairperson proposed a subamendment to add at the end of the amendment the following:

> The duration and distribution of any such leave shall be determined by each Member after consulting the representative organizations of employers and workers and with due regard to the protection of the health of the mother and the health of the child.

She said that the subamendment would underpin the minimum standard by facilitating the provision for agreement at national level on the period of compulsory leave. She noted that the terms of the Worker members' amendment would allow the period of compulsory leave to be longer or shorter than six weeks and that it would allow for no period of compulsory leave if so agreed at the national level.

184. The Worker Vice-Chairperson opposed the subamendment, stating that it would add nothing. Women in many countries needed a compulsory leave period to ensure adequate time to recover from childbirth and the minimum duration of compulsory leave should be six weeks. In countries where women had real decision-making power, the provisions on compulsory leave could be amended, but in the majority of countries in which women had no real choice or power, they needed a provision for a minimum compulsory leave period.

185. The Government member of Canada understood the spirit of the Employer members' proposal but pointed out that there would be a contradiction in the text of the amendment if it first provided for six weeks of compulsory leave and then provided that the duration of leave should be determined by each Member. He pointed out that the main difference

between the amendment submitted by the Worker members and another amendment submitted by his Government and others was that the former provided flexibility only where governments were able to reach agreement with the organizations of employers and workers. He was supported by the Government member of Chile, who added that the proposed amendment, in providing for national level agreements, provided sufficient flexibility.

186. In light of the discussion, the Employer Vice-Chairperson withdrew her subamendment.

187. The Government member of Côte d'Ivoire proposed a further subamendment to insert the words "at least" before "six weeks" in order to strengthen the terms of the amendment. He referred to medical and scientific knowledge which implied that longer leave should be taken after childbirth. Since the Convention provided for 14 weeks' maternity leave, he would have preferred that at least eight of those weeks should be compulsory, but the insertion of "at least" would also strengthen the provision.

188. The Worker Vice-Chairperson supported the subamendment.

189. The Employer Vice-Chairperson observed that the aim of revising the Convention was not to improve every clause in Convention No. 103, but to address the barriers to ratification which had led to the low level of ratification of that Convention. The compulsory leave provision had been identified by the Office as one such obstacle. In certain countries, women were not compelled to take leave of a specified duration or at a specified time. Additionally, under the proposed amendment, different arrangements could be agreed at the national level. Countries could provide for compulsory leave of however long a period they might choose, but they should not attempt to impose higher levels on other countries, since the Convention was intended to have as wide an application as possible. The subamendment was not supported by the Employer members.

190. The Government member of Ghana supported the subamendment. She asserted that since the Committee had accepted a provision of 14 weeks of maternity leave, there was no reason to argue against six weeks as a minimum compulsory period of leave. In practice, women would prefer to spend more time with their babies, and an employer or government would not wish to give less than six weeks. The Government member of Barbados supported the subamendment on the grounds that six weeks was the minimum leave required for medical reasons.

191. The Government member of Cyprus observed that the subamendment would not alter the meaning of the amendment, a view supported by the Government members of France, Namibia, Portugal and the United States.

192. The Government member of Côte d'Ivoire disagreed, arguing that including the words "at least" would allow for a period of compulsory leave of more than six weeks. Omitting the words "at least" would allow Members to provide a lesser period, a view also expressed by the Government member of Barbados. The Government member of Croatia supported including the words "at least" but disagreed that that would prevent a possibility of negotiations at the national level resulting in a reduction of the period of compulsory leave. This possibility was one which provided less protection to employed women than the provision contained in Convention No. 103.

193. Following further lack of support from Government members, the subamendment was withdrawn.

194. The Government member of the Islamic Republic of Iran, seconded by the Government member of Chile, proposed a subamendment to delete "six" and replace it with "seven". Since the provision for maternity leave was 14 weeks, it would be appropriate to provide for half of that period as compulsory leave.

195. The Employer and Worker Vice-Chairpersons opposed the subamendment, which was withdrawn due to lack of support.

196. The Government member of Mali asked the Worker members whether the intention of the phrase "Unless otherwise agreed at the national level by governments and the representative organizations of employers and workers" was that there could be an agreement to provide for less than six weeks of compulsory postnatal leave.

197. The Worker Vice-Chairperson said that agreement among Worker members on the wording of the amendment had been very difficult because of differences in their views. For the vast majority of women, it was absolutely necessary to have six weeks' compulsory leave after childbirth. However, the amendment provided the flexibility requested by some Worker members to allow women the opportunity to choose to return to work sooner without the fear that pressure would be exerted on them by employers. It was important to note that provision of a period of compulsory leave that was more or less than the specified six weeks would require governments to obtain the agreement of representative organizations of employers and workers. The need for agreement of employers' and workers' organizations made their role in this regard much stronger than if governments were only required to consult with them.

198. The Government member of the United Kingdom was sympathetic to the Worker members' observation that women in many countries would not be in a position to take maternity leave if it were not compulsory. However, in many other countries women workers wished to have the freedom to choose when to return to work after childbirth. This was reflected in Article 8(2) of European Union Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, which provided for a minimum of "at least two weeks allocated before and/or after confinement in accordance with national legislation and/or practice". The Directive allowed for national legislation and practice to give women freedom of choice, which would be denied under a provision that established a specific period of compulsory postnatal leave. The Government member of France supported the amendment.

199. The amendment was adopted.

200. In light of that decision, an amendment on the same subject submitted by the Government members of Canada and New Zealand was withdrawn.

201. The Government member of Croatia submitted an amendment to add a new paragraph as follows:

> If an employed woman gives birth to a stillborn child or if the child dies before the expiry of postnatal leave, she shall be entitled to continue the leave for as long as it is necessary, as specified in a medical certificate, for her to recover from giving birth and the psychological condition resulting from the loss of her child.

If a woman gave birth to a child that was stillborn or died, she should have the right to adequate time to recover from that loss.

202. The Employer Vice-Chairperson opposed the amendment, which she said was much too broadly worded. An entitlement to leave for as long as necessary until the woman recovered, which was based on a medical certificate, related to sickness issues rather than to maternity.

203. The Worker Vice-Chairperson asked the Office whether circumstances in which a woman gave birth to a stillborn child or one that died were covered under Article 4 as a complication arising out of childbirth. If this were not the case, she would support the amendment. The Employer Vice-Chairperson expressed the view that Article 4 did cover such circumstances. The Government member of Croatia objected that Article 4 referred to a period following the maternity leave, but a woman whose child was stillborn had not begun her maternity leave.

204. The representative of the Legal Adviser explained that two provisions read together – Article 3(1) and Article 4 – covered the situation of the stillborn child. Under Article 3(1) the production by a woman of a medical certificate or other appropriate certification stating the presumed date of childbirth triggered the woman's entitlement to maternity leave. Article 4 referred to leave in the event of complications arising from pregnancy or childbirth. A medical certificate had also to be produced. She could be considered to fall under Article 4 for any prenatal period if she was not yet on maternity leave, but to come under Article 3 when she gave birth to the stillborn child. If she gave birth to a stillborn child while on maternity leave, she would remain covered by Article 3.

205. The Worker Vice-Chairperson considered, in view of this explanation, that the amendment was unnecessary. The Government member of Croatia withdrew the amendment due to a lack of support.

206. Article 3, paragraph 4, was adopted as amended.

Paragraph 5

207. The Government members of Denmark, Italy, Portugal and Sweden submitted an amendment to add a new paragraph after paragraph 5, to read as follows:

> In the case of the death, sickness or hospitalization of the mother before the expiry of postnatal leave, and where the mother cannot look after the child, the employed father shall be entitled to take leave of a duration equal to the unexpired portion of the postnatal maternity leave.

In presenting the amendment, the Government member of Portugal said that its purpose was to ensure greater protection for the child and to involve the father in the protection of the child's health. The provision would update the instrument and mark a major step forward.

208. The Employer Vice-Chairperson reminded the Committee that there had been a lengthy debate on the issue of parental leave during the first discussion. She opposed the amendment not as a matter of principle but because she believed it was better suited for inclusion in the proposed Recommendation. She believed that it would be difficult in many cases to transfer maternity protection rights to a father who would probably have a different employer and that the entire question of providing leave to persons other than the mother would be fraught with difficulties, create uncertainty and make ratification less likely. Such a provision, regarding social security payments and entitlements, should be left to national law and practice and dealt with in the proposed Recommendation.

209. The Worker Vice-Chairperson supported the amendment.

210. The Government member of Argentina said that the amendment would take account of the child's best interests and would emphasize the shared responsibility of both parents. The Government member of Chile, supported by the Government members of Brazil, Costa Rica, Peru and Venezuela, said that the amendment would emphasize the social nature of maternity protection. The cost of such a measure, which would concern only a small percentage of cases, would be relatively insignificant, especially since such leave was often paid for by public funds. The Government member of Croatia also endorsed the amendment, which she said would help take the instrument into the twenty-first century, while the Government member of Thailand said that the intention of the amendment – the greater welfare of children – was a justification in itself.

211. The amendment was opposed by the Government member of Indonesia and the Government member of Egypt, who said that the legislation of many countries prohibited the transfer of leave from one person to another. The Government member of Namibia wondered who would pay for such leave and how the provision could be applied in countries with different cultural practices. The Government member of Papua New Guinea, in expressing her doubts about the amendment, said that in her country it was the female family members who would take over responsibility for a child in the event of the death of the mother, not the father. Similar observations were made by the Government member of Kenya and the Government member of Senegal, who emphasized the importance of the different cultural and legal practices of member States. The Government member of Mali stated that although the declared purpose of the amendment was to protect the interest of the child, account should be taken of different social practices and countries should be allowed to progress at their own pace. The Government member of Morocco emphasized that there was a need to recognize that international standards were universal, a principle which would be compromised by the adoption of the amendment. The Government member of Barbados said that its inclusion in the proposed Convention would not facilitate widespread ratification; such leave would be available to the father in her country by negotiation and its inclusion in the proposed Recommendation would provide for such negotiation. The Government member of Cyprus, while acknowledging that the proposal went in the right direction, recognized that it would pose ratification difficulties and for that reason she preferred its inclusion in the proposed Recommendation. The Government member of Nigeria maintained that the matter could not be properly addressed until the question of who would pay for the leave was resolved.

212. The Government member of Costa Rica submitted a subamendment, seconded by the Government member of Brazil, to add the words "In accordance with national law and practice" at the beginning of the text. The Worker Vice-Chairperson supported the subamendment. The Employer Vice-Chairperson opposed the subamendment on the grounds that the additional words did not circumvent the difficulties regarding leave, payments and benefits or the cultural aspects of the provision.

213. The Government member of the United Kingdom, while expressing her sympathy for the reasons underlying the subamendment, believed that parental leave provisions went beyond the scope of the instrument. The Government member of South Africa acknowledged the importance of the idea behind the subamended text, but believed that its inclusion in the proposed Recommendation would enhance ratification possibilities, a view echoed by the Government member of Côte d'Ivoire. The Government member of Namibia opposed the subamendment, stating that there was no need for international legislation to regulate such detailed aspects of family life.

214. Following further lack of support from Government members, the subamendment was withdrawn.

215. The Government member of Mali submitted a subamendment to insert after the word "father" the words "or any other person taking care of the child", the purpose of which was to take account of the cultural aspects of the proposal already raised in the discussion. The Worker Vice-Chairperson supported the subamendment. The Employer Vice-Chairperson opposed the subamendment, which she said would not provide the certainty required in a minimum standards document. Following a lack of support from Government members, the subamendment was withdrawn.

216. The Government member of Chile submitted a further subamendment to delete the words "sickness or hospitalization" of the mother and replace them with "of the mother during childbirth or in relation thereto", the purpose of which was to limit the provision to the death of the mother during childbirth or shortly afterwards, without jeopardizing the protection granted to the child.

217. The Worker Vice-Chairperson supported the subamendment, as a logical extension of her previous endorsement. The subamendment was opposed by the Employer Vice-Chairperson, as she believed it mixed two concepts – maternity leave and bereavement leave – in a Convention which was about maternity protection at work.

218. Put to a vote, the subamendment was rejected by 184,008 votes in favour, 186,796 votes against, with 20,910 abstentions.

219. The Government member of Portugal explained that one of the intentions behind her original amendment had been to give recognition to the rights of the father, which in no way should be seen as compromising the differing cultural practices of member States.

220. The Government member of Mexico, with the support of the Government member of Costa Rica, submitted a further subamendment which read as follows:

> In the case of the death of the mother during childbirth or in relation thereto, the employed father shall be entitled to paternity leave in accordance with national law and practice or collective agreement.

He recalled that the proposed Convention had begun by recognizing the specific circumstances of enterprises and that his amendment now sought to recognize the specific characteristics of maternity, which went hand in hand with paternity. He said that the Committee should be forward-looking.

221. The Worker Vice-Chairperson endorsed the subamendment since it would protect the health of the child and would concern only the part of the maternity leave not used due to the death of the mother.

222. The Employer Vice-Chairperson, requesting that her reservations regarding the process under which subamendments were being submitted be placed on record, namely accepting a duplicate amendment after its original had been voted against, expressed her strong opposition to the proposal. She considered it inappropriate to introduce an entirely new concept, paternity leave, in an instrument dealing with maternity protection at work, after an already lengthy debate concerning leave following the death of a mother and discussion about the question of national cultural practices. Moreover, the subamendment proposed by the Government member of Mexico made such paternity leave entirely open-ended, i.e. not restricted to the unexpired portion of the leave.

223. The Government member of Tunisia opposed the subamendment on the grounds that paternity leave was not an appropriate provision for an instrument on maternity protection, a view endorsed by the Government member of Namibia. The Government member of New Zealand said that an option on parental leave was due to be discussed later by the Committee. Following further lack of support from the Government members, the subamendment was withdrawn, as was the original amendment.

224. The Government member of Croatia submitted an amendment to add a new paragraph which she subamended to read as follows: "in the case of sickness, hospitalization or death of the mother before the expiry of postnatal leave, in accordance with national law and practice, the employed father of the child may be entitled to take leave of a duration equal to the unexpired portion of the postnatal maternity leave.", which she hoped would address the doubts raised concerning national practice and circumstances.

225. The Employer Vice-Chairperson opposed the subamendment, on the grounds that the provision was already dealt with in the Workers with Family Responsibilities Convention, 1981 (No. 156), and that the word "may" was not appropriate for a Convention.

226. The Worker Vice-Chairperson indicated that she could support the amendment. However, following lack of support from the Government members, the amendment was withdrawn.

227. The Government members of Argentina, Brazil, Chile, Costa Rica, Guatemala and Venezuela submitted an amendment to add the following new paragraph:

> Women workers who adopt a child under two years of age shall, in accordance with national legislation, be entitled to a period of paid leave, the duration of which shall be equivalent to that of postnatal leave.

228. The Government member of Chile, in introducing the amendment, stated that it took account of the situation in a variety of developing countries in which a considerable percentage of the population lived in a state of poverty and were thus often confronted with circumstances in which the relatives of a child's parents would take care of the child. In these countries, legislation and decisions of the highest courts often extended protection to situations of adoption. Even in more developed countries, the subject of adoption was often significant. She stressed that the amendment limited leave for women adopting children to the duration of the postnatal leave provided by national legislation and applied only to adopted children under 2 years of age.

229. The Employer Vice-Chairperson accepted that the issue of adoption was an important one, but emphasized that the Convention addressed only maternity protection at work and should not be extended to include adoption. She also drew attention to the difficulties of the reference to "women workers", which was broader than the use of "employed women" contained in the proposed Convention. The issue of who would finance the leave posed difficulties, while the reference to "postnatal leave", which was not mentioned elsewhere in the text, would cause so much uncertainty as to render the instrument unratifiable for many countries. The proposed Convention was aimed at providing a period of leave for pregnancy and childbirth, to allow the mother time to recover; to ensure that her health and safety were not adversely affected; and to ensure that the infant was protected during its first weeks of life. These circumstances were quite different from those of adoption, and were more appropriate to the Workers with Family Responsibilities Convention, 1981 (No. 156).

230. The Worker Vice-Chairperson supported the amendment on the grounds that it was not only the health of the mother which was addressed by the instrument but the health of the child.

231. The Government member of Guatemala, with the support of the Government member of Zambia, stressed that the child was a central concern of the Convention. The Government member of Costa Rica pointed out that maternity had a sociological as well as a biological dimension and that it was important to provide for protection in circumstances of both natural and acquired maternity.

232. The Government members of Algeria, Bahrain, Egypt, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Morocco, Saudi Arabia, Syrian Arab Republic, Tunisia and the United Arab Emirates opposed the amendment on the grounds that it did not take account of the specific circumstances of various countries, in particular the Arab countries, and cautioned that it might prove an obstacle to ratification. The Government member of Indonesia also opposed the amendment. The Government member of Cyprus, noting that such leave was provided under maternity protection law in her country, suggested that since the proposed amendment referred to "paid leave", it should not be discussed at this stage when the issue of benefits had not yet been discussed. She added that it would not be advisable to indicate a period of leave of which the duration was not clearly defined. The Government member of Ethiopia suggested moving the amendment to the Recommendation to ensure that the Convention remained a flexible instrument.

233. The Government member of Kenya reminded the Committee that sometimes the biological mother could not or did not want to bring up the child, and some women wished to adopt because they were unable to have children. She therefore urged that serious attention be given to the amendment. She was supported by the Government member of South Africa, who also mentioned the societal problems concerning the increasing numbers of children orphaned as a result of HIV/AIDS, especially in Africa.

234. The Government member of Ghana expressed her sympathy for the amendment but wondered how it would apply in circumstances in which an adoptive mother was entitled to leave at the same time as the natural mother wished to take up her entitlement. The Employer Vice-Chairperson pointed out that in such circumstances there would be two separate periods of maternity which would be taken concurrently. She again referred to the relevance in this regard of the Workers with Family Responsibilities Convention, 1981 (No. 156). The Government member of Costa Rica pointed out that such circumstances were of an extreme kind, and that attention should be focused on the more general situation.

235. Put to a vote, the amendment was adopted by 179,826 votes in favour, 178,432 votes against, with 22,304 abstentions. In view of the significance of the issue and the uncertainty that might result from the use in the amendment of the terms "women workers", "paid leave" and "postnatal leave", the Employer Vice-Chairperson requested a record vote. The amendment was rejected by a vote of 178,432 in favour, 181,220 against, with 25,092 abstentions. [3]

[3] Details of the record vote with respect to Government members:

In favour = 23: Argentina, Brazil, Burkina Faso, Chile, Costa Rica, Croatia, Czech Republic, Finland, Greece, Guatemala, Italy, Kenya, Mexico, Mozambique, Norway, Poland, Portugal, Slovakia, South Africa, Sweden, Venezuela, Zambia, Zimbabwe.

Against = 25: Australia, Bahrain, Barbados, Belgium, Canada, Egypt, Ethiopia, India, Indonesia, Islamic Republic of Iran, Ireland, Japan, Republic of Korea, Kuwait, Luxembourg, Namibia,

236. Article 3, paragraph 5, was adopted.

237. Article 3 was adopted as amended.

Working Party concerning Articles 4 to 6

238. At its eighth sitting, the Committee decided to set up a Working Party to discuss Articles 4 to 6 and to report back to the Committee. To this end, a number of Government members were nominated from the different regions, while the Employer and Worker Vice-Chairpersons were nominated by the members of their respective groups. Nonetheless, membership of the Working Party was open to any Government member of the Committee.

239. At the tenth sitting, the Government member of Canada, in his capacity as Chairperson of the Working Party, informed the Committee that the Working Party had held a useful exchange of views, focusing on the issues of the financing of benefits, including the question of the individual liability of employers for the benefits payable to women employed by them, approaches to the level or rate of benefits and the treatment of medical benefits under Article 5. He said that the Working Party considered it would be useful to continue its discussions with a view to developing proposals to be submitted to the Committee. He suggested that, after its discussion of Article 3 of the proposed Convention, the Committee should move to the questions of employment protection and non-discrimination dealt with under Articles 7 and 8, before returning to the question of benefits, in order to give the Working Party time to make further progress. This was accepted by the Committee.

240. At the thirteenth sitting, the Chairperson of the Working Party reported on the progress. He said that three formal meetings had been held. No overall consensus on Articles 4, 5 and 6 had been reached, but discussions had continued outside the Working Party in order to produce a document that would set out tentative areas of consensus and particular points for decision-making, which might then serve as the basis for discussion in the plenary of the Committee.

241. At the sixteenth sitting, the Chairperson of the Working Party reported that the Working Party had made considerable progress towards achieving consensus. He introduced a "Draft proposal in light of Working Party discussions" which might be discussed as a single amendment proposed by the Working Party. The draft proposal had aimed to reflect the discussions of the Working Party, but there had not been time for it to be considered or adopted by the Working Party as a consensus document. He accordingly suggested that any ideas missing from the text could be introduced as subamendments.

Netherlands, Nigeria, Papua New Guinea, Saudi Arabia, Trinidad and Tobago, Tunisia, United Arab Emirates, United Kingdom, United States.

Abstentions = 18: Austria, Botswana, Colombia, Cyprus, Denmark, France, Ghana, Lesotho, Malaysia, Mali, New Zealand, Nicaragua, Philippines, Russian Federation, Spain, Switzerland, Thailand, Uruguay.

Absent = 39: Algeria, Angola, Bahamas, Belarus, Benin, Bolivia, Bulgaria, Cameroon, Chad, China, Côte d'Ivoire, Cuba, Dominican Republic, El Salvador, Gabon, Germany, Honduras, Hungary, Iceland, Israel, Jordan, Kiribati, Libyan Arab Jamahiriya, Madagascar, Malawi, Malta, Mauritania, Morocco, Niger, Pakistan, Peru, Rwanda, Sri Lanka, Sudan, Swaziland, Syrian Arab Republic, United Republic of Tanzania, Turkey, Viet Nam.

242. The Government member of Argentina objected that the Latin American countries had not participated in the drafting of the draft proposal. He questioned whether the text could be treated as an amendment, since the deadline for amendments had expired.

243. The Employer Vice-Chairperson commended the work of the Government member of Canada, who had chaired the Working Party and had done his utmost to bring together divergent views. The Working Party, which had been duly constituted under the Standing Orders, had permitted a small group to discuss highly technical issues and had been a very useful exercise. She also noted that at least three representatives of the Latin American countries had been involved in the meetings of the Working Party. The Employer members were disappointed that the draft proposal would not be considered by the Committee, since it would have significantly advanced the Committee's work in view of the large number of amendments and the complexity of the questions to be addressed. Her sentiments were shared by the Worker Vice-Chairperson, who commented that the establishment of a working party was a usual procedure for streamlining the work of especially complex issues before a Committee. The Chairperson had done everything possible to facilitate a constructive result to the work of the Working Party. She considered the Working Party's outcome satisfactory as it had allowed the Employer members and the Worker members to agree on these very important, difficult and sensitive issues.

244. In view of the objections raised by the Government member of Argentina concerning the status of the draft proposal, it was decided that it would not be treated as an amendment. The discussion then proceeded on the amendments that had been submitted to Article 4.

Article 4

245. An amendment submitted by the Worker members to insert after "on production of a medical certificate" the words "or other appropriate certification, as determined by national law and practice" was withdrawn, as was an amendment submitted by the Employer members to insert in the last line, after the word "leave", the words "and any payment for such leave".

246. The Government member of Argentina introduced an amendment submitted by the Government members of Argentina, Brazil, Chile, Costa Rica, Guatemala, Panama, Peru, Uruguay and Venezuela to replace "the competent authority" with "national legislation". He noted that the proposal was intended to make the provision of such leave more certain and to prevent the use of discretionary criteria on the part of the competent authority.

247. The Employer Vice-Chairperson could accept the principle of the amendment, but proposed to subamend the amendment to read "in accordance with national law and practice", which was the more usual phrase.

248. The amendment was adopted as subamended.

249. Article 4 was adopted as amended.

New Article after Article 4

250. The Government member of Portugal withdrew an amendment submitted by the Government members of France and Portugal to add a new paragraph after Article 4 as follows:

BENEFITS

1. Medical benefits shall be provided, in accordance with national laws and regulations or other means referred to in Article 11, to the woman and to the child.

2. Medical benefits shall include prenatal, childbirth and postnatal care, as well as hospitalization care, when necessary.

and to change the title and content of Article 5 accordingly.

Article 5

251. Although the Employer members would have preferred a principles-based approach, in the interests of achieving an acceptable Convention the Employer Vice-Chairperson withdrew an amendment to delete the Article and replace it with:

Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to ensure, by methods appropriate to national conditions and practice, that a woman on maternity leave has adequate means of supporting herself and her child.

Paragraph 1

252. The Employer Vice-Chairperson introduced an amendment to delete the words "Cash and medical" which she immediately subamended so that paragraph 1 would read:

1. Cash benefits shall be provided, in accordance with national laws and regulations, or in any other manner as may be consistent with national practice, to women who are absent from work on leave referred to in Articles 3 or 4.

Because the intention of the subamendment was to allow cash benefits and medical benefits to be dealt with separately, such a subamendment would necessarily affect the wording of paragraph 7. Wording similar to subamended paragraph 1 but relating only to medical benefits should be inserted at the beginning of paragraph 7, and the resulting text would read:

Medical benefits shall be provided in accordance with national laws and regulations or in any other manner consistent with national practice. Medical benefits shall include prenatal, childbirth and postnatal care, as well as hospitalization care when necessary.

253. In response to a request for clarification by the Worker Vice-Chairperson on the impact of the proposed subamendment, the representative of the Legal Adviser explained that the subamendment put forward by the Employer members to deal separately with cash benefits and medical benefits would permit medical benefits to be extended beyond the scope of the Office text which offered medical benefits only to women absent from work on leave if this was decided by national law or practice. The Worker Vice-Chairperson then expressed her support for the subamendment.

254. The Chairperson stated that the Committee would deal with the subamendment in two stages. To avoid potential confusion in discussing later paragraphs before earlier ones had been decided, discussion of the second portion of the Employer members' subamendment would be deferred until the Committee had dealt with paragraphs 2, 3, 4, 5 and 6. The part of the amendment as subamended concerning paragraph 1 was adopted.

255. Article 5, paragraph 1, was adopted as amended.

Paragraph 2

256. The Employer Vice-Chairperson withdrew an amendment to delete the word "cash".

257. Article 5, paragraph 2, was adopted without change.

Paragraph 3

258. The Employer Vice-Chairperson withdrew an amendment to delete paragraphs 3 and 4 as well as an amendment to move paragraphs 3 and 4 to the Recommendation, and to replace "shall" with "should" wherever it appeared.

259. The Government member of Canada introduced an amendment submitted by the Government members of Canada, Denmark, Finland, Ireland, Japan, Norway, Sweden and the United Kingdom to replace the text of paragraph 3 with the following:

> Cash benefits paid with respect to leave referred to in Article 3 or 4 shall be paid at a rate no lower than a rate payable for sickness or temporary disability in accordance with national laws and regulations or other means referred to in Article 11.

He explained that the intention was to provide an element of flexibility that, under Article 6, would be available only to certain countries. This would now be available to all countries, which would in turn facilitate ratification.

260. The Government members of Argentina, Brazil, Chile, Colombia, Costa Rica, Cuba and Venezuela submitted an amendment to replace the words "shall not be less than two-thirds of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits" with the words "shall cover the full amount of the woman's previous earnings." In presenting the amendment, the Government member of Argentina stated it was linked to a subsequent amendment he proposed to submit to Article 5, paragraph 7, to the effect that cash and medical benefits should be provided through compulsory social insurance, public funds or in a manner determined by national law and practice. He emphasized that the principle of non-discrimination against pregnant workers and mothers could not be implemented unless they received the full amount of their previous earnings while on leave. He referred to data showing that the total cost of providing benefits at this level, including replacement of the worker, maternity leave, the provision of nurseries, and other related costs, accounted for only a very small percentage of the total wage bill. The total cost of maternity protection would be very low if it were financed by society as a whole. In a country with a birth rate and female labour force participation such as those of Argentina, an ILO study had shown that the cost would be equal to 2.15 per cent of the wage bill, if nurseries were included, and 1.12 per cent if they were excluded. The economically active population covered in the developed countries might be higher, but the birth rate in those countries was lower. The case of Argentina was probably representative of the average situation. He added that a large number of Latin American and African countries believed that working mothers should no longer be penalized by receiving only two-thirds of their earnings. The ILO's mission was to help countries achieve social progress, even when others chose not to do so. He referred to the provision of the ILO Constitution that labour is not a commodity and insisted that, since almost half a century had passed since the 1952 instrument, it was time to provide women with the full amount of their previous earnings.

261. The Government members of Benin, Botswana, Burkina Faso, Côte d'Ivoire, Ethiopia, Ghana, Kenya, Lesotho, Libyan Arab Jamahiriya, Madagascar, Mali, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, South Africa, Sudan, Zambia and Zimbabwe submitted an amendment to delete the words "two-thirds of". The Government member of Kenya explained that the African countries had in place a variety of provisions on cash benefits, including some which provided for the full amount of previous earnings. She emphasized that women should not be disadvantaged while on maternity leave, but stated that to ensure flexibility the issue of the cash benefits should be left to the individual States to determine according to national law and practice.

262. The Employer Vice-Chairperson opposed all the amendments in preference to the Office text. She recognized that some countries provided for benefits equal to the full amount of the woman's previous earnings, but felt that this was not an issue for the Committee since, under the Office text, countries would be able to provide for benefits at a level higher than the minimum standard. The requirement that benefits should be the full amount of a woman's previous earnings would represent an important barrier to ratification.

263. The Worker Vice-Chairperson stressed that the Committee was considering an extremely important aspect of its work and must be forward-looking and realistic. She observed that the Worker members had sought a balance throughout the discussions and intended to continue to do so in the interests of adopting a widely ratifiable text. She strongly opposed the amendment submitted by the Government members of Canada, Denmark, Finland, Ireland, Japan, Norway, Sweden and the United Kingdom, which sought to reduce benefits. In respect of the amendment submitted by the Government members of Argentina, Brazil, Chile, Colombia, Costa Rica, Cuba and Venezuela, as well as the amendment submitted by the Government members of Benin, Botswana, Burkina Faso, Côte d'Ivoire, Ethiopia, Ghana, Kenya, Lesotho, Libyan Arab Jamahiriya, Madagascar, Mali, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, South Africa, Sudan, Zambia and Zimbabwe, she emphasized that it would not pose significant difficulties for many industrialized countries, but would be problematic for many countries in other parts of the world and wondered whether all the Government members who supported setting benefits at the full amounts of the woman's previous earnings felt that their Governments would be able to implement the provision. While workers would like the best of all worlds, it was incumbent on the Worker members to help in reaching a responsible decision that would result in a realistic Convention that would be more widely ratified and implemented than Convention No. 103.

264. In the light of the discussion, the Government member of Kenya withdrew her amendment on the grounds that the Office text provided sufficient flexibility for member States to pay higher levels of benefits. The Government members of Canada, Denmark, Finland, Ireland, Japan, Norway, Sweden and the United Kingdom also withdrew their amendment.

265. The Government member of Chile reiterated her support for the amendment which she had co-sponsored and which she said concerned a matter of principle. Furthermore, she believed that it gave the International Labour Organization the opportunity to send a clear signal of the value of motherhood at a time when the birth rate was falling worldwide, and 80 per cent of the world's poor were women and children. The Government members of Brazil, Côte d'Ivoire and Cuba said that provision for cash benefits at the full amount had not posed any difficulties in their countries. The Government member of Cyprus endorsed the agreement reached on the Office text between the Employer and Worker members and thanked the Government member of Kenya for her understanding in helping the Committee in deciding this issue. The Government member of Namibia also preferred the Office text and pointed out the difficulties in making comparisons between the rates of cash benefits provided in different countries, since the full amount of a woman's previous earnings might

still not provide a suitable standard of living in some countries, whereas in others a lower rate of benefits might nonetheless be satisfactory.

266. Following lack of support from Government members, the amendment was withdrawn.

267. Article 5, paragraph 3, was adopted without change.

Paragraph 4

268. An amendment submitted by the Worker members to insert the words "and Article 4" after "in Article 3" was withdrawn.

269. The Government members of Australia and Canada submitted an amendment to insert a new paragraph as follows:

> Notwithstanding the two preceding paragraphs, cash benefits may be provided in an amount that on average is less than two-thirds of the women's previous earnings provided the Member, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organization, explains the reason therefor and indicates the rate at which cash benefits are provided. In its subsequent reports, the Member shall describe the measures taken with a view to progressively raising the rate of benefits.

In presenting the amendment, the Government member of Canada stated that it was aimed at recognizing that some of those countries which provided for cash benefits as a percentage of earnings were not currently able to provide for benefits at the level of two-thirds of previous earnings but aspired to this standard. The amendment would enable them to ratify the Convention and subsequently report on measures taken with a view to progressively raising the rate.

270. The Employer Vice-Chairperson stated that, while she endorsed the principles behind the proposal, she opposed the amendment in the light of the previous discussion.

271. The Worker Vice-Chairperson also opposed the amendment, which was withdrawn by its sponsors.

272. Article 5, paragraph 4, was adopted without change.

Paragraph 5

273. An amendment submitted by the Employer members to delete the word "cash" was withdrawn.

274. Article 5, paragraph 5, was adopted without change.

Paragraph 6

275. An amendment submitted by the Employer members to delete the word "cash" was withdrawn.

276. An amendment submitted by the Government members of Canada, Denmark, Finland, Ireland, Japan, Norway, Sweden and the United Kingdom to insert the words "referred to in paragraph 3 above and medical benefits" after the words "cash benefits" was withdrawn.

277. An amendment submitted by the Government members of Austria and the Netherlands to insert the words "and medical" after the word "cash" was withdrawn.

278. An amendment submitted by the Government members of Denmark, Finland, Norway and Sweden to insert the words "based on previous earnings" after the words "cash benefits" and to insert the words "a flat-rate benefit or to" after the words "she shall be entitled to" was withdrawn.

279. An amendment submitted by the Government members of Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Guatemala, Peru, Uruguay and Venezuela to replace the words "social assistance" with the word "public" was withdrawn.

280. An amendment was submitted by the Government members of Benin, Botswana, Burkina Faso, Côte d'Ivoire, Ethiopia, Ghana, Kenya, Lesotho, Libyan Arab Jamahiriya, Madagascar, Mali, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, South Africa, Sudan, Zambia and Zimbabwe to insert the words "where applicable" after "funds". In presenting the amendment, the Government member of Kenya explained that the amendment would address the needs of the majority of African countries, which had not yet established social assistance funds.

281. Following opposition from both the Employer members and the Worker members, the amendment was withdrawn by its sponsors.

282. An amendment was submitted by the Government member of Croatia to delete "or other means referred to in Article 11" on the grounds that it was consequential to the deletion of the same words from paragraph 1. The Employer Vice-Chairperson proposed a subamendment to replace the words "or other means referred to in Article 11" with the words "or in any other manner consistent with national practice", which was endorsed by the Worker Vice-Chairperson supported.

283. The amendment, as subamended, was adopted.

284. Article 5, paragraph 6, was adopted as amended.

Paragraph 7

285. Discussion returned to the second part of the Employer members' subamendment introduced during the discussion of paragraph 1, which would result in the following text:

> Medical benefits shall be provided in accordance with national laws and regulations or in any other manner consistent with national practice. Medical benefits shall include prenatal, childbirth and postnatal care, as well as hospitalization care when necessary.

286. The Government member of Croatia proposed a further subamendment to add the words "by qualified midwives or medical practitioners" after the words "postnatal care" and to add the sentence "Freedom of choice of doctor and freedom of choice of a public or private hospital shall be respected". She explained that elements of protection that had already been provided in Convention No. 103 were being left out of the revised text. The revision of Convention No. 103 should not be a step backwards. The Government member of Chile agreed that standards should be improved upon. However, it was important to distinguish between rights and obligations. The right to freedom of choice could not be exercised in countries which were unable to offer such a choice.

287. The Employer Vice-Chairperson considered that the issue of ensuring that the care was provided by qualified midwives or medical practitioners and also the issue of whether or not to pay for private hospitals should be left to each Member to decide. The Employer members did not support the further subamendment.

288. The Worker Vice-Chairperson, while supporting the idea that the care be provided by qualified personnel, could not accept the subamendment as proposed, because it would be too difficult in many countries to ensure freedom of choice of the type of hospital. She suggested that such wording might be put in the Recommendation. She proposed a further subamendment to add the words "provided by experienced personnel" after the words "postnatal care".

289. The Government member of Iraq opposed inclusion of such details in the Convention. The Government members of Cyprus and New Zealand opposed the further subamendment put forward by the Government member of Croatia since such matters were adequately dealt with in Paragraph 3 of the Recommendation.

290. Owing to lack of support, the Government member of Croatia and the Worker Vice-Chairperson withdrew their respective subamendments.

291. The Government member of Portugal proposed a further subamendment to the second part of the Employer members' subamendment to insert the words "to the woman and child" in the first sentence after the words "medical benefits shall be provided". In response, the Employer Vice-Chairperson proposed a further subamendment to the second part of their subamendment to add the words "as may be" before the word "consistent" and to add "to women who are absent from work on leave referred to in Article 3 or 4" at the end of the first sentence. The Worker Vice-Chairperson could not support the further subamendment because it would change the intention of the text, providing medical care only to women on leave. She also pointed out that the text referred to prenatal, childbirth and postnatal care and that it was implicit that such care included mother and child. The Employer Vice-Chairperson withdrew the further subamendment. Noting that there seemed to be agreement that the text implicitly referred to mother and child, the Government member of Portugal also withdrew her subamendment.

292. The Government members of Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Guatemala, Peru, Uruguay and Venezuela submitted an amendment to add the phrase "for the woman and her child as necessary" to the end of the paragraph, which the Government member of Brazil subamended to produce the following text:

> Medical benefits shall be provided for the woman and her child in accordance with national laws and regulations or in any other manner consistent with national practice. Medical benefits shall include prenatal, childbirth and postnatal care, as well as hospitalization care when necessary.

The purpose was to resolve the matter regarding to whom such benefits should apply.

293. The Employer Vice-Chairperson noted that this amendment as subamended by the Government member of Brazil incorporated the intentions behind the second part of the subamendment that the Employer members had submitted in relation to paragraph 1. She therefore withdrew the second part of the Employer members' amendment as subamended and supported the amendment submitted by the Government members of Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Guatemala, Peru, Uruguay and Venezuela, as subamended by the Government member of Brazil, on the

understanding that the hospitalization care referred to was limited to that provided in conjunction with prenatal, childbirth and postnatal care. This view was endorsed by the Worker Vice-Chairperson.

294. The amendment was adopted as subamended.

295. Article 5, paragraph 7, was adopted as amended.

New paragraph after paragraph 7

296. Following a request from the Government member of Argentina, two amendments to add new paragraphs after Article 5, paragraph 7, were discussed together.

297. An amendment was submitted by the Employer members to add a new paragraph, which the Employer Vice-Chairperson subamended to read as follows:

> In order to protect the situation of women in the labour market, benefits in respect of the leave referred to in Articles 3 and 4 shall be provided through compulsory social insurance or public funds or in a manner determined by national law and practice. An employer shall not be individually liable for the direct cost of any monetary benefit to a woman employed by him or her without that employer's specific agreement except where such is provided for in national law or practice in a member State prior to the date of adoption of this Convention by the International Labour Conference, or unless subsequently agreed at the national level by governments and the representative organisations of employers and workers.

298. The Employer Vice-Chairperson stated that the effect of the amendment as subamended would be to confirm that arrangements regarding liability for the payment of benefits that already existed by the date of the adoption of the Convention could continue. Beyond that date, any subsequent decision to impose individual employer liability for the direct cost of any monetary benefit to an employee would be subject to agreement at the national level between the government and the representative organizations of employers and workers. Collective agreements, such as those which provided for employers to supplement social assistance, could be considered to constitute employers' specific agreement. This protected the position of countries where national law or practice currently allowed for the individual liability of employers for the direct cost of maternity benefits to their employees. Furthermore, the amendment would help ensure that the promotion of female employment opportunities would not be compromised by initiatives to place the individual liability on employers.

299. The Worker Vice-Chairperson noted that the Committee had reached a crucial stage in its deliberations and emphasized that it was important to be forward-looking, to ensure sufficient flexibility to allow different maternity benefit systems to operate while promoting the provision of maternity benefits through social security systems. With regard to individual liability of employers, she accepted the amendment in principle, but submitted two subamendments: first, to insert the word "such" before the words "monetary benefit"; and second, to delete the words "In order to protect the situation of women in the labour market" at the beginning of the sentence. The first subamendment was accepted by the Employer Vice-Chairperson but the second was opposed by the Employer members and subsequently withdrawn.

300. In response to a request from the Worker Vice-Chairperson concerning the last sentence of the original subamendment, the representative of the Legal Adviser stated that if the Convention were adopted by the International Labour Conference, the provision would

permit exceptions to the non-liability of the individual employer in three situations. In the first situation, all countries which currently provided for individual employer liability for the payment of benefits referred to in Articles 3 and 4 would be able to maintain that system of financing benefits. The national laws or practice of these countries would be deemed to be in compliance with the Convention if they were to ratify it. The second situation concerned those countries which did not have individual employer liability at 15 June 2000, the date of adoption of the proposed Convention. The employer could be made individually liable if this were agreed at the national level by the government and the representative organizations of employers and workers. The third situation covered was where the employer expressly agreed to that liability. Collective agreements would be considered to constitute such an agreement.

301. The Government members of Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Guatemala, Peru, Uruguay and Venezuela submitted an amendment to add the following paragraph after paragraph 7:

- The cash and medical benefits should be provided through compulsory social insurance, public funds or in a manner determined by national law and practice.

- Any contribution due under compulsory social insurance providing maternity benefits and any tax based upon payrolls which is raised for the purpose of providing such benefits, whether paid by both the employer and the employees or by the employer, shall be paid in respect of the total number of persons employed, without distinction of sex.

It was agreed that this amendment would be considered together with the amendment submitted by the Employer members.

302. The Government member of Argentina noted that, more than 80 years earlier, Article 3(c) of Convention No. 3 already provided that benefits were to be paid "either out of public funds or by means of a system of insurance" as a means of preventing discrimination against women in employment. Moreover, the provisions under the second part of their amendment were already established by Article 4, paragraph 7, of Convention No. 103, which was essential to preventing discrimination in employment. Flexibility which encouraged discrimination was unacceptable. He did not want to support a revised Convention that would reduce the protection of women from discrimination to below the level provided under these earlier instruments. If the Employer members' amendment were adopted, a member State which had a system under which employers were individually liable for the direct cost of maternity benefits could continue to have such a system and still be able to ratify the proposed Convention without being required to amend its legislation. Furthermore, a member State that had ratified the proposed Convention could, with the agreement of the representative organizations of employers and workers, establish such a system of individual employer liability. It was the State's responsibility to defend the fundamental principle that there should be no gender-based discrimination in employment, hence he could not support any provision that would pose such a risk. He pointed out in this respect that some workers' organizations were dominated by men and would not necessarily give priority to defending the interests of women workers. Moreover, although the cost of maternity benefits for governments would not be high in terms of their overall budget, such costs could be very high for employers with many women workers of childbearing age. For these reasons the principles adopted in 1919 and 1952 under Conventions Nos. 3 and 103 to prohibit individual employer liability for maternity benefits should continue to apply.

303. The Employer Vice-Chairperson pointed out that the first part of the amendment was already included under her own amendment. She considered that the second part should remain in the Recommendation as currently provided for in the Office text.

304. The Worker Vice-Chairperson agreed that the first part had already been addressed in the amendment submitted by the Employer members and that the second part belonged more properly in the proposed Recommendation.

305. The Government member of Croatia submitted a further subamendment to the Employer members' amendment to delete the words "in a manner determined by national law and practice", and all the words after the words "employer's specific agreement". She emphasized the need for a forward-looking Convention, firmly based on social insurance.

306. The Employer Vice-Chairperson opposed the subamendment.

307. The Worker Vice-Chairperson emphasized that the future depended on cooperation between governments, employers and workers, and that legislation alone could not resolve the challenges that lay ahead. She urged Government members to endorse the agreement reached between the Worker members and the Employer members and to recognize that the proposed text would enable a much larger number of members to ratify the new Convention.

308. Following lack of support, the Government member of Croatia withdrew her subamendment.

309. The Government member of New Zealand expressed his full support for the amendment of the Employer members, as subamended, as did the Government member of Germany, who said that the paragraph in Convention No. 103 concerning individual liability was a big obstacle for ratification by Germany. The proposed paragraph was acceptable to her country for two reasons: (a) the exception of existing systems; and (b) the explanation of this exception by the representative of the Legal Adviser. She said she would prefer the deletion of the first part of the sentence concerning the situation of women, and noted that the wording to the effect that "an employer may be individually liable … if such is provided for in national law" provided an important means of protecting existing systems of financing maternity benefits. If adopted, and taking into consideration the clarification provided by the representative of the Legal Adviser, its effect would be that Germany would be in a position to ratify the proposed Convention.

310. The Government member of Kenya believed that the inclusion of the second part of the Employer members' amendment in the proposed Convention would pose an obstacle to ratification and submitted a subamendment to move the second part to the Recommendation. She expressed concern however that some countries did not have social insurance schemes. Recognizing that the Employer and Worker members had reached agreement and emphasizing that their cooperation was respected, she said that African Government members were not satisfied with the outcome on this matter, but withdrew her subamendment.

311. In the light of the discussion and following lack of support, the Government member of Argentina withdrew the amendment submitted by the Government members of Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Guatemala, Peru, Uruguay and Venezuela.

312. The amendment submitted by the Employer members was adopted, as subamended.

313. The Government member of Venezuela withdrew an amendment to add a new paragraph after paragraph 7 to read as follows:

> All Members that ratify this Convention may grant monetary benefits equal to those for temporary disability in accordance with national legislation when the economy or the social security system is not sufficiently developed to comply with paragraphs 3, 4 and 8, and must indicate this in their first report on the application of the Convention under article 22 of the Constitution of the International Labour Organization, indicating in subsequent reports the measures they have taken with a view to increasing gradually the level of those benefits.

314. The paragraph was adopted.

315. Article 5, as amended, was adopted.

Article 6

316. The Government member of Canada withdrew an amendment to delete Article 6, which he had submitted together with the Government members of Denmark, Finland, Ireland, Japan, Norway, Sweden and the United Kingdom. He observed that this withdrawal was a consequence of the withdrawal of an earlier amendment to Article 5 to extend the flexibility envisaged in Article 6 to all countries. The Government member of the United Kingdom noted regretfully that the retention of Article 6 would mean that the proposed Convention would not establish a single minimum standard for the level of maternity benefit.

317. The Employer Vice-Chairperson introduced another amendment to delete Article 6, but subamended it to delete from the Office text only the words "or other means referred to in Article 11". This subamendment was fully supported by the Government member of Croatia who had tabled an identical amendment. The Worker Vice-Chairperson also supported the amendment as subamended.

318. The Government member of Argentina observed that in its amended form, the Employer members' amendment was now less radical than two amendments to delete Article 6, paragraphs 1 and 2, which he had submitted along with the Government members of Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Guatemala, Peru, Uruguay and Venezuela. The Chairperson therefore ruled that these two amendments would be discussed first.

319. In introducing the two amendments, the Government member of Chile explained that when she and the co-sponsors had submitted the amendments, they had not known how much flexibility the proposed Convention would provide for. In the meantime more flexible provisions had been adopted in Article 5 which would stand in the way of effective control of compliance with the Convention. After years of struggle to prevent pregnant women being penalized by having their incomes reduced, it was unacceptable to introduce still greater flexibility, so Article 6 could not be retained. It would send countries the wrong signal, particularly as there was evidence of regressive trends within social security systems.

320. In view of insufficient support from other members of the Committee, the Government member of Chile, with very deep regret, withdrew the amendments, expressing her conviction that the protection being provided for working mothers was being reduced.

321. Returning to the Employer members' amendment and subamendment, the Employer Vice-Chairperson explained, in response to a question from the Government member of Cyprus,

that the intention of deleting the words "or other means referred to in Article 11" was to safeguard the position of countries whose economy and social security system were insufficiently developed. The fact was that "other means" included company agreements under which sickness benefits were sometimes paid at the rate of 100 per cent of earnings, albeit for a short period. If benefits were to be based on these other means, the effect would be to impose not a lower, but a higher requirement on the countries concerned.

322. The amendment, as subamended, was adopted.

323. An amendment submitted by the Employer members to move Article 6 to the proposed Recommendation was withdrawn.

324. Article 6 was adopted as amended.

Article 7

325. The Worker members and the Government member of Croatia both submitted amendments to delete the rest of the paragraph after the words "national laws or regulations". The Worker Vice-Chairperson, supported by the Government member of Croatia, said that the Article was of great importance to both the Worker members and to the women concerned. It must be absolutely clear in the instrument that women should not be dismissed during maternity leave, or any other kind of leave provided for in the Convention, and during pregnancy. In reality there was wide discrimination against women because of maternity and all the obligations connected with it, and the primary role of the Committee was to ensure that women had the utmost protection against any kind of discrimination, especially dismissal. The absolute protection against dismissal during the period of maternity leave, which was provided in Convention No. 103, should not be reduced.

326. The Employer Vice-Chairperson, while stressing that women absent on maternity leave should be protected, opposed the amendment. An absolute prohibition on termination of employment was unacceptable, since it would preclude dismissal in the event of the closure of the enterprise, misconduct or a breach of workplace rules. Clearly stated prohibited grounds for dismissal should be maintained to ensure that the protection applied only to termination on grounds of pregnancy, childbirth and its consequences and nursing. She said, however, that the Employer members would willingly accept the deletion of the final sentence of the Article.

327. The Government member of Australia opposed the amendment on the grounds that the Office text appropriately balanced the workers' need for protection and the interests of employers in operating in an appropriate and efficient manner. The Government members of Barbados, Cyprus, Germany, Lesotho and Peru opposed the amendment, pointing to similarities between the Office text and provisions in their own countries. The Government member of Namibia also expressed his opposition, pointing out that burden of proof issues depended on whether a matter was dealt with under civil or criminal codes.

328. The Government member of Côte d'Ivoire supported the amendments and expressed his concern over the use of the word "grounds" in the Office text, since employers would always be able to find grounds for dismissal.

329. Following further lack of support from Government members, the amendments were withdrawn.

330. The Worker members submitted an amendment to replace the existing text with the following:

It shall be unlawful for an employer to terminate the employment of a woman during her absence on leave referred to in Article 3 or 4. It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or during the period of breastfeeding following her return to work, except on grounds unrelated to the pregnancy or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or nursing shall rest on the employer who must justify the dismissal before the judicial authorities or other competent authorities prior to its taking effect.

331. The Worker Vice-Chairperson stated that the amendment clearly prohibited dismissal during the period of maternity leave, but afforded equivalent protection to that provided for in the Office text during pregnancy and the period following leave. The absolute prohibition of dismissal during maternity leave was considered a vital protection in many countries.

332. The Employer Vice-Chairperson opposed the amendment, and noted that Convention No. 103 did not contain such restrictive wording. Recommendation No. 95 recognized closure of enterprises and the expiry of contracts of employment as justified grounds for dismissal. Were the current amendment to be adopted, it would mean that even in such circumstances, the employer could not terminate the employment of a woman. Such a situation did not make practical sense. The last part of the amendment, which would require an employer to justify the dismissal before the judicial authorities prior to its taking effect, would prevent employers from effectively running their businesses. Such a requirement could not be implemented across the range of diverse legal systems in member States. She added that the provision in the Office text that the protected period following the woman's return to work would be "prescribed by national laws or regulations" was missing from the amendment. Breastfeeding could extend for years. Such an unlimited period of protection as was provided for in the amendment was not workable.

333. The Government member of the United Kingdom noted that the amendment, in referring to the period of breastfeeding, was much broader than the Office text, and had implications with regard to Article 9. The Government member of Cyprus also opposed the amendment because of the imprecision of the term "period of breastfeeding".

334. The Government member of Chile fully supported the amendment. Protection against discriminatory dismissal was a priority issue in the twenty-first century. All democratic countries had clear legislation against discriminatory dismissal, for example, regarding pregnant workers. Non-discrimination on the basis of maternity had the same legal character as non-discrimination on the basis of race, colour or social status. Dismissal should only be allowed for just cause, such as *force majeure*, closure of the enterprise or serious fault on the part of the employee, and in these cases prior approval by the competent authorities should be required.

335. The Worker Vice-Chairperson stressed that the amendment would not prevent dismissal due to the closure of an enterprise. If a company no longer existed, then there would no longer be a reason to retain the woman worker. However, during maternity leave there could be no possible reasons for a woman's dismissal due to just cause, because the woman would not be in a position to do anything wrong while she was not at work. The situation was different with regard to pregnancy or breastfeeding, since many discriminatory dismissals did take place for those reasons because of employers' desire to reduce labour costs and the difficulties of rescheduling work and operations. For this reason, in the same manner as the Office text, the amendment permitted dismissals during those periods as long as the grounds for dismissal were unrelated to pregnancy or nursing. The Worker Vice-Chairperson also accepted that there was a need to set a limit on the period of protection for

breastfeeding, and proposed a subamendment to add after the words "following her return to work" the phrase "to be prescribed by national laws and regulations".

336. The Government member of the United Kingdom opposed the reference to breastfeeding, and could not support a requirement that employers should first have to justify dismissing a pregnant or breastfeeding woman before the competent authorities, as this would place an intolerable burden on businesses. The Government member of France, echoing that view, supported the Office text.

337. The Worker Vice-Chairperson withdrew the subamendment and proposed a new subamendment that would reintroduce part of the Office text by replacing "during the period of breastfeeding following her return to work" with "during the period following her return to work to be prescribed by national laws and regulations".

338. The Employer Vice-Chairperson emphasized that an absolute prohibition of dismissal allowed for no exceptions. She referred to a 1999 direct request of the Committee of Experts commenting upon the legislation of Poland that allowed dismissal of a woman during pregnancy or maternity leave upon agreement with the trade union organization represented in the enterprise, if specified grounds were met for the dismissal. The Committee of Experts stated that in the event that justifiable reasons for dismissal were invoked during maternity leave, the notice of dismissal would be suspended for the duration of the protection period provided for under Article 6 of Convention No. 103. The Employer Vice-Chairperson interpreted this comment to mean that if a company went out of business it would nevertheless be required to continue to employ a woman for the duration of her maternity leave. Such an absolute prohibition of dismissal would be a barrier to ratification. For this reason, she insisted that dismissals unrelated to pregnancy or the birth of the child must be permitted during maternity leave as well as during pregnancy and the protected period following return to work. It was totally unacceptable to require the employer to obtain prior authorization before dismissal, in view of the fact that it might take many months before a hearing could be held to determine whether or not a dismissal was to be permitted.

339. The Worker Vice-Chairperson observed that many countries banned dismissal of women during their maternity leave, and no businesses were prevented from closing because of this. The Government member of Croatia stated that in her country in such cases the woman on leave would continue to be covered under social security schemes, and only afterwards would her employment be terminated.

340. The Government members of Cyprus and the Netherlands preferred the Office text.

341. The Worker Vice-Chairperson withdrew both the subamendment and the amendment due to lack of support.

342. In light of the preceding discussion, the Employer members withdrew their amendment which would have replaced Article 7 with the following text:

> It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on maternity leave, except on grounds unrelated to the pregnancy, to the childbirth or to breastfeeding.

343. The Government member of Brazil introduced an amendment submitted by the Government members of Brazil, Chile, Costa Rica, Dominican Republic, Guatemala and Venezuela to delete all the text after "national legislation" and add "except for just cause, with prior authorization of the competent authorities, in accordance with national

legislation. The burden of proof that there was just cause for dismissal shall rest on the employer." The Government member of Brazil emphasized that, both during maternity leave and upon her return to work, a woman should be able to dedicate herself to breastfeeding and caring for her health and that of the child. Dismissal for economic reasons or reasons unrelated to pregnancy, childbirth or breastfeeding was unacceptable. It was very difficult for workers to establish before the judicial authorities that reasons given by the employer were not valid, but the concept of just cause existed in all national legislation.

344. The Employer Vice-Chairperson was totally opposed to the amendment, which she said would place an intolerable threefold burden on employers. Not only would the employer be required to establish just cause for dismissal, a concept that was not accepted in many countries, but the employer would also need prior authorization and then bear the burden of proving that the dismissal was for valid reasons. Such a requirement would make employers less willing to employ women and would thus adversely affect women's situation in the labour market.

345. The Worker Vice-Chairperson supported the amendment because of the importance of providing a barrier to dismissal on maternity-related grounds. The Government member of Argentina supported the amendment on the basis that the revision of a Convention should always extend rights rather than reduce them. The Government member of Chile explained that in some countries prior authorization for dismissal was given by the labour inspectorate, while in others it was necessary to request permission through the judicial system. She referred to the values which the Convention was intended to protect, including the protection of the woman throughout the maternity period and the principle of non-discrimination. These values could not be protected with a commercial or business logic.

346. The Government member of Cyprus opposed the amendment because it placed inappropriate burdens on governments, which should not have to determine whether or not there was just cause for dismissal. Moreover, it was inconsistent to require prior authorization for dismissal and then to specify that this should be in accordance with national legislation.

347. After further expressions of opposition from the Government members of Barbados, Kenya and Nigeria, the amendment was withdrawn.

348. The Government member of the United Kingdom introduced an amendment, submitted by the Government members of Canada, Cyprus, Japan, the United Kingdom and the United States, to replace the last sentence of the proposed Article by "The burden of proving that the reasons for dismissal are unrelated to pregnancy and its consequences shall rest with the employer once a *prima facie* case has been established." The sponsors subamended the last part of the sentence to clarify the meaning of *prima facie* by replacing the text after "employer" with "once the employee has stated why she suspects that her dismissal was related to her pregnancy or absence on leave." The intention behind their amendment as subamended was to remove some of the burden from the employer of proving that the dismissal was not unfair, since they did not consider that the employer should have to disprove unsupported or vexatious cases. The woman would first have to establish the existence of just suspicion. Such an approach would be consistent with the existing procedures in the United Kingdom and in the United States, as well as in a number of countries in the European Union.

349. The Employer Vice-Chairperson pointed out that a statement of suspicion was quite different from a *prima facie* case, which required demonstrating that there were reasonable grounds for suspicion. There was limited usefulness in introducing into an international

Convention a notion of law that existed in the English common law system but not in other legal systems. Wording must be found which could apply in all legal systems. While she appreciated the intention of removing the sole responsibility for the burden of proof from the employers, she could not support the subamended amendment since the mere statement of suspicion did not constitute a *prima facie* case.

350. The Worker Vice-Chairperson expressed her group's preference for the Office text. She recalled that during the first discussion a clear understanding had been reached that a woman must file a complaint before the employer would be required to provide proof that the reasons for dismissal were not discriminatory.

351. Owing to the clear lack of support, the amendment was withdrawn.

352. The Employer Vice-Chairperson introduced an amendment that she subamended in the interests of responding to some of the concerns expressed. Instead of replacing the words "rest on the employer", those words would be retained and would be followed by "or be determined by national law or practice".

353. The Worker Vice-Chairperson reiterated her preference for the Office text.

354. The Government member of Cyprus objected since the additional phrase would negate the initial notion. The Government member of Namibia also opposed the subamended amendment. The Government member of Croatia referred to the wording used in the Termination of Employment Convention, 1982 (No. 158), in the case of termination and suggested that it would also be applicable in the case of the draft Convention.

355. The Government member of France proposed a subamendment, accepted by the Employer members, to maintain the phrase "rest on the employer" and add "in accordance with national law and practice". Such wording was similar to that used in the Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex and might provide more flexibility.

356. The Worker Vice-Chairperson opposed the subamendment, in preference to the Office text. She referred the Committee to page 90 of Report IV(2A) which made clear that the Office text would not dispense the employed woman from first providing evidence of her pregnancy and of the termination of her employment.

357. In response to a question from the Government member of the United Kingdom, the representative of the Legal Adviser referred the Committee to page 90 of Report IV(2A) in which the Office stated that the proposed Convention did not dispense with the requirement that the employed women first provide evidence of both her pregnancy and of the termination of her employment, if these were in dispute. She explained that a woman would have to indicate the reasons for her suspicion to allow the employer to prove that the reasons for the dismissal were not related to pregnancy, childbirth and its consequences, or nursing. However, she emphasized that the woman would not be required to indicate more than the basic elements of her suspicions.

358. Following lack of support from the Government members, the subamendment was withdrawn.

359. The Employer Vice-Chairperson emphasized that the question of the burden of proof placed on the employer was of crucial importance and immense concern to employers. She noted that the requirement that a woman state the basic elements of her suspicions did not have legal status in any jurisdiction. This provision would be impossible to transpose into

many national legal systems and would render the Convention unratifiable and therefore meaningless.

360. The Worker Vice-Chairperson expressed her deep concern that the Committee should produce an instrument which would be meaningful to the women concerned. This would not be the case if there remained a danger of women being dismissed because of pregnancy, maternity and breastfeeding and she therefore urged the Committee to adopt the Office text.

361. The Government member of Chile pointed out that both in her country and in Brazil systems more complicated than that provided for in the Convention had operated for more than 40 years without raising any difficulties. The Employer Vice-Chairperson responded that while employment protection was important, the Convention should not impose prescriptive requirements relating to the different legal systems of other member States.

362. Put to a vote the amendment, as subamended, was defeated by 40,579 votes in favour, 52,173 votes against, with 2,728 abstentions.

363. The Government members of Denmark, Finland, Ireland, Norway and Sweden submitted an amendment to delete the words "or 4 or during ... regulations" in the first sentence, and to replace both instances of "nursing" with "breastfeeding". In introducing the amendment, the Government member of Norway said that women returning to work should enjoy the same protection as other workers and that the provision of special protection would restrict the access of women to the labour market.

364. The Employer Vice-Chairperson supported the amendment, noting that protection against termination of employment was provided by the Termination of Employment Convention, 1982 (No. 158).

365. The Worker Vice-Chairperson opposed the amendment in preference to the Office text, noting that the provisions of Article 4 concerned additional leave provided on production of a medical certificate in the case of illness, complications or risk of complications arising out of pregnancy or childbirth. Women taking leave in such circumstances were not in a comparable position to other workers and should therefore receive special protection.

366. Following lack of support from Government members, the amendment was withdrawn by its sponsors.

367. An amendment by the Employer members to delete "or during a period following her return to work to be prescribed by national laws or regulations" was withdrawn.

368. An amendment was submitted by the Government member of Croatia to insert after the word "regulations" the words "which must include the period during which she breastfeeds the child". She explained that this period was not indefinite and should be determined by national law and practice.

369. The Employer Vice-Chairperson opposed the amendment on the grounds that such a provision was so broad as to render the proposed Convention unratifiable, particularly since different countries established different levels of prescription.

370. The Worker Vice-Chairperson expressed her support for the intention behind the amendment.

371. The Government member of Kenya opposed the amendment on the assumption that if the terms "nursing" and "breastfeeding" could be used interchangeably, the period of

breastfeeding was already protected under Article 7. The Government member of New Zealand also opposed the amendment in preference to the Office text, as did the Government member of Cyprus. The Government member of the Russian Federation supported the proposal, and noted that the period of breastfeeding was a natural continuation of childbirth and was considered by both UNICEF and WHO as crucial in ensuring the health of the child. The representative of the World Health Organization, expressing her understanding for the concerns of the Employer members, stated that, although her Organization recommended that breastfeeding should continue for at least two years, the majority of women breastfed for no longer than the first year, which was the most important period.

372. Following lack of support from the Government members, the amendment was withdrawn.

373. An amendment submitted by the Worker members to insert the words "including during the period of nursing" after "a period following her return to work" was withdrawn in light of the earlier debate.

374. An amendment submitted by the Employer members to replace the word "to" with "as might" after the words "return to work" was withdrawn, as was an amendment submitted by the Employer members to replace the words "leave referred to in Article 3 or 4" with the words "maternity leave".

375. An amendment was submitted by the Employer members to replace both instances of the word "nursing" with "breastfeeding", in the interests of ensuring consistency in terminology. The Government member of Costa Rica drew the Committee's attention to the fact that the two terms were not interchangeable, and that in Spanish *lactancia* referred to the idea of 'milk', whereas the term *amamantamiento* meant that the milk was provided directly at the breast. In replying to a request for clarification from the Worker Vice-Chairperson, the representative of the Legal Adviser stated that the Office had been conscious of these distinctions in drafting its text, but considered that the word "nursing" was more elegant in certain contexts. She emphasized that in both cases the intended reference was to breastfeeding and further confirmed that the term "breastfeeding" encompassed the expression of breast milk.

376. Following lack of support from the Government members, the amendment was withdrawn.

377. The paragraph was adopted.

New paragraph after Article 7, paragraph 1

378. The Government members of Argentina, Brazil, Chile, Dominican Republic, Guatemala and Venezuela submitted an amendment to add a new paragraph as follows:

> 2. The pregnant woman shall have the right to transfer to another post, when this is required by health conditions, on presentation of a medical certificate, with the assurance that she can return to her previous post.

The purpose of the proposal was to protect the employment of the pregnant woman, with account being taken of her health and that of her child.

379. The Employer Vice-Chairperson opposed the amendment on the grounds that the matter had been dealt with in new Article 3, which contained general principles concerning the health of mother and child, and was addressed by Paragraph 7(2) of the Recommendation which provided for a variety of other options. Furthermore, in many cases transfer to

another post was not a feasible option, particularly in the case of small and micro-enterprises, where no such post might even exist.

380. The Worker Vice-Chairperson supported the amendment, stating that its content was different from that of the new Article 3, which concerned the safe nature of the workplace, rather than the condition of health of the woman concerned.

381. The Government members of Cyprus and New Zealand stated that they understood the intention of the amendment, but considered that the matter had been satisfactorily addressed by new Article 3.

382. The Government member of Côte d'Ivoire submitted a subamendment to add the words "as far as possible" after the words "women shall have". While the woman might not be ill, she might be in a weakened position and there might be conditions to which she should not be exposed, particularly harmful chemicals or ionizing radiation.

383. The Employer Vice-Chairperson made it clear that she was not suggesting that women should be exposed to such conditions, a matter which in any case was addressed by other instruments. The means for providing the woman worker with alternatives to working under harmful conditions were best addressed in the Recommendation. She therefore opposed the subamendment, for the same reasons as she had opposed the original amendment.

384. The Worker Vice-Chairperson supported the subamendment.

385. The Government member of Brazil said that the idea of "as far as possible" was already implicit in the original amendment, whereupon the Government member of Côte d'Ivoire withdrew his subamendment. Following a lack of support from Government members, the amendment was withdrawn.

386. The Government members of Argentina, Brazil, Chile, Dominican Republic, Guatemala and Venezuela submitted an amendment to add a new paragraph as follows: "A woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave". The justification for the proposal was similar to that of the previous amendment, namely that a woman should not suffer any discrimination on her return to work.

387. The Employer Vice-Chairperson opposed the amendment, which she said was more a matter to be addressed in the proposed Recommendation where it was already covered by Paragraph 6. A woman was entitled to leave and to protection against dismissal and discrimination, but a guarantee of this kind might be difficult to establish in some countries.

388. The Worker Vice-Chairperson strongly endorsed the amendment, which she believed addressed an important issue.

389. The Government member of Croatia supported the amendment which she said would enhance employment protection. The Government members of Barbados and Côte d'Ivoire also endorsed the amendment, as did the Government member of Trinidad and Tobago, who said that her country went even further by allowing such workers the right to promotion while on maternity leave. The amendment was adopted.

390. Article 7 was adopted as amended.

Article 8

Paragraph 1

391. The Worker Vice-Chairperson submitted an amendment to add in the second line the words "any aspect of" before the word "employment", which she said was intended to make the provision as comprehensive as possible. The Employer Vice-Chairperson did not consider that the amendment added any substance to the meaning of the Office text. Following the lack of support from the Government members, the Worker Vice-Chairperson withdrew the amendment.

392. The Government members of Denmark and Portugal submitted an amendment to delete the words "– notwithstanding Article 2, paragraph 1 –". They did not consider that issues concerning the scope of the Convention should be addressed in this Article. Furthermore, the protection of the rights of people seeking employment should be dealt with in other instruments.

393. The Employer Vice-Chairperson supported the amendment, on the grounds that the phrase "notwithstanding Article 2, paragraph 1" only complicated and confused matters.

394. In response to a request for clarification from the Worker Vice-Chairperson, the representative of the Legal Adviser said that for the Office that protection against discrimination in employment applied to access to employment. However, in view of the questions raised regarding the scope of the Convention under Article 2, paragraph 1, and in order to avoid any ambiguity, it had been considered advisable to clarify beyond any doubt that persons seeking employment would also be protected under this paragraph. This was reflected on pages 92-93 of the Office commentary in Report IV(2A). If the Committee considered that the addition of these words was unnecessary, they could be removed.

395. The Government members of Cyprus and the United Kingdom said that, on that understanding, it might be unnecessary to include the reference. The Government member of Croatia considered that the reference to Article 2, paragraph 1 should be retained, since it was a technical element which clarified the reference to unemployed women seeking access to employment.

396. In the light of the clarification provided by the representative of the Legal Adviser, the Government member of Portugal withdrew her endorsement of the amendment, which was not adopted due to lack of support.

397. Article 8, paragraph 1, was adopted.

Paragraph 2

398. The Government members of Denmark, Finland, Norway and Sweden submitted an amendment to delete paragraph 2 and replace it with the following:

> An employer may require a test for pregnancy or a certificate of such a test only when a woman is applying for employment where the work is prohibited or restricted for pregnant or breastfeeding women under national laws or regulations or where there is recognized or significant risk to the health of the woman or the health of the child.

In presenting the amendment, the Government member of Norway said that it was a more flexible provision that would accommodate different national legislations and regulations regarding pregnancy tests.

399. The Employer Vice-Chairperson supported the amendment, which she said gave sufficient protection while recognizing the existence of differences in law and practice.

400. The Worker Vice-Chairperson stated that the subject of pregnancy tests was an important one and opposed the amendment, on the grounds that the Office text was stronger.

401. Following lack of support from Government members, the amendment was withdrawn.

402. The Worker Vice-Chairperson submitted an amendment to delete the rest of the paragraph after the words "applying for employment", the purpose of which was to prevent the abuse of pregnancy tests by employers, particularly in export processing zones, where they were often used as a means of excluding women from employment and terminating the employment of pregnant women. While she was not against pregnancy tests for certain kinds of work, she opposed the enforced testing of women workers.

403. The Employer Vice-Chairperson stressed that there was no requirement under the Office text for imposing such tests. There was rather a prohibition against pregnancy tests, except where they were necessary to protect the health of the woman and her unborn child. In the event that employers in ratifying countries misused such tests, they would be acting contrary to their national legislation. She emphasized that employers must be able to know if a woman worker was likely to be at risk, and that this was in the interest of the health and safety of the woman and her child.

404. The Government members of Cyprus, Namibia and Poland preferred the Office text , which they said provided greater protection of the health of women.

405. Following further lack of support from the Government members, the Worker Vice-Chairperson withdrew the amendment.

406. The Government members of France and Portugal submitted an amendment to delete the words "where the work" and to replace by the words "where required by national laws, regulations or practice in respect of work that", which would accommodate those national legislations that required such testing in specific cases. The Worker Vice-Chairperson submitted a subamendment to delete the words "or practice", which she said often involved instances of abuse.

407. The Employer Vice-Chairperson opposed the subamendment and the amendment in preference to the existing Office text which already prohibited testing except where restricted under national laws or regulations. Under the subamendment there could be no pregnancy testing unless specific legislation were in effect to cover all areas of work and all circumstances. The onus on member States to keep up to date in this regard was clearly impracticable, given the changing nature of work and improvements in occupational safety and health and the measurement of risks. Adoption of the amendment would in practice put a stop to pregnancy tests in situations where women's health might be at risk.

408. The Worker Vice-Chairperson responded that legislation was not needed to cover all branches of industry, and that her objective was to ensure that women would not be excluded from employment simply because of discrimination. The subamendment was supported by the Government member of Senegal.

409. Put to a vote, the amendment, as subamended by the Worker members, was adopted by 48,763 votes in favour, 39,215 votes against, with 5,115 abstentions.

410. Article 8, paragraph 2, was adopted as amended.

411. The Government member of New Zealand, with the support of the Government member of the Netherlands, moved a motion as to procedure to obtain a decision by the Committee to proceed to the discussion of proposed Article 9. He considered the question of health protection, which was the subject of a number of proposed amendments, had already been discussed at length by the Committee, in particular resulting in the adoption of a new Article 3, and that the subject was also addressed by the proposed Recommendation. He noted that additional amendments on this issue had been submitted by the Government members of Croatia, Benin, Botswana, Burkina Faso, Burundi, Congo, Côte d'Ivoire, Ghana, Kenya, Libyan Arab Jamahiriya, Madagascar, Mali, Nigeria, Rwanda, Sudan, Swaziland and Zimbabwe, dealing largely with issues covered in early discussion on health protection, which had resulted in the adoption of a new Article.

412. The Employer Vice-Chairperson supported the motion and also noted that it would be possible to go into further detail when the Committee discussed the proposed Recommendation.

413. The Worker Vice-Chairperson emphasized that health protection was a matter of extreme importance and that several amendments not yet discussed introduced elements that might strengthen the health protection provided in Article 3. She said she was ready to support any proposals which enhanced such protection. Similar views were expressed by the Government members of Chile and Côte d'Ivoire.

414. After a request by the Worker Vice-Chairperson for clarification concerning the motion as to procedure moved by the Government member of New Zealand, the representative of the Legal Adviser stated that such motions were governed by the provisions of article 63(2)(d) of the Standing Orders concerning adjournment of debate. It was a motion to adjourn the debate on the question of health protection under the Convention. The motion had been moved before the sponsors of several amendments had been able to present their amendments, but in the light of the support for the motion as indicated by a show of hands, it was possible to proceed with a vote on the motion in accordance with article 63, paragraph 7(2).

415. Put to a vote, the motion as to procedure to obtain a decision by the Committee to proceed to the discussion of proposed Article 9 was carried by 50,809 votes in favour, 41,943 votes against and no abstentions.

416. The Government member of Croatia suggested that the Committee Drafting Committee examine the best placement within the instrument of the provision on health protection which had been adopted earlier.

417. Article 8 was adopted, as amended.

Article 9

418. The Government member of Canada introduced an amendment which would replace Article 9 by the following text:

> Each Member shall, after consulting the representative organizations of employers and workers, adopt appropriate measures to support the return to work of women who are breastfeeding and ensure that employers take reasonable steps to enable a woman to tend to her breastfeeding needs without discrimination.

He explained that the purpose was to provide balance by ensuring the necessary protection but avoiding a text which would be too prescriptive. It had to be recognized that in some

workplaces employers could encounter serious practical difficulties in providing paid breaks for women to breastfeed.

419. The Employer Vice-Chairperson supported the amendment for similar reasons, recalling that nursing breaks had been high on the list of issues that had deterred ratification of Convention No. 103. That had initially led the Office to place the matter in the draft Recommendation, but the Committee in its first discussion had decided to move it into the draft Convention. The Employer members supported the return to work of women who were breastfeeding, but believed that the Convention should allow the adoption of measures appropriate to each country.

420. The Worker Vice-Chairperson, speaking against the amendment, reiterated the importance of breastfeeding to the health of both the child and the mother, as affirmed by the statements of NGOs, WHO and UNICEF, and recalled the extensive research findings on this subject. The reality was that the need to return to work often led women to stop breastfeeding too early. There could therefore be no question of reducing the protection provided by Convention No. 103.

421. The Government member of Zimbabwe commented that the wording of the amendment was ambiguous and underlined the need for the Convention to contain some minimum defined standard. The Government member of Poland wondered what was meant by "reasonable steps" and the Government member of Croatia asked what was to be understood by the phrase "without discrimination", points echoed by the Government member of Côte d'Ivoire who underlined the vagueness of the amendment. For the Employer Vice-Chairperson, "appropriate measures" referred to the adoption of legislation, but the Worker Vice-Chairperson felt that the wording lent itself to many different interpretations.

422. The amendment was supported by the Government members of Tunisia and the United Kingdom, as well as by the Government members of Bahrain, Kuwait and Saudi Arabia who found the proposed wording sufficiently flexible.

423. The Government member of the Netherlands supported the Office text and felt that the amendment did not go in the right direction. The Government member of Zambia recalled the statements of UNICEF and WHO about the minimum duration of breastfeeding; as the draft Convention provided for only 14 weeks' maternity leave, nursing breaks were vital. The Government member of Kenya commented that a lot of research on breastfeeding had been conducted since the adoption of Convention No. 103 in 1952. What was at stake was child mortality and the health of the mother, issues which the amendment did not adequately recognize.

424. Following a lack of support from Government members, the Government member of Canada withdrew the amendment.

Paragraph 1

425. An amendment was submitted by the Government members of Belgium, Finland, Greece, Italy, Norway, Portugal and Sweden to replace paragraph 1 of Article 9 by the following text: "Each Member shall provide a woman with the right to one or more daily breaks and/or a daily reduction of hours of work to breastfeed her child." In introducing the amendment, the Government member of Belgium observed that there was a need for greater flexibility. This is why all Members should be given the possibility of either prescribing breaks or adapting working time to enable women workers to begin their working day later or to finish earlier.

426. The Employer Vice-Chairperson expressed support for the amendment as it would allow each country to provide what it felt was the appropriate response. However, the Worker Vice-Chairperson understood that each woman should have the right to nursing breaks or a reduction in daily working hours and presented a subamendment to make that clear. The Government member of Belgium accepted the subamendment, which was also supported by the Government member of Côte d'Ivoire. The Government member of the Netherlands questioned the meaning of "and/or". The Employer Vice-Chairperson declared that it would be unacceptable to require both breaks and a reduction in working hours. The Worker Vice-Chairperson's understanding was that the woman should have the choice, not that she should have a reduction in hours as well as nursing breaks. She therefore presented a second subamendment to replace "and/or" by "or", which was duly adopted. Speaking in support of the amendment, the Government member of Chile underlined that breastfeeding was the mother's right and stated that it was desirable to provide breastfeeding women with the choice between nursing breaks and shorter hours. The Government member of the Netherlands said that things were becoming unclear. The State should provide the woman with *either* the right to nursing breaks *or* the right to a daily reduction of hours of work. She insisted on adding "either … or" in the amendment. In reply to a question from the Government member of Poland, the Worker Vice-Chairperson said that the question of remuneration in respect of the reduction in working hours would be covered in Article 9, paragraph 2.

427. The Committee then adopted the amendment which, as subamended, read as follows:

> A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child.

428. The Chairperson then proposed to proceed to an amendment, submitted by the Government members of Benin, Botswana, Burkina Faso, Burundi, Congo, Côte d'Ivoire, Ghana, Kenya, Libyan Arab Jamahiriya, Madagascar, Mali, Nigeria, Rwanda, Sudan, Swaziland and Zimbabwe, to replace in paragraph 1 of Article 9 the words "one or more daily breaks to nurse her child" by "a minimum of two half-hour daily breaks to nurse her child up to one year after birth". However the Employer Vice-Chairperson argued that, as paragraph 1 of Article 9 had been totally replaced by the previous amendment, no further amendment to that text could be considered.

429. In response to further questions by the Government members of Côte d'Ivoire and Croatia concerning the effect of the adoption of the previous amendment on other amendments that had been proposed, the representative of the Legal Adviser stated that the adoption of the amendment presented by the Government member of Belgium had the effect of completely replacing Article 9, paragraph 1. As a result, all other amendments to that paragraph could not be considered as they no longer had textual relevance to the new wording which the Committee had adopted. The Chairperson ruled that further amendments to paragraph 1 of Article 9 fell because of the adoption of the new wording.

430. Article 9, paragraph 1, was adopted as amended.

Paragraph 2

431. The Employer members submitted an amendment that would replace the existing text by the following:

> 2. The period of entitlement to such breaks and their frequency, length and payment that might apply may be determined in accordance with national law and practice.

432. The Employer Vice-Chairperson stressed that employers supported the protection of breastfeeding needs. The proposed amendment combined in one provision all the issues to be determined: the period of entitlement to nursing breaks, their frequency and length and the question of payment. Leaving more detailed regulation of these issues to national law and practice would enable governments to determine the most appropriate approach for national circumstances. The Recommendation would provide further guidance to the parties. The Office text requiring that breaks be counted as working time and remunerated in consequence could not be implemented satisfactorily in all working places. It was important to note that a great variety of payment systems existed, not all of which were based on working time. Some examples included payment based on results, and payment based on participation in actual production, with different rates applicable for non-production time. The intention of the amendment was not to reduce the entitlement, but instead to ensure that all systems of payment as well as national particularities could be accommodated. This would make the Convention more broadly ratifiable. The Employer Vice-Chairperson noted that the Office had identified the provisions on nursing breaks as such an obstacle to ratification that it had originally shifted them to the Recommendation. It would be wrong to reintroduce into the new Convention an even higher degree of prescription than that contained in Convention No. 103. Members with generous periods of entitlement and payment for nursing breaks would be free to specify this, while those approaching the matter differently could decide for themselves how best to address these issues. She emphasized that it was important for the standing of the Committee and for the standard-setting process as a whole to demonstrate an ability to recognize differences in national systems.

433. The Government member of Namibia was in favour of the amendment. It recognized the three important issues of frequency, length and payment of nursing breaks and allowed the specific details to be determined by national law and practice.

434. The Worker Vice-Chairperson opposed the amendment in its entirety, because it removed the remuneration requirement and would result in a lower standard of protection than under Convention No. 103. There was a need for a common framework within international standards to guide national legislation. Whether or not remuneration was to be paid could not be left for determination at the national level. The Worker members signalled that they might propose that the provision be replaced with the following text:

> The period during which nursing breaks or the reduction of daily hours of work are allowed, their number, the duration of nursing breaks and the procedures for the reduction of daily hours of work may be determined by national law and practice. These breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly. In special cases and on the basis of a medical certificate or other appropriate certification, the number and length of daily nursing breaks shall be adapted to the needs of the mother and child as determined by national law and practice and shall be counted as working time and remunerated accordingly.

435. The Government member of Chile opposed the amendment submitted by the Employer members since it did not stipulate that such nursing breaks should be provided during working time and be counted as such. It was inadvisable to leave such an issue open. It was important that employed mothers did not have to accept a shorter working day with lower income in order to breastfeed their infants. The Government member of Benin observed that the proposed amendment mentioned only nursing breaks and did not take account of the reduction of daily hours of work which had been agreed in paragraph 1 of the Article.

436. The Employer Vice-Chairperson emphasized that the draft Convention should be read in conjunction with the draft Recommendation. She pointed out that Paragraph 9 of the

Recommendation looked at the practicality of providing a reduction of daily hours of work. The Employer members' amendment recognized that women were entitled to such breaks but, rather than providing prescription, it allowed each Member to regulate their frequency, length and payment. The Employer Vice-Chairperson reminded the Committee that the Convention provided that workers should not be discriminated against on the grounds of breastfeeding. Thus, to provide that no payment at all should be made to breastfeeding workers would likely be a breach of the Convention. She stressed that the framework of entitlement to breaks was set by the Convention and that the issues of frequency, length, duration of entitlement and payment would be more appropriately determined at the national level.

437. The Worker Vice-Chairperson stated that although the non-discrimination provisions were useful, the Committee should not assume that women would have sufficient power to compel governments to enact legislation in line with those provisions, and therefore minimum standards for breastfeeding breaks should be included. She stressed that the Recommendation did not impose legal obligations and therefore adequate protective measures must be included in the Convention. She emphasized that if the proposed amendment were to be adopted, the length and frequency of breaks and the question of remuneration would be entirely determined at the national level. Article 9, paragraph 1, would provide for daily breaks or a reduction of hours of work, but there would be no remuneration for the woman concerned, who would consequently lose part of her income and therefore be punished for breastfeeding her child. She therefore reiterated the view that she could not accept the amendment.

438. The Government members of Denmark, Finland, Norway and Sweden supported the amendment, as did the Government member of France, who affirmed that the modalities and the question of remuneration would be more logically determined in national legislation.

439. The Government members of Cyprus, Greece, New Zealand and Nigeria opposed the amendment. They considered the remuneration element important for the Convention.

440. The Government member of Zimbabwe submitted a subamendment to insert after the word "breaks" the words "shall be for at least one year. Their frequency and length shall be determined in accordance with national law and practice. These breaks must be counted as working time and remunerated accordingly".

441. The Employer Vice-Chairperson countered that the subamendment was the antithesis of what the Employer members were trying to achieve, in that it included too high a degree of prescription. She pointed out that some countries would be unable to ratify the Convention if it were to provide that a woman should be entitled to daily breaks for a period of one year, and stressed that the countries should have an opportunity to determine, in accordance with national law and practice, how payment was to be made. The Government member of Cyprus opposed the subamendment on the grounds that providing for daily breaks for a period of one year would render the Convention difficult to ratify in countries like hers, where the entitlement was for a period less than a year, e.g. six months.

442. The Worker Vice-Chairperson supported the subamendment, but proposed a further subamendment to provide for the reduction of working time, and to include the following paragraph:

> On the basis of a medical certificate or other appropriate certification, the number and length of daily nursing breaks shall be adapted to the needs of the mother and the child, as determined by national law. These breaks must be counted as working time and remunerated accordingly.

443. Due to insufficient support by Government members, the subamendment submitted by the Government member of Zimbabwe and subsequently subamended was withdrawn.

444. Given the importance of the issue, the Employer Vice-Chairperson called for a record vote on the amendment which had been submitted by the Employer members. The amendment was defeated by 3,630 votes in favour, 4,650 votes against, with 214 abstentions. [4]

445. The Government members of Belgium, Greece, Italy and Portugal submitted an amendment to replace paragraph 2 with the following text:

> The period during which nursing breaks or the reduction of daily hours of work are allowed, their number, the duration of nursing breaks and the procedures for the reduction of daily hours of work may be determined by national law and practice. These breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly.

In presenting the amendment, the Government member of Belgium stated that its purpose was to introduce in this paragraph a reference to the reduction of working hours as a consequence of the adopted text of paragraph 1.

446. The Worker Vice-Chairperson supported the amendment in view of the fact that the Committee had already adopted an amendment to paragraph 1 that would allow for a daily reduction of hours of work as an alternative to daily breaks for breastfeeding. It was clear that any such reduced working hours should also be counted as working time and remunerated accordingly. This reasoning was endorsed by the Government member of Croatia.

447. The Government member of Guatemala submitted a subamendment to replace the words "may be determined by national practice" with the words "shall be determined by national law and practice". This subamendment was adopted. The Employer Vice-Chairperson noted with concern that the consequence of the subamendment would be that all the matters referred to under the paragraph would have to be determined by national law and practice.

448. The Worker Vice-Chairperson stated that it was important to cover both normal situations, which did not require the presentation of a medical certificate, and specific situations concerning the health of the mother or child which involved special breaks and required the

[4] Details of the record vote with respect to Government members:

In favour = 14: Australia, Canada, China, Denmark, Finland, France, Ireland, Japan, Namibia, Norway, Sweden, Turkey, United Kingdom, United States.

Against = 48: Argentina, Austria, Bahrain, Belgium, Botswana, Brazil, Bulgaria, Chile, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Egypt, El Salvador, Ethiopia, Germany, Ghana, Greece, Guatemala, Hungary, Indonesia, Israel, Italy, Kenya, Republic of Korea, Kuwait, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Malaysia, Morocco, Netherlands, New Zealand, Nigeria, Peru, Philippines, Poland, Portugal, Russian Federation, Rwanda, Saudi Arabia, Slovakia, Spain, Suriname, United Arab Emirates, Venezuela, Zimbabwe.

Abstentions = 2: India, Switzerland.

Absent = 43: Algeria, Angola, Bahamas, Barbados, Belarus, Benin, Bolivia, Burkina Faso, Cameroon, Chad, Colombia, Congo, Cuba, Dominican Republic, Gabon, Honduras, Iceland, Islamic Republic of Iran, Jordan, Kiribati, Lebanon, Lesotho, Mali, Malta, Mauritania, Mexico, Mozambique, Nicaragua, Niger, Pakistan, Papua New Guinea, South Africa, Sri Lanka, Sudan, Swaziland, Syrian Arab Republic, United Republic of Tanzania, Thailand, Trinidad and Tobago, Tunisia, Uruguay, Viet Nam, Zambia.

presentation of a medical certificate. For these reasons, and pending the final outcome of the discussions, she submitted a subamendment to insert after the first sentence a new sentence as follows:

> In special cases and on the basis of a medical certificate or other appropriate certification, the number and length of daily nursing breaks shall be adapted to the needs of the mother and child, as determined by national law,

and to move the second sentence of the original amendment to a new paragraph 3 to read as follows:

> These breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly.

449. The Employer Vice-Chairperson reiterated that the reduction of daily hours of work for breastfeeding should be dealt with in the proposed Recommendation, as the need for flexibility in these areas was very important.

450. The Government member of Indonesia opposed the subamendment, as did the Government member of the Netherlands, who said that it dealt with specific situations better addressed in a Recommendation. The Government member of Kenya recognized the importance of the issue, but felt that the subamendment complicated the issue unnecessarily, a view endorsed by the Government members of Ghana, Senegal, Suriname and Trinidad and Tobago. The Government members of Denmark, Finland, Norway and Sweden also expressed their opposition to the proposal, which they said would be an obstacle to ratification. Similar views were expressed by the Government members of Bahrain and Nigeria, who believed that the Office text adequately addressed the issue. The Government member of Cyprus considered that the matter could be satisfactorily dealt with according to national law and practice. The Government member of Côte d'Ivoire expressed his sympathy with the intention of the proposal, but considered the matter more appropriate for the proposed Recommendation.

451. Noting that several Government members had expressed their understanding of the reasons for her proposal, the Worker Vice-Chairman withdrew her subamendment due to a lack of support.

452. The amendment, as subamended, was adopted.

453. The Government member of Côte d'Ivoire introduced an amendment to add a sentence at the end of the paragraph to read: "The total length of these breaks should not be less than one hour per working day.", the purpose of which was to give the provision a practical dimension.

454. The Employer Vice-Chairperson opposed the amendment, on the grounds that the Committee had just agreed that the duration and length of breaks should be determined by national law and practice. She maintained that the proposed Convention should remain as free as possible of any prescription of this kind.

455. The Worker Vice-Chairperson expressed her support for the intention of the amendment.

456. The Government members of Cyprus, the Netherlands, New Zealand and Zimbabwe opposed the amendment as being too prescriptive and likely to make the proposed instrument unratifiable. The Government member of Namibia said that the amendment was unrealistic, and wondered whether women working part time would also qualify for such

breaks. The Government member of Senegal, while commending the intention of the amendment, considered that it would be more appropriate for inclusion in the proposed Recommendation. The representative of the World Health Organization said that her Organization recommended that breastfeeding should take place every three to four hours.

457. Following a lack of support from the Government members, the Government member of Côte d'Ivoire withdrew the amendment.

458. Article 9, paragraph 2, was adopted as amended.

New paragraph after paragraph 2

459. The Government members of Argentina, Bolivia, Brazil, Chile, Costa Rica, Dominican Republic, Guatemala and Venezuela submitted an amendment to add a new paragraph after Article 9, paragraph 2, that would read:

> 3. Provision shall be made for the establishment of facilities for breastfeeding under adequate hygienic conditions.

In presenting the amendment, the Government member of Chile said that it was logical to establish the material conditions in which women would be able to exercise their right of breastfeeding. The Government member of Egypt supported the intention of the amendment. However, she could not endorse it and given its very general wording, said that it was better placed in the Recommendation.

460. The Employer Vice-Chairperson considered that it was unacceptable to include such a provision in the proposed Convention. The amendment did not address the fundamental aspects which would normally be covered by a Convention, such as cost, and would only create uncertainty in this respect. Furthermore, it would be unrealistic to require small enterprises to establish such facilities. It should therefore remain in Paragraph 10 of the proposed Recommendation.

461. The Worker Vice-Chairperson expressed her support for the amendment, which she said addressed an issue of importance in many countries.

462. The Government member of Cyprus, while not opposed to the idea of the proposal, said that it should not be included in a Convention, where it would pose an obstacle to ratification.

463. The Government member of Kenya submitted a subamendment to add at the beginning of the sentence the words "Where practicable," which she said would provide the necessary flexibility, and which was further subamended by the Government member of Côte d'Ivoire to read:

> Where female employees exceed a number to be determined under national legislation, provision shall be made where practicable for the establishment of facilities for breastfeeding under adequate hygienic conditions.

464. The Employer Vice-Chairperson recalled that during its first discussion the Committee had decided that breastfeeding also referred to the expression of breast milk and that adequate hygienic conditions would also include refrigeration, which would entail costs that exceeded the financing abilities of many micro, family and small enterprises. The provision would also require that these matters be determined by national legislation. Following opposition from the Worker Vice-Chairperson, who also believed that the subamendment

was too prescriptive and restrictive, the subamendment was withdrawn by the Government member of Côte d'Ivoire.

465. In response to a request for clarification from the Government member of New Zealand concerning the use of the words "where practicable" in a Convention, the representative of the Legal Adviser stated that it was a flexibility device used in a number of ILO Conventions. Although it did reduce the extent of the obligation, ratifying member States in their reports to the supervisory bodies would nonetheless be required to indicate where and why such an obligation was not practicable.

466. The Government member of the Libyan Arab Jamahiriya considered that the provision should remain in the proposed Recommendation. He considered that the term "where practicable" should be avoided in a Convention. The Government member of Senegal expressed her concern about the practical aspect of providing facilities for breastfeeding at the workplace and wondered whether this would require employers to set up nurseries. The Government member of Hungary also opposed the subamendment, on the grounds that its provisions were better suited to the proposed Recommendation.

467. The Government member of Chile clarified the intention of her proposal by stating that it was a minimum provision which drew on the legal and practical experience of countries in which governments, and sometimes employers, had established the necessary facilities for women to nurse their infants. She emphasized that the provision of hygienic facilities was essential to the prevention of disease in both women and their children, which would in turn result in a reduction of costs incurred through illness. The Government member of Argentina noted that the amendment did not stipulate that employers would have to provide facilities. He added that in many cases it would be preferable if these could be established through the social security system.

468. The Government member of Côte d'Ivoire endorsed the subamendment, as did the Government member of Ghana, who said that its inclusion in the proposed Convention would ensure that since women had the right to breaks for breastfeeding, they would also have the necessary facilities to make that right effective. The Government member of Trinidad and Tobago said that the proposal logically followed from the entitlement to breastfeeding breaks. Furthermore, the inclusion of the words "where practicable" provided the necessary flexibility for member States.

469. The representative of the World Health Organization pointed out that breast milk contained substances that provided protection against infection and contamination. Although it should be kept in hygienic conditions, there was no need for refrigeration for up to eight hours, nor for sophisticated equipment, provided that there was a clean environment with access to safe water. This would not entail any major financial cost.

470. Put to a vote by a show of hands, the subamendment was carried by 4,050 votes in favour, 3,990 votes against, with 180 abstentions. In the light of the debate and the closeness of the vote, the Employer Vice-Chairperson called for a record vote. The subamendment failed to carry by 3,960 votes in favour, 3,960 votes against, with 360 abstentions. [5]

[5] Details of the record vote with respect to Government members:

In favour = 25: Argentina, Bolivia, Botswana, Brazil, Chile, Côte d'Ivoire, Croatia, Ghana, Guatemala, Hungary, Indonesia, Jordan, Kenya, Madagascar, Malaysia , Mozambique, Nigeria, Peru, Poland, Suriname, Thailand, Trinidad and Tobago, Uruguay, Zambia, Zimbabwe.

471. Article 9 was adopted as amended.

New Article after Article 9

472. The Government member of Guatemala introduced an amendment which he had submitted along with the Government members of Argentina, Bolivia, Brazil, Chile, Costa Rica, Dominican Republic and Venezuela, to add a new Article on nurseries, as follows: "Appropriate means shall be adopted under national legislation and practice to provide for the care of working mothers' children in early infancy." He emphasized that nurseries were necessary if women were to be able to breastfeed without leaving the workplace. Such facilities could be simple but had to be adequate.

473. The Employer Vice-Chairperson well understood the reasons for the amendment but felt that its place was not in the proposed Convention but rather came within the parameters of the Workers with Family Responsibilities Convention, 1981 (No. 156). The Worker Vice-Chairperson expressed support for the amendment, as did the Government member of Zambia. While agreeing with the intention of the amendment, the Government member of Cyprus thought that the Convention was not the right place to deal with the subject of nurseries, a point of view shared by the Government member of the Netherlands who said that the best place for it would be in the Recommendation.

474. Following a lack of support by Government members, the Government member of Guatemala withdrew the amendment.

Article 10

475. The Employer Vice-Chairperson presented an amendment to Article 10, deleting all text after "workers" and replacing it with the words "issues relating to maternity protection". She explained that it would be too restrictive to imply that periodical consultations should be only about extending the period of leave and increasing the cash benefits.

476. The Worker Vice-Chairperson opposed the amendment, saying that from the Worker members' point of view it was important to retain the wording of the draft Convention. The Government member of Poland also spoke against the amendment, noting that the Office text posed no problems for ratification.

477. The Government member of Chile proposed a subamendment which would retain the Office text of Article 10 and add to it the words "as well as all issues relating to maternity protection". The Government member of Cyprus noted that both the subamendment and the amendment itself were much too imprecise: if periodical consultation was to be required, it

Against = 25: Australia, Bahrain, Belgium, Canada, China, Cyprus, Czech Republic, Denmark, Egypt, France, Ireland, Japan, Kuwait, Lesotho, Luxembourg, Namibia, Norway, Philippines, Portugal, Saudi Arabia, Slovakia, Spain, Sweden, United Arab Emirates, United Kingdom.

Abstentions = 12: Austria, Ethiopia, Germany, Greece, India, Italy, Republic of Korea, Netherlands, New Zealand, South Africa, Switzerland, United States.

Absent = 45: Algeria, Angola, Bahamas, Barbados, Belarus, Benin, Bulgaria, Burkina Faso, Cameroon, Chad, Colombia, Congo, Costa Rica, Cuba, Dominican Republic, El Salvador, Finland, Gabon, Honduras, Iceland, Islamic Republic of Iran, Israel, Kiribati, Lebanon, Libyan Arab Jamahiriya, Mali, Malta, Mauritania, Mexico, Morocco, Nicaragua, Niger, Pakistan, Papua New Guinea, Russian Federation, Rwanda, Sri Lanka, Sudan, Swaziland, Syrian Arab Republic, United Republic of Tanzania, Tunisia, Turkey, Venezuela, Viet Nam.

was essential to know what subjects it should cover. She therefore opposed the subamendment and the amendment.

478. Both the subamendment and the amendment were withdrawn.

479. The Worker Vice-Chairperson introduced an amendment to add, at the end of Article 10, the following text: "and the possibility to progressively extend the provisions of the Convention to the categories of workers excluded under the terms of Article 2, paragraph 2". This was necessary in view of the large number of women workers belonging to the excluded categories.

480. In opposing the amendment, the Employer Vice-Chairperson observed that the matter was already covered in Article 2, paragraph 3, and that it was unnecessary to repeat it in Article 10.

481. The Government member of Senegal questioned the interpretation given by the Employer Vice-Chairperson. The Worker Vice-Chairperson explained the difference between her amendment and the content of Article 2, paragraph 3. In the light of this explanation, the Government member of Senegal expressed support for the amendment. The Government member of Chile also supported the amendment, as it required tripartite consultation and was therefore different from Article 2, paragraph 3, which contained no such requirement. The Government member of Cyprus opposed the amendment, arguing that the inclusion of the matter in Article 10 was unnecessary. In view of the insufficient support for it among other Government members, the amendment was withdrawn.

482. The Worker Vice-Chairperson proposed to amend the first line of Article 10 by deleting the word "most" before "representative". She felt that it would be enough to refer to "representative organizations". The Employer Vice-Chairperson had no objection to the amendment which was then adopted.

483. An amendment was presented by the Worker Vice-Chairperson to add a new paragraph, as follows:

> Each Member shall, at the national level, examine periodically, in consultation with the representative organizations of employers and workers, the appropriateness of extending the scope of the Convention and may subsequently deposit with the Director-General of the International Labour Office a declaration extending the scope of the Convention.

She further proposed a subamendment to replace the word "consultation" with "agreement".

484. The Employer Vice-Chairperson supported the Office text and opposed the amendment. The scope of the Convention was a matter that had been determined in Article 2 and it would be inappropriate for it to be changed outside the international framework in which the Convention was being adopted. She also felt that it was not right to create any expectation that the scope of the Convention would be extended to other categories such as self-employed workers.

485. The Government member of Cyprus queried whether inclusion of the amendment would really make any difference. Responding to an intervention by the Government member of Argentina, the Worker Vice-Chairperson explained that the word "scope" in the amendment was intended to provide an opportunity to broaden the scope beyond what was provided for in Article 2(1) which was more significant than the possibilities provided for

in Article 2(3). The Government member of Argentina then declared his support for the amendment, which he viewed as a logical consequence of Article 2, paragraph 3. For the Employer Vice-Chairperson, the broader meaning given to the word "scope" in the explanation of the Worker Vice-Chairperson only strengthened the reasons to oppose the amendment.

486. The Government member of the Netherlands pointed out that the subamendment could also have the effect of preventing extension of coverage, in cases where the Government wanted to extend coverage but it was not possible to reach tripartite agreement. The Worker-Vice-Chairperson appreciated the problem and therefore withdrew her subamendment.

487. The Government member of Portugal had certain misgivings about the amendment since, from a legal point of view, the procedure envisaged was oversimplified.

488. In the light of the insufficient support for the amendment among Government members, the Worker Vice-Chairperson withdrew the amendment.

489. Article 10 was adopted as amended.

Article 11

490. The Government member of Croatia introduced an amendment to replace the words "except in so far as effect is given to it" with the words "supplemented where necessary", arguing that in order to safeguard the rights established by the Convention, laws or regulations were necessary. Means such as collective agreements were subject to change and reliance upon them created legal uncertainty. On the other hand, there was no problem if laws and regulations were supplemented by any other means.

491. The Employer Vice-Chairperson stated that this was an illustration of the different ways that different countries have of implementing the same thing. She pointed out that the Convention had to be implemented by laws and regulations in so far as it was not implemented by other means. Furthermore, the Constitution of the ILO recognized that collective agreements could deliver the provisions of a Convention. The Employer members therefore supported the Office text of Article 11.

492. The Worker Vice-Chairperson, expressing confidence in the role of the social partners, pointed out that matters were increasingly regulated through collective agreements. She therefore preferred the Office text.

493. The Government member of Croatia withdrew her amendment.

494. Another amendment was presented by the Government member of Croatia, to delete all the text after "court decisions". She wondered what "other means" might be, but had so far failed to find out. The Employer Vice-Chairperson and the Worker Vice-Chairperson both expressed a preference for the Office text, and the latter gave company agreements as an example of "other means". Another example mentioned by the Government member of Cyprus was custom. The Government member of Croatia withdrew her amendment, but at the same time expressed doubt that an international treaty could be implemented by such means.

495. The Employer Vice-Chairperson presented an amendment to add a new paragraph to Article 11, as follows:

> The direct and indirect costs of maternity protection shall not be excessive for employers, thus impeding the employment possibilities of women of child-

bearing age. Each Member shall, after consulting representative organizations of employers and workers, adopt measures to ensure that the costs for enterprises, resulting from this Convention, are affordable and do not impede women's employment.

496. She underlined that the objective of the amendment was to ensure that maternity would be protected without making the direct and indirect costs for employers so great as to place obstacles in the way of women's employment. It would be a tragedy for women if the Convention did create such obstacles. The necessary balance had therefore to be ensured.

497. The Worker Vice-Chairperson felt that the amendment was unnecessary and was unable to support it. It was true that maternity protection involved costs, but its benefits were substantially greater, in terms of investing for the future. The Government member of the Netherlands noted that the issue dealt with in the amendment was closely linked to other provisions, including benefits and their financing.

498. In view of the lack of support from Government members, the Employer Vice-Chairperson withdrew the amendment, regretting the lack of recognition of the need to consider the relationship between maternity protection costs and women's employment opportunities.

499. Article 11 was adopted without change.

New Article after Article 11

500. The Government members of Croatia, Finland, Norway, Portugal and Sweden submitted an amendment to add, after Article 11, the following new Article:

PARENTAL LEAVE

1. The employed mother or the employed father of the child shall be entitled to parental leave during a period following the expiry of maternity leave.

2. The period during which parental leave might be granted, the length of the leave and other modalities, including the use and distribution of parental leave between the parents, shall be determined by national laws and regulations after consulting the representative organizations of employers and workers or in any other manner consistent with national practice.

3. Any Member which ratifies this Convention may, by a declaration appended to its ratification, exclude paragraphs 1 and 2 of this Article from its acceptance of the Convention.

4. Any Member which has made such a declaration may at any time cancel that declaration by a subsequent declaration.

501. In introducing the amendment, the Government member of Sweden recalled that many Committee members had advocated a new Convention that would be flexible enough for most countries to ratify. Proposing an optional Article on parental leave was a good example of such flexibility. While creating absolutely no obstacles to ratification, this Article would reflect progress accomplished in numerous member States since the adoption of Convention No. 103 and would thus help to make the proposed Convention modern and forward-looking. It was unnecessary to reiterate all the arguments in favour of parental leave as these had been covered in the general discussion. If it were adopted, the new Article should be placed before rather than after Article 11.

502. The Employer Vice-Chairperson, recalling the long debate on this issue in the first discussion, was of the view that parental leave was more appropriately dealt with under the Workers with Family Responsibilities Convention, 1981 (No. 156). She could therefore not support its inclusion in the proposed Convention.

503. The Worker Vice-Chairperson supported the intention of the amendment, but proposed a subamendment to replace "or" by "and" in paragraph 1 and to delete in paragraph 2 the words "including the use and distribution of parental leave between the parents".

504. The Employer Vice-Chairperson observed that the subamendment implied that both the father and the mother could take leave at the same time. Such a provision could create enormous problems for ratification and implementation, even amongst countries that already provided parental leave. The Government member of Kenya, in opposing the subamendment, noted that parental leave came after the end of maternity leave and thus appeared to lie outside the scope of maternity protection. She also wondered how it would work in polygamous societies where some fathers might be on leave almost all the time.

505. The Government member of Sweden commented that the subamendment to change "or" to "and" did not necessarily imply that both parents would be on leave at the same time since it was stipulated that the use and distribution of leave between the parents should be determined by national law. She underlined that the proposed amendment was an optional provision on the issue of parental leave and, since there was no corresponding provision in Convention No. 156, it would not constitute a duplication of a provision already existing in any other Convention. The Worker Vice-Chairperson emphasized the importance of participation by fathers in child rearing, both as a step towards equal opportunities for women and as an essential component of child development. She added that the reference to parental leave was in the accompanying Workers with Family Responsibilities Recommendation, 1981 (No. 165), and that it was time to place such a provision in a Convention.

506. The Employer Vice-Chairperson pointed out that the second part of the proposed subamendment to delete the phrase "including the use and distribution of parental leave between the parents" would limit the national authorities' capacity to distribute the leave. She also insisted that if there were to be a reference to parental leave in a Convention, it made more sense to have it in the Workers with Family Responsibilities Convention, 1981 (No. 156). That Convention dealt with equal treatment between men and women workers, not with maternity protection. The Worker Vice-Chairperson subamended the subamendment by reinstating the phrase "including the use and distribution of parental leave between the parents" which had been proposed for deletion in the second paragraph of the proposed new Article.

507. The Government members of Australia and the United Kingdom supported the intention behind the amendment but observed that the present Convention was not the appropriate instrument for such a provision. The Government member of Cyprus added that the optional nature of the provision might diminish its force in some way. The Government member of New Zealand also supported the objectives of the amendment in general, but did not believe that the subamendment to change "or" to "and" would add anything to it. The Government members of Egypt, Morocco and Tunisia opposed the amendment as subamended because they thought it would prejudice broad ratification. The Government member of Morocco observed that a non-binding provision would be better placed in the Recommendation.

508. The Government members of Argentina, Bolivia, Brazil, Chile, El Salvador, Guatemala, Peru and Venezuela considered that the proposed amendment was an excellent initiative.

While most Latin American countries had no legislation that provided for such leave, there were some indications that they could be moving in that direction. However, they did not support the proposed amendment since it sent a signal of modernity which was not consistent with the removal of protection so far agreed.

509. The Government member of Sweden, emphasizing that the amendment had been drafted as an optional provision so as not to hinder ratification, withdrew the amendment in view of the lack of support.

510. The Worker Vice-Chairperson introduced an amendment to add a new Article that read as follows:

> The adoption or ratification of this Convention by a Member will not affect any law, verdict, practice or accord that secures more favourable conditions for the workers in question, than those provided in the Convention.

She explained that the Worker members had submitted such an amendment because they were concerned that it should be clear that a country which ratified the proposed Convention, whose provisions were already more favourable than those stipulated in the Convention, could not reduce protection as a result.

511. The representative of the Legal Adviser referred to article 19, paragraph 8, of the ILO Constitution which read as follows:

> In no case shall the adoption of any Convention or Recommendation by the Conference, or the ratification of any Convention by any Member, be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation.

She pointed out that provisions similar to that proposed by the Worker members existed in some Conventions but the omission of such a provision would not lessen the legal effect of what was stated in the ILO Constitution. She noted that a similar provision had been placed in the Holidays with Pay Convention (Revised), 1970 (No. 132). She stressed, however, that whether such a provision appeared in a Convention or not, a member State could not use the ratification of a Convention which might contain minimum standards to lower protection already provided for at the national level which was superior.

512. The Worker Vice-Chairperson withdrew the amendment on the basis of the statement by the representative of the Legal Adviser.

513. The Government member of Croatia introduced an amendment to insert a new Article, as follows:

> 1. This Convention revises the Maternity Protection Convention (Revised), 1952, inasmuch as it provides more favourable provisions for the women covered.
>
> 2. As from the date when this Convention comes into force, the Maternity Protection Convention (Revised), 1952, shall not cease to be open to ratification by the Members.
>
> 3. The coming into force of this Convention for any Member bound by the Maternity Protection Convention (Revised), 1952, shall not, *ipso jure*, involve the immediate denunciation of this Convention.

514. The Government member of Croatia explained that her country, as a party to Convention No. 103, would only be able to support new provisions which were superior to the standards contained therein. A number of the provisions of the proposed new Convention were, in her view, of a lower standard than those of its predecessor. She cited as examples the loss of an absolute protection against dismissal during maternity leave, the possibility of a lower level of cash benefits for developing countries, and less certainty regarding the provision of cash and medical benefits. She expressed disappointment that certain provisions, including those in respect of compulsory leave and implementation of the Convention, allowed for determination at the national level. The revision process had made evident that at the international level, agreement could be reached on principles, but not on the precise benefits to be provided and how to provide them. For these reasons she felt that Convention No. 103 should remain open for ratification by those countries which might wish to seek better maternity protection for employed women, for example, through the provision of benefits through social insurance. She noted that Convention No. 3 had remained open to ratification when Convention No. 103 had been adopted.

515. The Employer Vice-Chairperson asserted that the Governing Body in requesting the revision of Convention No. 103 did not necessarily mean that the standards should only be raised, but also expected that the provisions be examined closely with a view to removing obstacles to ratification and devising an instrument which could be more widely adopted, to replace Convention No. 103 which had attracted few ratifications. It was precisely in response to the problems created when old Conventions remained open after they had been revised that since 1946 it had been standard practice that on the adoption of a revising Convention the earlier Convention was closed to further ratification. She emphasized that over the last two years the Employer members had worked in good faith and with due diligence to revise the instrument. Those who did not approve of the resulting instrument could vote against it, but member States should not pick and choose amongst Conventions or even between provisions in different Conventions. If the new instrument were adopted, then the earlier Convention should not remain open to ratification. She reminded the Committee that those countries which had ratified Convention No. 103 could still abide by its provisions. Those who wished to provide longer leave and higher benefits could do so, but they should not demand that both instruments remain open.

516. The Worker Vice-Chairperson informed the Committee that the Worker members had held extensive discussions on the amendment, and had decided to oppose it. She recognized that some countries had excellent legislation that provided for maternity protection at a level which would not be improved upon through implementing the Convention, but this was not the case with many other countries. At any rate, those countries which had ratified Convention No. 103 could remain bound by its provisions, if they so chose. In light of the overall situation, it was better that the standard provisions be adopted.

517. The Government member of Chile expressed the support of the Government members of Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Guatemala, Panama, Uruguay and Venezuela for the amendment. Many of the provisions of Convention No. 103 were more favourable than those provided for in the new Convention. There was no reason why Convention No. 103 should not remain open for ratification, unless there was a legal impediment in doing so.

518. Responding to a question by the Government member of Chile, the representative of the Legal Adviser confirmed that there was no legal impediment to keeping Convention No. 103 open to further ratification. Convention No. 103 contained the standard final provisions which were to be found in almost all ILO Conventions. Article 16, paragraph 1, of that Convention contained a phrase which provided that "unless the new Convention otherwise provides … as from the date when the new revising Convention comes into

force this Convention shall cease to be open to ratification by the Members". It was therefore up to the Committee to decide whether it wished Convention No. 103 to remain open or not.

519. The Government members of Australia, Austria, Belgium, Canada, Cyprus, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, the United Kingdom and the United States opposed the amendment on the grounds that the standard procedures should be followed. The Government member of Cyprus added that there was no regression compared to Convention No. 103. On the contrary, real progress was achieved. In the few instances where flexibility was introduced, this was intended to remove obstacles, with the expectation that there would be more ratifications and thus better and wider protection of women. The Government member of the United Kingdom supported the argumentation of the Employer members and added that the objective of the Committee had been to propose a single clear minimum standard and no more than one. The Government member of Peru also rejected the proposed amendment. The Government member of Namibia was of the view that the minimum standards established under the new Convention were clearly better in many respects than those in Convention No. 103. To imply that the Committee had achieved nothing was not a true reflection of what had actually occurred.

520. The Government representative of Côte d'Ivoire supported the amendment. The Committee had left too many decisions on maternity protection to be determined by national law and practice. Convention No. 103, on the other hand, did provide minimum standards for the benefit of working women. For this reason, it should be possible for Members considering ratification to choose between the new Convention and Convention No. 103.

521. In the view of the Government member of Argentina, the new Convention provided less protection than Convention No. 103. In the face of globalization and the protests against it, the ILO should act as a counterweight to the World Trade Organization and defend standards against the trend towards lower social protection. He urged the Committee members to consider the proposed amendment carefully. Their decision would determine whether Convention No. 103 would remain open to ratification for countries striving to ensure a high level of maternity protection. He closed by quoting from a recent article by a prominent jurist and former senior ILO official: "To empty a Convention of substance in order to improve statistics on ratification would be absurd."

522. The Government member of Mexico emphasized that as a basic social premise it was better to have two options for ratification than only one. It was misleading to suggest that greater flexibility in the new Convention would necessarily increase the level of ratification as compared to Convention No. 103 because many governments might not ratify the new Convention, arguing that their legislation was superior to its provisions. Paradoxically, the raising of the number of weeks of maternity leave from 12 to 14, would impede ratification for many countries. If the ILO continued to make its Conventions increasingly flexible, there would be no protection left for workers.

523. The Worker Vice-Chairperson strongly affirmed that there were real improvements in protection under the new proposed Convention. She wholeheartedly congratulated those countries which already provided excellent protection through their legislation: they were a source of inspiration for others who had not yet reached that level of protection. The proposed Convention strengthened maternity protection, taking into account different realities and cultures in many countries. All employed women, including those in atypical forms of work were now covered, while under Convention No. 103 entire sectors had been excluded, particularly the informal sector. This marked a new path that would ensure

coverage for many new forms of work. Other achievements were the increase in maternity leave from 12 to 14 weeks and the retention of the provision for six weeks' compulsory postnatal leave. A provision on health protection had been introduced, whereas none existed under Convention No. 103. While some Members provided maternity cash benefits equal to the workers' previous earnings, in other countries women had no cash benefits at all. As a minimum standard, the new Convention was intended to improve the situation of such workers by providing them with two-thirds of their previous earnings or, for developing countries, the possibility of payment of a rate no lower than that provided for sickness or temporary disability. The new Convention would encourage those countries with relatively lower standards to introduce improvements and to ratify. Upon ratification, the ILO supervisory procedures would be applicable, and workers' organizations could be involved in the supervisory process. The ILO could provide technical assistance. This was preferable to having a Convention that could be ratified by only a few countries with high levels of protection.

524. The Government member of Croatia pointed out that freedom of choice was something that should be respected. Such a provision had existed in Convention No. 103 as regards a woman's choice of doctor and of private or public hospital. Although such a provision had not been included in the new Convention, she insisted that freedom of choice should also exist with regard to the ratification of international standards. The revision of a Convention should not preclude ratification of the Convention that was in force previously. As to the representatives of those governments who were more concerned that two different standards would exist to regulate the same issue, she pointed out that if and when Convention No. 103 ceased to be open for ratification, governments would still be in a position to choose between the new Convention from the year 2000 and a Convention from 1919, because Convention No. 3 would still be open for ratification. Her amendment had been submitted in order to allow countries to choose which Convention on maternity protection they wished to ratify, but in view of the lack of support she would withdraw it.

Title

525. An amendment, submitted by the Government members of Argentina, Brazil, Chile, Costa Rica, Guatemala, Panama, Peru, Uruguay and Venezuela, to change the title to "Proposed Convention concerning maternity protection and the protection of the early infancy of the children of women workers" had been held over from an earlier stage of the Committee's discussions. The Government member of Brazil indicated that the amendment was withdrawn, in view of the decisions which had been taken in the meantime concerning the content of the proposed Convention.

526. The title was adopted.

Preamble

527. An amendment to insert in paragraph 3 of the Preamble the word "partially" after the words "to revise" had also been postponed. The Government member of Croatia withdrew this amendment, regretting that the revision had been complete and, although certain improvements had been achieved, the revision had taken a different direction from which it ought to have done.

528. The Preamble was adopted as amended.

529. The Convention was adopted as amended.

Proposed Recommendation concerning the revision of the Maternity Protection Recommendation, 1952

Title

530. An amendment submitted by the Government members of Argentina, Bolivia, Brazil, Chile, Costa Rica, Guatemala, Peru, Uruguay and Venezuela to change the title of the Recommendation to "Recommendation concerning maternity protection and the protection of the early infancy of the children of women workers" was withdrawn, in view of the fact that a similar amendment to change the title of the Convention had been defeated.

531. The title was adopted.

Preamble

532. The Preamble was adopted.

Paragraph 1

Paragraph 1(1)

533. The Employer Vice-Chairperson introduced an amendment to delete the words "to at least 16 weeks". She recalled that during their discussions it had often been said that the Recommendation was not legally binding and it would therefore be preferable to place specific details there. The Employer members nonetheless considered that countries which ratified a Convention in good faith saw meaning in its accompanying Recommendation. It was important to ensure that the provisions of the Recommendation were as realistic and as widely applicable as possible. The Employer members thought it was sufficient to indicate that Members should endeavour to extend the period of protection: there was no need to specify a figure. Each Member should move at an appropriate pace to reach the period of leave most suitable to its national circumstances.

534. The Worker Vice-Chairperson opposed the amendment. She noted that the Recommendation had a function not only of supporting and interpreting a Convention, but also of pointing the way ahead. The Recommendation should provide a signal to Members of what constituted an adequate period of maternity leave. The representatives of WHO and UNICEF had recommended 26 weeks, so the proposal by the Worker members to raise the figure in the Recommendation to 18 weeks was a moderate request.

535. Following lack of support by Government members, the Employer Vice-Chairperson withdrew the amendment.

536. The Worker Vice-Chairperson introduced an amendment to replace "16" with "18". She pointed out that recent medical research had shown that a longer period was preferable. The Government member of Argentina, referring to an identical amendment put forward by the Government members of Argentina, Brazil, Chile, Costa Rica, Peru and Venezuela, stated that their intention was to seek an optimum period of leave. The increase of two weeks' leave provided under the Convention constituted modest progress in that direction.

537. The Employer Vice-Chairperson opposed the amendment, reiterating that no figure should be specified. The Government member of Egypt, while supporting attempted improvements in maternity protection, opposed the amendment noting that it would

contradict the national law in her country. The Government member of France preferred the 16 weeks proposed in the Office text.

538. The amendment was adopted by vote with 62,730 votes in favour, 58,786 votes against, with 5,434 abstentions.

539. Paragraph 1(1) was adopted as amended.

Paragraph 1(2)

540. An amendment was submitted by the Employer members to delete the Paragraph, on the grounds that since the proposed Convention provided for maternity leave of 14 weeks a further extension in the event of multiple births was unnecessary.

541. The Worker Vice-Chairperson opposed the amendment.

542. Following opposition from the Government members, the amendment was withdrawn.

543. An amendment submitted by the Government members of Argentina, Brazil, Chile, Costa Rica, Peru and Venezuela to replace the subparagraph with the following text: "Provisions should be made to ensure that the mother, or the father when appropriate, is able to extend the leave in the event of multiple births or of the adoption of more than one child at the same time." was withdrawn.

544. The Government members of Canada, Japan, the Netherlands and New Zealand submitted an amendment to replace the subparagraph with the following: "Provision should be made to ensure that adequate leave is provided in the event of multiple births, so that the total amount of leave in this case would exceed that required by Article 3." The Government member of Canada, in introducing the amendment, explained that its purpose was to recognize that in countries where the leave provided was already in excess of the minimum standard set by the proposed Convention it might not be necessary to extend the period to accommodate multiple births.

545. The Employer Vice-Chairperson opposed the amendment on the grounds that its meaning was unclear and confusing. She preferred the Office text, which was more appropriate for an instrument setting minimum standards. The Worker Vice-Chairperson also opposed the amendment for similar reasons. In light of these views, the amendment was withdrawn.

546. Paragraph 1(2) was adopted without change.

Paragraph 1(3)

547. Paragraph 1(3) was adopted without change.

Paragraph 2

548. An amendment submitted by the Government members of Argentina, Chile, Costa Rica, Mexico and Peru to delete the Paragraph was withdrawn.

549. An amendment was submitted by the Employer Vice-Chairperson to delete the remainder of the Paragraph after the word "raised", on the grounds that it was unnecessary to specify a particular level to which cash benefits should be raised.

550. The Worker Vice-Chairperson opposed the amendment, since specifying that the rate of cash benefits should be raised to the full amount of the woman's previous earnings would provide a standard to which member States could aspire.

551. The Government member of Chile, in opposing the amendment, reminded the Committee that the Recommendation did not have to be ratified. Conventions were about what was considered possible, but she believed that Recommendations could address the issue of what was considered to be desirable. Similar views were expressed by the Government members of Côte d'Ivoire and Croatia, and by the Government member of Denmark who pointed out that the last part of the Office text meant that a ceiling on such benefits could be included, which would not be appropriate in a Recommendation.

552. Put to a vote, the amendment was rejected 60,762 votes in favour, 66,690 votes against, with 2,964 abstentions.

553. Two amendments submitted by the Employer members to delete the word "cash" and the words "and 4" were withdrawn.

554. Paragraph 2 was adopted without change.

Paragraph 3

555. An amendment submitted by the Worker members to insert after the words "the medical benefits provided for in Article 5, paragraph 7, of the Convention should", the words "be extended to cover the period of pregnancy and, on return to work, the period of nursing, and" was withdrawn in the light of the earlier discussion.

556. Paragraph 3, clause (a), was adopted without change.

557. An amendment submitted by the Government member of Côte d'Ivoire to replace the words "other maternity service" by the words "other maternity services" in clause (b) and to replace the words "any necessary pharmaceutical and medical supplies, examinations and tests" by the words "the supply of pharmaceutical products and medical materials, examinations and tests", in clause (d) was withdrawn, on the understanding that it would be referred to the Committee Drafting Committee.

558. Paragraph 3, clause (b), was adopted without change.

559. Paragraph 3, clause (c), was adopted without change.

560. Paragraph 3, clause (d), was adopted without change.

561. Paragraph 3, clause (e), was adopted without change.

562. An amendment was submitted by the Government members of Argentina, Brazil, Costa Rica, Mexico, Peru and Venezuela to add a new Paragraph as follows: "The Members should guarantee assistance to women workers as regards family planning services." In presenting the amendment, the Government member of Venezuela said that such a provision was already included in the legislation of many countries.

563. The Employer Vice-Chairperson, observing that the amendment was primarily a matter for governments, noted that it went beyond the scope of both the proposed Convention and Recommendation, which were about maternity protection at work. Family planning services were a social issue which concerned all women, and not just working women.

564. The Worker Vice-Chairperson felt that the provision of family planning services was an important concern both for men and women workers and was prepared to support the amendment. She submitted a subamendment, to replace the word "guarantee" with "provide" and to delete the word "women", which was subsequently withdrawn due to lack of support from both the Employer members and Government members.

565. Following lack of support, the amendment was withdrawn.

566. Paragraph 3 was adopted without change.

Paragraph 4

567. Following an intervention by the Government member of Croatia, it was agreed that Paragraph 4 should be examined by the Committee Drafting Committee in the light of the Committee's adoption of an amendment to insert a similar provision in the Convention.

Paragraph 5

568. Paragraph 5 was adopted without change.

Paragraph 6

569. The Employer Vice-Chairperson submitted an amendment to add a new sentence at the end of the Paragraph as follows: "The period of such leave and the rights provided for in this Paragraph should be determined in accordance with national law and practice." The Employer Vice-Chairperson said that the amendment was necessary to recognize differences in national law and practice, and that it made the provision more realistic and applicable, particularly with regard to those countries with extensive leave periods.

570. The Worker Vice-Chairperson opposed the amendment, on the grounds that some countries did not have such regulations.

571. The Government members of Croatia and the Netherlands believed that the meaning of the amendment was unclear, considering that the Convention already established the period of maternity leave at 14 weeks.

572. Following lack of support from the Government members, the amendment was withdrawn.

573. The Worker Vice-Chairperson submitted an amendment to insert "and Article 4" after "Article 3". The Worker Vice-Chairperson noted that under Article 7, paragraph 2, of the proposed Convention a woman was guaranteed the right to return to the same position or an equivalent position paid at the same level at the end of her maternity leave, but she was given no such right following leave in case of illness or complications. This amendment would provide an additional ingredient by ensuring that the different types of leave would be covered by the proposed Recommendation. The Employer Vice-Chairperson said that there had been considerable debate on this matter at the first discussion, when provision was made for an employment guarantee on return to work after maternity leave. She opposed the amendment in preference to the Office text.

574. The Government member of Cyprus supported the amendment and said there was a need to ensure consistency between the proposed Convention and its Recommendation, a view endorsed by the Government member of Côte d'Ivoire. The Government members of Denmark, New Zealand and the United Kingdom pointed out that the matter as it related to maternity leave was already covered by the proposed Convention. The Government

member of Canada said that although this was the case, the concerns of the Worker members could be taken account of by deleting the first sentence and subamending the second sentence to read: "The period of leave referred to in Articles 3 and 4 should be considered as a period of service for the determination of a woman's rights." This was opposed by the Worker Vice-Chairperson and it was withdrawn. Reiterating her concern that the period of leave referred to in Articles 3 and 4 should be included as a period of service for the determination of rights, the Worker Vice-Chairperson subamended her proposal to read as follows:

> A woman should be entitled to return to her former position or an equivalent position paid at the same rate at the end of her leave referred to in Article 4 of the Convention. The period of leave referred to in Article 3 and Article 4 of the Convention should be considered as a period of service for the determination of her rights.

575. The subamendment was endorsed by the Government member of the United Kingdom as being consistent with the spirit of the provision.

576. The amendment, as subamended, was adopted.

577. The Government members of Canada and Japan submitted an amendment which the Government member of Canada subamended to insert at the beginning of the second sentence the words "To the greatest extent possible,".

578. The Employer Vice-Chairperson supported the subamendment, which she said would facilitate ratification of the Convention, since in some countries service entitlements did not apply to the various types of leave.

579. The Worker Vice-Chairperson opposed the subamendment in preference to the Office text as already amended by the Committee.

580. The Government member of Croatia opposed the proposal, emphasizing that there were already a number of references to national law and practice in the proposed Convention. A similar degree of flexibility was not needed in the Recommendation, which was not binding, and where the words "to the greatest extent possible" would not be appropriate. The Government member of Cyprus also opposed the proposal, which she said would provide less protection in relation to maternity leave than what was already established in the Convention. The Government member of France agreed that the subamendment would weaken what had already been decided upon. The Government member of Kenya also opposed the subamendment, on the grounds that Paragraph 6 was clear enough in its present form.

581. Following lack of support, the Government member of Canada withdrew the subamendment and the original amendment.

582. An amendment submitted by the Government members of Argentina, Brazil, Chile, Costa Rica, Guatemala, Mexico, Peru, Uruguay and Venezuela to add a new Paragraph concerning the employment effects on women of occupational medical examinations was withdrawn.

583. An amendment submitted by the Government members of Argentina, Brazil, Chile, Costa Rica, Guatemala, Peru and Venezuela to add a new Paragraph relating to parental leave was withdrawn.

584. Paragraph 6, as amended, was adopted.

Paragraph 7

Paragraph 7(1)

585. The Worker Vice-Chairperson submitted an amendment to insert, at the beginning of the text, a new subparagraph as follows:

> (1) Members should take measures to ensure assessment, by the competent authorities, of any workplace risks related to the safety and health of the pregnant or nursing woman and her child. The results of the assessment should be made known to the pregnant or nursing woman.

She said that her proposal was closely related to the new Article 3 and ensured that the risk assessment referred to under that provision would take place.

586. The Employer Vice-Chairperson opposed the amendment because of the enormous burden it would place on member States and on the competent authorities, which would be required to determine whether there were "any" workplace risks, as opposed to the "significant risk" referred to under new Article 3 of the proposed Convention. Occupational safety and health standards, such as the Code of Practice on ambient factors at the workplace, referred to the concept of "significant risk", which was quite different from that of "any" risk.

587. The Government member of Cyprus opposed the amendment because of the heavy onus it would place on the competent authorities. Risk assessment was important and should concern both men and women workers. It would therefore be better addressed in an instrument on occupational safety and health. At any rate, risk assessment had already been addressed in Article 3 of the Convention. Similar views were expressed by the Government member of Namibia, who queried whether the reference to "competent authorities" meant national legislatures.

588. The Government member of Croatia, in expressing her support for the amendment, said that Recommendations established no obligation other than the requirements set forth by article 19 of the Constitution of the ILO. She agreed that it was important for the results of such assessments to be made known to pregnant and nursing women, but suggested that it could be clarified how these results would be made known.

589. In the light of the comments by Government members, the Worker Vice-Chairperson submitted a subamendment to delete the words ", by the competent authorities," and to replace the words "known to the pregnant or nursing woman" with the words "available to the woman concerned".

590. The Government member of Chile fully endorsed the subamendment, which she said was a means of reaffirming State responsibility in this matter, and noted that employers also needed to know about existing risks. There could be flexibility concerning remuneration and other conditions of work, but not with regard to the health of workers.

591. The Employer Vice-Chairperson emphasized that the assessment of workplace risks was a matter for occupational safety and health instruments, and that the proposal that unspecified parties should assess unspecified risks in unspecified workplaces was unacceptable. Furthermore, regarding the responsibilities of Members in respect of Recommendations, she pointed out that, under article 19 of the Constitution of the ILO,

such responsibilities were significant. Each Recommendation was communicated to Members "with a view to effect being given to it by national legislation or otherwise". Members undertook to "bring the Recommendation before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action". They were then required to inform the Director-General of the action taken to do so. At appropriate intervals, they were also required to report to the Director-General "the position of the law and practice in their country in regard to the matters dealt with in the Recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as it has been found or may be found necessary to make in adopting them or applying them". Obligations therefore flowed from Recommendations, and there were certain expectations regarding good faith.

592. The Government member of Côte d'Ivoire supported the amendment, which he said addressed two important issues, namely the need to evaluate risks, and the need to provide information on the results of such assessments to the women concerned. The Government member of the Libyan Arab Jamahiriya also endorsed the amendment since the health of pregnant women was a priority matter. The existence of other instruments on safety and health at work that applied to women did not mean that the subject could not be addressed in the proposed Recommendation where it would serve to reinforce what had already been provided for under Article 3 of the proposed Convention.

593. The Government member of Australia, echoing the views of the Government member of Cyprus, opposed the amendment, on the grounds that general occupational safety and health principles should prevail with regard to risk assessment for the workplace. Furthermore, the proposal would involve practical difficulties, since risks were not always the same at different stages of pregnancy.

594. The Government member of the United Kingdom said that risk assessment was already an implicit assumption in Article 3 of the proposed Convention as adopted by the Committee. She therefore endorsed the amendment.

595. In response to a request for clarification from the Government member of New Zealand, the Worker Vice-Chairperson stated that general workplace risk assessment programmes, including assessment of particular risks for pregnant and nursing women, would meet the requirements of her subamendment and that it would not be required to conduct separate assessments for each pregnant or nursing woman.

596. Following support from the Government members, the amendment, as subamended, was adopted.

597. The Government member of Canada introduced an amendment to delete subparagraph 1 of Paragraph 7, pursuant to the adoption of new Article 3 of the proposed Convention.

598. The amendment was supported by the Employer and Worker Vice-Chairpersons and adopted.

599. As a result, Paragraph 7(1) was deleted.

New subparagraph after Paragraph 7(1)

600. The Worker Vice-Chairperson submitted an amendment to insert a new subparagraph to read:

(2) A woman who is pregnant or nursing should not be obliged to do night work, shift work or overtime.

601. The Employer Vice-Chairperson opposed the amendment as being so broad as to be unworkable and which she said would be considered discriminatory in many countries. It would be impossible to apply in many occupations, such as nursing. Employers could not run their businesses properly if they did not know if their workers were going to turn up for work, and thus the provision would actually be a barrier to female employment.

602. The Government member of Cyprus, while sympathizing with the intention of the amendment, said that it was an issue already covered by the Night Work Convention, 1990 (No. 171). The Government member of the Netherlands also opposed the amendment as being too broad, in particular as regards shift work and overtime. Furthermore, the matter of risk assessment, which was already addressed by Paragraph 7(2), adequately covered its intention. The Government member of the Libyan Arab Jamahiriya said he could accept the amendment since it clearly implied that women should not be forced to do such work but could do it if they so wished. He noted that there were medical differences at different stages of pregnancy which affected the importance of the respective risks.

603. The Worker Vice-Chairperson proposed a subamendment to limit the provision to night work, which she said would address the concerns expressed about the inclusion of shift work and overtime.

604. The Employer Vice-Chairperson, in calling attention to the existence of the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948 (No. 89), and the Night Work Convention, 1990 (No. 171), proposed a further subamendment to add after "night work" the words "if a medical certificate declares such work to be incompatible with her pregnancy or nursing".

605. The Worker Vice-Chairperson endorsed the proposal, and the amendment, as subamended, was adopted.

606. The new subparagraph, as amended, was adopted.

Paragraph 7(2)

607. An amendment by the Government member of Canada to replace the word "subparagraph 1" with the words "Article 3 of the Convention" was withdrawn in the light of the amendments adopted to Paragraph 7, subparagraph 1, and because the matter would be dealt with by the Committee Drafting Committee.

608. An amendment submitted by the Worker members to replace "subparagraph 1" by "the preceding paragraphs" was withdrawn.

Paragraph 7(2)(a)

609. The Government member of Côte d'Ivoire submitted an amendment to insert in subparagraph 2, before clause (a), a new clause "(a) elimination of risk;". He said that in order to safeguard the health of the mother and child it was important to identify the risk and eliminate it; only if that were not possible would other alternatives have to be sought.

610. The Employer Vice-Chairperson opposed the amendment on the grounds that it was impossible to eliminate all risks in all workplaces. She emphasized that the addition of the clause was irrelevant since the provisions of Paragraph 7, subparagraph 2, would be

invoked only in situations where an assessment had identified a risk. Furthermore, the issue had already been addressed by earlier amendments.

611. The Worker Vice-Chairperson supported the amendment, which she subamended to add after the word "risk" the words "or, when this is not feasible,". The Government member of Côte d'Ivoire noted that these words were not necessary since Paragraph 7, subparagraph 2, was already based on a hierarchy of alternatives. The subamendment was withdrawn.

612. The Government member of France said that he could accept the amendment if, as he had understood, the intention was first to set out the principle that they wanted to eliminate the risk, and then if that were not possible other measures would have to be taken.

613. The Government member of Cyprus supported the views expressed by the Employer members that the proposal did not seem to fit in with the logic of the subparagraph.

614. Following support by Government members, the amendment was adopted.

615. Paragraph 7(2)(a), as amended, was adopted.

Paragraph 7(2)(b)

616. The Worker Vice-Chairperson presented an amendment to insert after the words "another post" the words "without loss of pay".

617. The Employer Vice-Chairperson opposed the amendment on the grounds that the proposed Recommendation needed to take account of what was applicable under national law and practice.

618. Following support by Government members, the amendment was adopted.

619. Paragraph 7(2)(b), as amended, was adopted.

Paragraph 7(2)(c)

620. An amendment to insert the word "paid" before the word "leave" was submitted by the Worker Vice-Chairperson. She stressed that the leave was taken only if there was no other alternative for health reasons and in such cases it would be inappropriate to penalize the woman through loss of pay.

621. The Employer Vice-Chairperson opposed the amendment, stating that the leave should be provided in accordance with national laws, regulations and practice. The amendment would discourage the employment of women in those jobs where there might be an assessable significant risk.

622. The Government of Kenya also preferred the Office text as providing greater flexibility. The Government member of Barbados thought it would be best not to include the word "paid", which might pose an obstacle to job opportunities for women. She noted that in some countries unemployment benefit schemes could address this issue. The Government member of Namibia wondered whether the amendment was consistent with the stipulation in the provision that the leave would be provided in accordance with national law and practice, since paid leave might not be provided for in all countries.

623. The Government member of the United Kingdom endorsed the addition of the word "paid", which she said was in the spirit of the provision. Similar views were expressed by the Government members of Croatia, Nigeria and Peru. The Government member of Côte d'Ivoire also supported the idea of paid leave, since the leave was necessary through no fault of the woman, as did the Government member of Chile, who said that unpaid leave was of no use to workers and could be misused by employers. The Government member of Cyprus suggested that the Committee might look at the similar provisions contained in the Night Work Convention, 1990 (No. 171).

624. The amendment was adopted.

625. Paragraph 7(2)(c), as amended, was adopted.

Paragraph 7(3)

Paragraph 7(3)(a)

626. Paragraph 7(3)(a) was adopted unchanged.

Paragraph 7(3)(b)

627. The Government member of Côte d'Ivoire submitted an amendment to add, at the end of clause (b), the words "for the foetus or the breastfed child", since the risk was not limited only to reproductive health hazards.

628. The Employer Vice-Chairperson considered that the amendment was redundant since it was inherent in the provision, in so far as subparagraph 3, referred back to measures included in subparagraph 2, which in turn referred back to Article 3 of the proposed Convention, concerning the health of the mother and child.

629. The Worker Vice-Chairperson also opposed the amendment for the same reasons and, while the sponsor was not convinced that the concerns addressed by his amendment were already met, the amendment was withdrawn.

630. Paragraph 7(3)(b) was adopted without change.

Paragraph 7(3)(c)

631. Paragraph 7(3)(c) was adopted without change.

Paragraph 7(3)(d)

632. An amendment was presented by the Worker Vice-Chairperson to add the following clauses to Paragraph 7(3):

(e) night work, shift work and overtime;

(f) work where there is a risk of violence.

633. The Employer Vice-Chairperson recalled that a provision had already been added to Paragraph 7(1) to the effect that pregnant women should not be obliged to do night work if they had a medical certificate declaring such work to be incompatible with their pregnancy or nursing and that in that provision it had been decided to omit any reference to shift work and overtime. As for work where there was a risk of violence, this would appear to apply

to such a wide range of work that its inclusion could not be accepted, even in a Recommendation.

634. The amendment was withdrawn.

635. Paragraph 7(3)(d) was adopted without change.

Paragraph 7(4)

636. The Government members of Canada and New Zealand presented an amendment to replace Paragraph 7(4) with the following:

> Once any compulsory portion of maternity leave has expired, the woman should retain her right to return to her job or an equivalent job as soon as possible, provided there is no significant risk to the health of the woman or her child.

In introducing the amendment, the Government member of Canada explained that it had two purposes: to recognize that, if there was a period of maternity leave which was compulsory, the woman could not return to work until the end of that period, and to recognize the concern for the health of the child.

637. The Employer Vice-Chairperson felt that the concerns of the amendment were probably already adequately taken care of in Article 7, paragraph 2, of the proposed Convention, which guaranteed the right to return to the same position or an equivalent position paid at the same level at the end of her maternity leave, and in Article 3, which ensured that pregnant women were not obliged to perform work which involved a significant risk to the health of the mother or her child. The Worker Vice-Chairperson doubted if there was any real difference between what was proposed in the amendment and the Office text.

638. The amendment was withdrawn.

639. The Worker Vice-Chairperson presented an amendment to insert in Paragraph 7(4) after the words “an equivalent job” the words “with equivalent pay and conditions as applied prior to the leave”. The Employer Vice-Chairperson felt that it was unnecessary to add these words in view of Article 7, paragraph 2, of the proposed Convention. In the light of this observation, the amendment was withdrawn.

640. Paragraph 7(4) was adopted unchanged.

New subparagraph after Paragraph 7(4)

641. The Government member of Brazil introduced an amendment, which he had submitted along with the Government members of Argentina, Bolivia, Chile, Costa Rica, Guatemala, Peru, Uruguay and Venezuela, to add a new Paragraph after Paragraph 7(4) as follows:

> A woman worker should be allowed to leave her workplace for the purpose of undergoing medical examinations during her pregnancy which are related thereto.

642. The Employer Vice-Chairperson indicated her agreement with parts of the amendment, but proposed to subamend it by deleting the word “worker” and by inserting after “workplace” the words “if necessary and with the agreement of the employer”. She noted that in the

case of a part-time worker, it might not be necessary to undergo medical examinations during working time.

643. The Worker Vice-Chairperson agreed with the first subamendment but not with the second. She suggested instead that it would be reasonable to require that the employer merely be notified, a proposal echoed by the Government member of Nigeria. The Employer Vice-Chairperson therefore reformulated her second subamendment to read "if necessary, after notifying her employer".

644. The amendment was adopted as subamended.

645. The new subparagraph after Paragraph 7(4) was adopted as amended.

646. Paragraph 7 was adopted as amended.

Paragraph 8

647. The Worker Vice-Chairperson introduced an amendment to replace Paragraph 8 with the following: "The frequency and length of nursing breaks should be adapted to particular needs of the mother and child." The amendment was designed to take account of the difficulty in certain countries of obtaining a medical certificate.

648. The Employer Vice-Chairperson pointed out that Article 9 of the proposed Convention provided for one or more daily breaks or a reduction in daily working hours and for national law and practice to determine the period, number and duration of such breaks or reductions in hours. She therefore felt that Paragraph 8 would be of value only if it applied to specific situations and that the requirement of medical or other appropriate certification should be maintained.

649. The amendment was withdrawn.

650. The Government member of Brazil withdrew another amendment to replace the word "particular" with the words "the mothers' and their children's", which he had submitted along with the Government members of Argentina, Brazil, Chile, Costa Rica, Guatemala, Peru and Venezuela.

651. An amendment was presented by the Government member of the Côte d'Ivoire to add at the end of Paragraph 8 the following sentence: "However, a minimum of one hour of breastfeeding should be provided on each working day to women workers who breastfeed." He recalled that he had presented a similar amendment to the proposed Convention, but had been advised that it would be more appropriate for inclusion in the proposed Recommendation.

652. The Employer Vice-Chairperson noted that in Article 9, paragraph 2, of the proposed Convention the period, number and duration of breaks were to be determined by national law and practice. It would be inconsistent to specify a minimum of one hour in the proposed Recommendation. This minimum would be particularly inappropriate in the case of part-time employees.

653. The Government member of Cyprus expressed reservations about the amendment, noting that her country's legislation, for example, would comply with Article 9, paragraph 2, but could not satisfy Paragraph 8 of the proposed Recommendation if it were so amended. The Worker Vice-Chairperson indicated that she could not support the amendment.

654. The Government member of Côte d'Ivoire stated that he had intended to propose a subamendment concerning part-time employees. However, in the light of the common position adopted by the Employer member and Worker members, he withdrew his amendment.

655. An amendment submitted by the Government member of Japan to add the sentence "The breaks shall be counted as working time and remunerated accordingly" was withdrawn, as this provision had been included in Article 9, paragraph 2, of the proposed Convention.

656. Paragraph 8 was adopted without change.

Paragraph 9

657. Paragraph 9 was adopted without change.

Paragraph 10

658. The Government member of Chile introduced an amendment to delete from Paragraph 10 the words "where practicable", which she had submitted along with the Government members of Argentina, Brazil, Costa Rica, Guatemala, Mexico, Peru, Uruguay and Venezuela. She saw no good reason to include these words in a Recommendation.

659. The Employer Vice-Chairperson, on the other hand, considered that there were many reasons to retain the words and therefore opposed the amendment. There were many circumstances where it might not be practicable to establish facilities with adequate, hygienic conditions, particularly in hot countries and in agricultural settings. The Worker Vice-Chairperson supported the amendment.

660. Due to a lack of support from Government members, the Government member of Chile withdrew the amendment.

661. The Worker Vice-Chairperson introduced an amendment to insert after the words "for nursing" the words "or expressing milk" and to add at the end of the Paragraph the words ", at or near the workplace".

662. The Employer Vice-Chairperson stated that the first part of the amendment was unnecessary, as it had been agreed that nursing was to be understood as including expressing milk. As for the second part, since the subject of the proposed Recommendation was maternity protection at work, it would be odd if the facilities were not "at or near the workplace". However, to establish them there would not always be feasible, for example, in the case of many micro-enterprises.

663. The Worker Vice-Chairperson subamended her amendment to delete "or expressing milk".

664. The amendment as subamended was adopted.

665. Paragraph 10 was adopted as amended.

Paragraph 11

New subparagraphs before Paragraph 11(1)

666. The Government members of Austria, Croatia, Denmark, Finland, Italy, New Zealand, Norway, Portugal and Sweden presented an amendment to insert in Paragraph 11 two new subparagraphs as follows:

> (1) The employed mother or the employed father of the child should be entitled to parental leave during a period following the expiry of maternity leave.
>
> (2) The period during which parental leave might be granted, the length of the leave and other modalities, including the payment of parental benefits, the use and distribution of parental leave between the employed parents, should be determined by national laws or regulations or in any manner consistent with national practice.

In introducing the amendment, the Government member of Sweden noted that its purpose was to reintroduce provisions which had figured in Report IV(1), but had been subsequently deleted in the Office text of the proposed Recommendation.

667. The Employer Vice-Chairperson recalled that the reason why the Office had withdrawn the provision was that the majority of Government replies were opposed to its inclusion, on the grounds that the proposed Convention and Recommendation were not the appropriate place to deal with the subject of parental leave. It had been excluded from the proposed Convention and should also be excluded from the supporting Recommendation, since the Recommendation was intended to support the Convention.

668. The Worker Vice-Chairperson supported the amendment, but proposed a subamendment to change "or" to "and" in the first line. She added that another possible alternative might be to include the text on parental leave contained in the Workers with Family Responsibilities Recommendation, 1981 (No. 165).

669. The Government member of Poland opposed the subamendment since the mother and father should not be able to take leave at the same time, but supported the amendment. The Government members of Argentina, Brazil, Chile, Costa Rica and Venezuela supported the amendment and pointed out that they had submitted a similar amendment. It was agreed to discuss the two amendments together.

670. Returning to the subamendment put forward by the Worker Vice-Chairperson, the Government member of Sweden pointed out that it did not imply that the mother and father would be able to take leave at the same time. That was one of the matters which would be determined by national law and practice. However, the Worker Vice-Chairperson withdrew the subamendment.

671. The Employer Vice-Chairperson noted that Paragraph 22 of Recommendation No. 165 referred to "either parent", not to "the mother and the father". She also wondered whether there was any point in repeating the same provision in the proposed Recommendation as was already contained in Recommendation No.165 and asked the representative of the Legal Adviser whether this had been a reason for excluding it from the Office text. She further noted that the Preamble to the proposed Convention referred to Convention No. 156 and thus, implicitly, to Recommendation No. 165.

672. The representative of the Legal Adviser stated that the provision had been deleted by the Office to reflect the view expressed in the majority of responses against its inclusion, not for any legal reason.

673. The Government member of Cyprus stated that it was preferable to refer to Recommendation No. 165, in order to avoid having two Recommendations on the same subject. The Government member of Kenya opposed the amendment. She recognized the importance of enabling both parents to look after their children, but felt that provisions on parental leave would be misplaced in a Convention on maternity protection.

674. Pointing out that a significant majority of Governments had previously opposed the inclusion of a provision on parental leave in their replies contained in the Office Report IV(2A); that the issue of parental leave was covered by an existing Recommendation; and that the Convention and Recommendation related to maternity protection, and thus did not extend to the issue of parental leave, the Employer Vice-Chairperson requested a record vote.

675. Put to a record vote, the amendment was adopted by 65,208 votes in favour, 56,316 votes against, with 8,892 abstentions. [6]

Paragraph 11(1)

676. An amendment was submitted by the Employer members to insert "in accordance with national law and practice" after "entitled to take leave" and to add "to look after the child" to the end of the sentence. The Employer Vice-Chairperson stated that the amendment was aimed at underlining that the related leave should be in accordance with national law and practice, and that it was intended solely to allow the father to look after the child.

677. The Worker Vice-Chairperson opposed the amendment.

678. The Government member of New Zealand supported the objective of the amendment. He felt, however, that it was superfluous to indicate that the purpose of the leave was to look after the child. The amendment was withdrawn due to lack of support by Government members.

679. Paragraph 11(1) was adopted without change.

[6] Details of the record vote with respect to Government members:

In favour = 25: Argentina, Austria, Brazil, Bulgaria, Chile, Costa Rica, Croatia, Cyprus, Denmark, Greece, Italy, Mozambique, Netherlands, New Zealand, Norway, Poland, Portugal, Russian Federation, Slovakia, Spain, Sweden, United Arab Emirates, United States, Venezuela, Zambia.

Against = 7: Australia, Belgium, Botswana, China, Egypt, Kenya, Nigeria.

Abstentions = 18: Algeria, Barbados, Benin, Canada, Ethiopia, France, Germany, India, Japan, Republic of Korea, Lesotho, Madagascar, South Africa, Sudan, Switzerland, United Republic of Tanzania, Trinidad and Tobago, Zimbabwe.

Absent = 57: Angola, Bahamas, Bahrain, Belarus, Bolivia, Burkina Faso, Cameroon, Chad, Colombia, Congo, Côte d'Ivoire, Cuba, Czech Republic, Dominican Republic, El Salvador, Finland, Gabon, Ghana, Guatemala, Honduras, Hungary, Indonesia, Islamic Republic of Iran, Ireland, Israel, Jordan, Kiribati, Kuwait, Lebanon, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Malawi, Malta, Mauritania, Mexico, Morocco, Namibia, Nicaragua, Niger, Pakistan, Papua New Guinea, Peru, Philippines, Rwanda, Saudi Arabia, Sri Lanka, Suriname, Swaziland, Syrian Arab Republic, Thailand, Tunisia, Turkey, Uganda, United Kingdom, Uruguay, Viet Nam.

Paragraph 11(2)

680. An amendment was submitted by the Employer members to insert the words "and before the expiry of postnatal leave" after the word "childbirth"; to insert "of a duration equal to the unexpired portion of the postnatal maternity leave" after the words "entitled to leave"; and to add the words "to look after the child" to the end of the sentence. The Employer Vice-Chairperson explained that the amendment was intended to ensure that the leave would be taken before the expiry of postnatal leave and would extend only until the end of the unexpired portion of the maternity leave. She noted that the leave provisions of the proposed Convention did not require a specific indication that it was intended to be used in looking after the child, since this meaning was implicit in the reference to pregnancy, childbirth, and the period immediately after childbirth. She stressed, however, that since the Paragraph concerned leave to be taken by the father, its purpose must be clarified.

681. The Worker Vice-Chairperson supported the amendment, which was adopted.

682. Paragraph 11(2) was adopted as amended.

New subparagraph after Paragraph 11(2)

683. The Government members of Argentina, Brazil, Chile, Costa Rica, Peru and Venezuela submitted an amendment to add a new subparagraph as follows:

> Adoptive parents should be guaranteed access to the system of protection offered by the Convention, especially regarding leave for the father and the mother, benefits and employment protection.

The Government member of Chile, introducing the amendment, observed that maternity was not only a biological fact. Adoptive mothers were also mothers and should not be subjected to discrimination. The Government member of Croatia supported the amendment, referring the Committee to her Government's observations on Paragraph 11 in Report IV(2A), and stating that adoptive parents should be entitled to rights similar to those of natural parents. The Government member of Algeria opposed the amendment.

684. The Employer Vice-Chairperson opposed the amendment on the grounds that the entitlements of adoptive parents would more appropriately be covered by the Workers with Family Responsibilities Convention, 1981 (No. 156). She observed that neither fathers nor adoption were covered by the proposed Convention and argued that it was meaningless to say that adoptive parents "should be guaranteed access to the system of protection", when that system specified that benefits and employment protection applied only in relation to pregnancy, childbirth and breastfeeding.

685. The Worker Vice-Chairperson proposed a subamendment to read:

> Where national law and practice provide for adoption, adoptive parents should have access to the system of protection offered by the proposed Convention, especially regarding leave, benefits and employment protection.

She pointed out that adoption was not recognized in many countries because of religious or cultural beliefs and considered that the provision should apply only where national law and practice already provided for adoption. Furthermore, she acknowledged that since the proposed Convention did not extend protection to fathers, it would not be appropriate to refer to them specifically in this context. The Government members of France, Greece, Kenya, South Africa and Sweden supported the subamendment.

686. The Government member of the Netherlands opposed the subamendment on the grounds that its provisions were too broad. Although it was situated under the heading "Related types of leave", it also contained provisions on both benefits and employment protection. She was supported by the Government member of Cyprus who, in addition, expressed reservations about the possible extension of employment protection to adoptive fathers. The Government member of Senegal also opposed the amendment, while recognizing its intention, and questioned whether benefits relating to maternity could effectively be extended to adoptive parents.

687. The Government member of Croatia proposed a subamendment to replace the word "parents" with "mother". The Government member of the Netherlands proposed a further subamendment to delete the words "benefits and employment protection". The Government member of Algeria opposed the subamendment. The Worker Vice-Chairperson also expressed her opposition, believing that it would be appropriate to include a reference to "parents", given that a Paragraph on parental leave had already been adopted. She recognized that an adoptive mother would have no need for prenatal leave, but stated that she would need postnatal leave were her baby ill. The Government members of Croatia and the Netherlands withdrew their subamendments.

688. The Government member of Australia opposed the amendment on the grounds that it was far too broad. He argued that since it was not explicitly limited to the adoption of infants its provisions would apply in respect of adopted children of any age. The Government member of China also opposed the amendment, while recognizing its intention, stating that the Recommendation should be restricted to maternity protection.

689. The Worker Vice-Chairperson asserted that the entitlements being discussed would be provided in the framework of the proposed Maternity Protection Convention. Consequently, it was clear that they applied only to the adoption of infants where adoption was recognized by national law and practice. The Government member of Zambia also supported the amendment, since priority should be given to protection of the child. Moreover, adoptive mothers were still mothers: this was not a narrowly biological definition. The Government member of Poland also supported the amendment.

690. Warning the Committee that support for the amendment would signal acceptance that adoptive fathers and mothers of children of all ages were entitled to rights to leave, benefits and employment protection, the Employer Vice-Chairperson requested a record vote. She underlined that, were the amendment as subamended to be adopted, the proposed Convention likely would be unratifiable. The Worker Vice-Chairperson reiterated that the Convention and Recommendation related to maternity, so the amendment would apply only to the adoption of infants.

691. Put to a record vote, the amendment, as subamended, was adopted by 62,738 votes in favour, 60,762 votes against, with 5,928 abstentions. [7]

[7] Details of the record vote with respect to Government members:

In favour = 20: Argentina, Brazil, Chile, Costa Rica, Croatia, Denmark, Greece, Italy, Kenya, Mozambique, New Zealand, Norway, Poland, South Africa, Sweden, United Republic of Tanzania, United States, Venezuela, Zambia, Zimbabwe.

Against = 16: Algeria, Australia, Austria, Barbados, Belgium, Botswana, Canada, China, Cyprus, Egypt, Germany, India, Japan, Netherlands, Sudan, United Arab Emirates.

Abstentions = 12: Benin, Bulgaria, Ethiopia, France, Republic of Korea, Lesotho, Madagascar, Nigeria, Portugal, Spain, Switzerland, Trinidad and Tobago.

692. The Employer Vice-Chairperson emphasized the disappointment of the Employer members that the debate on the important issue of adoption had been dealt with when more than half [59 out of 107] the Government members of the Committee had been absent and that only 20 members had voted in favour. She suggested that the system of standard setting would need to be critically re-evaluated in the light of the unacceptable level of participation, to ensure its credibility.

693. The Government members of Argentina, Brazil, Chile, Costa Rica, Peru and Venezuela submitted an amendment to add a new Paragraph as follows: "The woman worker should be guaranteed leave in the event of a miscarriage." The Government member of Chile explained that it would recognize that in many countries legislation provided for leave in these circumstances. She also reminded the Committee that a miscarriage could result in both psychological and physical damage to the mother. She requested clarification from the Office on whether the reference to "complications arising out of pregnancy or childbirth" in Article 4 of the proposed Convention encompassed miscarriages. The representative of the Legal Adviser responded in the affirmative and the amendment was withdrawn.

694. The new Paragraph was adopted as amended.

695. Paragraph 11 was adopted as amended.

696. The Recommendation was adopted as amended.

Adoption of the report and the proposed Convention and Recommendation

697. At its 21st sitting, the Committee adopted its report, subject to changes requested by various members, as well as the proposed Convention and Recommendation as they had been amended by the Drafting Committee. Delegates indicated some minor discrepancies among the English, French and Spanish versions of the instruments which they agreed to refer to the Conference Drafting Committee. The Employer Vice-Chairperson requested that the Committee's report contain details of the record votes with respect to the Government members of the Committee.

698. Before adopting its report, the Committee had been informed by the Reporter that according to its mandate, the Committee Drafting Committee had made drafting changes which did not change the meaning of the Convention or Recommendation and had dealt with two questions which had been referred to it by the Committee concerning Paragraph 3, clauses (b) and (d) of the Recommendation relating to the types of medical benefits and Paragraph 4 of the Recommendation relating to the financing of benefits. Concerning the first question, the Drafting Committee considered that the amendment submitted by the Government member of Côte d'Ivoire, could be accommodated by redrafting the clause to read: "(b) maternity care given by a qualified midwife or by another maternity service at

Absent = 59: Angola, Bahamas, Bahrain, Belarus, Bolivia, Burkina Faso, Cameroon, Chad, Colombia, Congo, Côte d'Ivoire, Cuba, Czech Republic, Dominican Republic, El Salvador, Finland, Gabon, Ghana, Guatemala, Honduras, Hungary, Indonesia, Islamic Republic of Iran, Ireland, Israel, Jordan, Kiribati, Kuwait, Lebanon, Libyan Arab Jamahiriya, Luxembourg, Malaysia, Mali, Malta, Mauritania, Mexico, Morocco, Namibia, Nicaragua, Niger, Pakistan, Papua New Guinea, Peru, Philippines, Russian Federation, Rwanda, Saudi Arabia, Slovakia, Sri Lanka, Suriname, Swaziland, Syrian Arab Republic, Thailand, Tunisia, Turkey, Uganda, United Kingdom, Uruguay, Viet Nam.

home or in a hospital or other medical establishment;". The Drafting Committee had considered that the word "supplies" in English and "fournitures" in French were sufficiently broad to include pharmaceutical products and medical materials. It had therefore left clause (d) unchanged. Regarding the second question, the Drafting Committee had deleted subparagraph 1 of Paragraph 4 of the Recommendation, since that provision had been transferred to the Convention during the discussion of the Committee and was found in Article 6, paragraph 8, of the Convention. The term "benefits" in Article 6, paragraph 8 referred to both cash and medical benefits and therefore the methods of financing provided for in that paragraph applied to both. To retain the provision in the Recommendation with the word "should" would weaken the obligation contained in the text of the Convention.

699. The Employer Vice-Chairperson wished to thank Ms. A. Andersen, the Chairperson, for her able direction in keeping the proceedings of the Committee moving smoothly. It had not always been an easy task, given the nature of the topic and the number of amendments. She also extended thanks to Ms. U. Engelen-Kefer, the Worker Vice-Chairperson, with whom it had been a pleasure to work. Together they had managed to resolve a number of differences. To the Government members of the Committee she expressed her appreciation for the spirit in which the discussions had been held. Working with them had enabled her to put a human face on all the different countries that had participated in the debates. In her view, the Office had done a sterling job, and she was grateful for the work of J. Dy-Hammar, the representative of the Secretary-General and her team, seen and unseen, including the interpreters and technicians, who had been supporting the work of the Committee. She thanked those who had worked on the Committee's report for an excellent job in encapsulating a vast number of ideas accurately and coherently. Ms. L. Samuel, the Committee's Reporter, had put in a great many extra hours to ensure that the Committee's report and the instruments accurately reflected the Committee's work, including her work in the Drafting Committee discussing the fine points of the instruments. Lastly, she wished to thank her advisers and the Employer members for their great team effort.

700. The Worker Vice-Chairperson also expressed her thanks to the Chairperson for steering the Committee in sometimes difficult situations to a successful end. She praised her for the patient and balanced manner in which she had guided the work of the Committee. She thanked Ms. A. Knowles, her counterpart for the Employers' group, whose fairness and cooperation had enabled them to resolve difficulties together despite their differences. The Government members had engaged in lively and comprehensive discussions, which had provided insight into the different cultures, religions and ways of life in many regions of the world. Their contributions to the work of the Committee had brought to the fore the human aspect of globalization. She thanked the representative of the Secretary-General and her team for doing a difficult job well and, in particular, the representative of the Legal Adviser, who had always provided clear explanations. Ms L. Samuel, the Committee's Reporter, who was dedicated to the goals of the ILO, had participated in a very balanced fashion in the work of the Committee. She thanked the Worker members for their inputs and hoped that the spirit of cooperation that had prevailed in their work as a group would permeate the final decisions that would be made by the Conference, as to whether their efforts over the previous two years would achieve a successful outcome.

701. The Government member of Kenya, speaking on behalf of the African countries, thanked the Chairperson for the able way in which she conducted the proceedings of the Committee. She also thanked the secretariat, for their ability and patience, and the Employer and Worker members for the support they had given to the Government members. She noted that it had been a learning experience for all. Of special interest to the African countries was the issue of social security funds, which were central to the practical application of maternity protection in Africa. It was their hope that the ILO would provide

the necessary assistance to help them set up such funds. She also wished to thank her African colleagues for the support they had given her to enable her to coordinate their views for the work of the Committee despite the differences of language, religion or levels of economic development. Lastly, she thanked the members of the Committee for their tolerance, hard work and understanding in working to produce an instrument that would be beneficial to women around the world.

702. The Government member of Trinidad and Tobago considered that the two instruments that the Committee had developed would stand as testimony of their level of enlightenment in protecting a woman's unique ability to bear children. Whereas some Committee members would have preferred different provisions, they had had to start from where they were, not from where they wished they were. Her Government was satisfied that the Committee had succeeded in developing two sound instruments. She thanked the Chairperson and the Employer and Worker Vice-Chairpersons for their dedicated service to the mandate of the Committee. She also expressed her best wishes to the secretariat and thanked, in particular, the representative of the Secretary-General and the representative of the Legal Adviser, as well as the Committee Coordinator, for their excellent work.

703. The Chairperson thanked the Committee for their seriousness of purpose, hard work, cooperative spirit and good humour. She expressed the hope that the work of the Committee would lead to a fruitful result.

704. The report of the Committee and the proposed Convention and Recommendation concerning the revision of the Maternity Protection Convention (Revised), 1952 are submitted for consideration.

Geneva, 14 June 2000. (*Signed*) A. Andersen,
Chairperson.

L. Samuel,
Reporter.

CONTENTS