SESSIONAL PAPER NO 1 OF 2001

INTERNATIONAL LABOUR ORGANIZATION

PROPOSED ACTION BY THE

REPUBLIC OF KENYA

ON THE

CONVENTIONS AND RECOMMENDATIONS

ADOPTED BY THE

INTERNATIONAL LABOUR CONFERENCE AT THE

34TH, 42ND AND 81ST TO 87TH
(1951, 1958 AND 1994 – 1999) SESSIONS

SESSIONAL PAPER NO 1 OF 2001

INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS

CONVENTION NO. 100
EQUAL REMUNERATION

The Convention, which is one of the "core" Conventions of the International Labour Organization, that is, under the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up provides, *inter-alia*, that ratifying countries should promote and ensure that the principle of equal remuneration for men and women workers for work of equal value is applied to all workers.

In Kenya, the Employment Act, Cap. 226, the Regulation of Wages and Conditions of Employment Act, Cap. 229 as well as all freely negotiated Collective Bargaining Agreements provide for equal pay for work of equal value for men and women employees.

In order to formally register our support for and commitment to the principle of Elimination of Discrimination as set out in the above mentioned ILO Declaration, it is necessary that the Government ratifies this Convention.

In view of the foregoing, there is need for us to ratify this Convention.

RECOMMENDATION NO. 90
EQUAL REMUNERATION

The Recommendation supplements the Equal Remuneration Convention No. 100 which is one of the "core" ILO Conventions and provides that appropriate action should be taken to ensure that the principle of equal remuneration is applied to men and women workers for work of equal value. Both law and practice in Kenya do not make any consideration of sex in determining the wages of or applying this principle to workers in either public or private agencies.

In view of the foregoing, the Government intends to adopt this Recommendation.

CONVENTION NO. 111
DISCRIMINATION IN EMPLOYMENT AND OCCUPATION

The Convention was adopted against a background of the Declaration of Philadelphia which affirms that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

For the purpose of this Convention, the term "discrimination" includes any distinction, exclusion or preferences made on the basis of race, colour, sex, religion and political opinion, among others, which has the effect of impairing equality of opportunity or treatment in employment or occupation.

Countries which ratify this Convention are required to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of occupation and employment with a view to eliminating any discrimination.

Section 82 of the Constitution of Kenya outlaws discrimination. In practice as well, discrimination is not practiced with regard to employment and occupation. Just as in Convention No. 100, in order to formally register our support for and commitment to the principles of Elimination of Discrimination as set out in the above-mentioned ILO Declaration, it is necessary that the Government ratifies this Convention.

In view of the foregoing, there is need for us to ratify the Convention.

RECOMMENDATION NO. 111
DISCRIMINATION IN RESPECT OF EMPLOYMENT AND OCCUPATION

The Recommendation supplements the Discrimination (Employment and Occupation) Convention No. 111 which is one of the "core" ILO Conventions.

Member-Countries which adopt it are expected to formulate a national policy for the prevention of discrimination in employment and occupation. This includes access to vocational guidance and placement services.

The provisions of this Recommendation are not inconsistent with our law and practice. The Government, therefore, intends to adopt the Recommendation.

CONVENTION NO. 175
PART-TIME WORK

This Convention was adopted against a back-ground of recognition of the importance of productive and freely chosen employment for all workers, the economic importance of part-time work, the role of part-time work in facilitating additional employment opportunities and the need to ensure protection for part-time workers in areas of access to employment, working conditions and social security. The Convention complements the Equal Remuneration Convention No. 100 as well as the Discrimination (Employment and Occupation) Convention No. 111, among others.

The Convention provides, among others, that part-time workers shall receive the same protection as accorded to full-time workers in respect of the right to organize and collective bargaining, occupational safety and health, maternity protection, paid leave, etc.

Some of the provisions of this Convention are at variance with our labour laws especially the Employment Act, Cap. 226 and established practices especially with regard to trade union membership as enshrined in the tripartite Industrial Relations Charter. Further, the provisions of the Convention are more applicable to countries with very low rates of unemployment.

In view of foregoing, the Government does not need to ratify this Convention.

RECOMMENDATION NO. 182
PART-TIME WORK

The adoption of this Recommendation was based on adoption of certain proposals with regard to Part-Time Work Convention No. 175.

The Recommendation makes certain specific guidelines with regard to treatment of part-time workers (including those with more than one job) such

as equal treatment with regard to financial compensation, additional to basic wages and other benefits that are applicable to full-time workers.

In a country like Kenya where unemployment is high, the provisions of an instrument on part-time work which is either lacking or minimal, do not apply. The Government does not, therefore, need to adopt this Recommendation.

CONVENTION NO. 176
SAFETY AND HEALTH IN MINES

The Convention was adopted against a backdrop of recognition that workers have a need for and a right to information, training and genuine consultation on and participation in the preparation and implementation of safety and health measures concerning the hazards and risks they face in the mining industry.
The Convention applies to all "mines"; a term which covers exploration for minerals that involves the mechanical disturbance of the ground, extraction of minerals, preparation of extracted material, etc.

Ratifying member-states are required to put in place measures in their national laws for ensuring application of the convention. These should be supplemented by technical standards, guidelines, codes of practice, etc.

Mining in Kenya is not yet a major sector of the economy. As such, for the time being, the Government does not need to ratify this Convention.

RECOMMENDATION NO. 183
SAFETY & HEALTH IN MINES

The Recommendation supplements the Safety and Health in Mines Convention No. 176 and applies to all mines. It requires countries that adopt the instrument to periodically review a coherent policy on safety and health in mines in conjunction with the representative organizations of employers and workers.

In the provisions of its various Articles, the standards set with regard to supervision of safety and health in mines, rescue operations in the event of such hazards as gas outbursts, rockfalls, seismic movements, etc. are too high

for a country which does not have a well-developed mining sector. The Government does not, therefore need to adopt this Recommendation.

CONVENTION NO. 177
HOME-WORK

The Convention was adopted on the basis of the need to improve the application of various international labour instruments to homeworkers and to supplement them with standards which take into account the special characteristics of homework.

For purposes of the Convention, the term "homework" means any work carried out by a person (a home worker) in his or her home or a place other than the employer's premises.

The Convention requires countries that adopt it to designate an authority or authorities entrusted to formulate and implement a national policy and also compile detailed information on homework. It also provides that any obstacles to trade unionism among home workers should be identified and removed.

The provisions of this instrument are too elaborate for a developing country like ours which is still struggling to create employment and alleviate poverty. In view of these facts, the Government does not need to ratify this Convention.

RECOMMENDATION NO. 184
HOME-WORK

The Recommendation was adopted on the basis of the need to improve the application of various international labour instruments to homeworkers and to supplement them with standards which take into account the special characteristics of homework.

For purposes of the Recommendation, the term "Homework" means any work carried out by a person (a home worker) in his or her home or a place other than the employer's premises.

The Recommendation requires countries that adopt it to designate an

authority or authorities entrusted to formulate and implement a national policy on homework and also compile detailed information on homework. It also provides that any obstacles to trade unionism among homeworkers should be identified and removed.

The provisions of this instrument are too elaborate for a developing country like ours which is still struggling to create employment and alleviate poverty. In view of these facts, the Government does not need to adopt this Recommendation.

CONVENTION NO. 178
INSPECTION OF SEAFARERS' WORKING AND LIVING CONDITIONS

In adopting this Convention on 8th October, 1996, the General Conference of the ILO noted the changes in the nature of the shipping industry and as a consequence, the changes in seafarers' working and living conditions since the Labour Inspection (Seamen) Recommendation No. 28 of 1926. The General Conference also recalled the provisions of the Labour Inspection Convention No. 81 of 1947, among others. The conference also recalled the entry into force of the United Nations Convention on the Law of the Sea, 1982.

The Convention applies to every seagoing ship, whether publicly or privately owned, which is registered in the territory of a Member country and is engaged in the commercial transportation of cargo or passengers. The Convention also applies to seafaring tugs.

The Convention requires ratifying countries to maintain a system of inspection of seafarers' working and living conditions and stipulates that inspectors carrying out these duties shall have appropriate status and credentials to carry out their work.

The major part of the provisions of this Convention are already covered by the Seafarers Annual Leave With Pay Convention No. 146 which Kenya has already ratified. Effect of the provisions of this Convention is given by the Merchant Shipping Act, Cap. 389 (which is enforced by the Ministry of Information, Transport and Communications) along with various labour legislation.

Since the country is yet to fully meet the requirements of the Conventions already ratified under this category, the Government does not need to ratify the Convention.

RECOMMENDATION NO. 185
INSPECTION OF SEAFARERS' WORKING AND LIVING CONDITIONS

The Recommendation makes certain guidelines concerning, among others, promotion of effective co-operation between public institutions and other organizations concerned with Seafarers' working and living conditions.

Among other, there are those on supply of technical information and advice to ship owners and seafarers and organizations concerned with shipping and also annual provision of statistics of ships or other premises liable to inspection, list of laws and regulations, amendments and infringements, etc.

Due to the elaborate nature of the instrument and the fact that Kenya is not a major seafaring or shipping country, the Government does not need to adopt this Recommendation.

CONVENTION NO. 179
RECRUITMENT AND PLACEMENT OF SEAFARERS

The Convention takes into account the provisions of a number of various instruments concerning shipping and the terms and conditions of work for seafarers.

The Convention provides, *inter-alia*, that seafarers shall not be charged any money for their recruitment and that a system of protection is established to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service to meet its obligations to them.

In Kenya, along with other legislation, the Merchant Shipping Act, Cap. 389 contains the rules and regulations governing employment and terms and conditions of employment for seafarers.

Since shipping is not an advanced industry in Kenya, the Government does

not need to ratify the Convention.

RECOMMENDATION NO. 186
RECRUITMENT AND PLACEMENT OF SEAFARERS

The Recommendation provides that countries which adopt it should take the necessary measures to promote cooperation between various placement services, be they public or private and also maintain an arrangement for collection and analysis of all relevant information on the maritime labour market including the current and prospective supply of seafarers classified by age, sex, etc.

For a country like Kenya in which the maritime industry is not advanced, adoption of this Recommendation would not be advisable. The Government does not, therefore, need to adopt it.

CONVENTION NO. 180
SEAFARERS' HOURS OF WORK AND THE MANNING OF SHIPS

The Convention takes into account the various maritime international labour instruments concerned with seafarers and shipping. The Convention stipulates that the normal working hours' standard for seafarers shall be 8 hours per day with one rest day per week and goes on to set the maximum hours of work and minimum hours of rest. However, should the rest period be disturbed by an emergency or the need to respond to and/or give assistance to other ships or persons in distress at sea, the Master should ensure that the seafarer gets adequate rest as soon as calm or normal situation has been restored.

The requirements that this Convention sets are too high for countries which do not have an elaborate or advanced maritime industry. Since Kenya falls in this category, the Government does not need to ratify the Convention.

RECOMMENDATION NO. 187
SEAFARERS' HOURS OF WORK AND THE MANNING OF SHIPS

The Recommendation takes into account various international labour instruments on protection of wages, minimum wage-fixing and working

conditions of seafarers.

The Recommendation applies to public and private sea-going ships but excludes wooden vessels of traditional build such as dhows and junks.

The Recommendation also provides that the competent authority should have the power to inspect stores and services provided on board ship to ensure that fair and reasonable prices are applied.

In view of the fact that Kenya is not a major maritime country, the Government does not need to adopt this Recommendation.

CONVENTION NO. 181
PRIVATE EMPLOYMENT AGENCIES

The Convention revises the Fee-Charging Employment Agencies Convention No. 96 of 1949. The Convention applies to private employment agencies and specifies their role in a well-functioning labour market.

For the purposes of the Convention, the term 'private employment agency' is defined as any natural or legal person, independent of the public authorities which provides any or more of the following labour market services:

(a) Matching vacancies and skills (or applications)
(b) Employing workers with a view to making them available to a third party
(c) Other services related to job-seeking that do not set out to match specific offers of and applications for employment

One of the purposes of this Convention is to allow the operation of private employment agencies. It applies to all categories of workers and all branches of economic activity but excludes recruitment and placement of seafarers.

The Convention, which provides that the legal status of private employment agencies shall be determined in accordance with national law and practice, goes on to prohibit such agencies to charge any fees to workers.

By virtue of our stage in economic development, our laws on the functioning of employment agencies are not elaborate enough to accommodate the various provisions in the Convention. Indeed, to-date, our National

Employment Bureau lacks the necessary legal instruments to compel employers declare vacancies to it.

In view of these facts, the Government does not need to ratify this Convention.

RECOMMENDATION NO. 188
PRIVATE EMPLOYMENT AGENCIES

The Recommendation supplements its corresponding Convention No. 181 and provides that national laws and regulations applicable to private employment agencies should be supplemented by technical standards, guidelines, codes of ethics, self-regulatory mechanisms or other means

The Recommendation also provides that private employment agencies should have properly qualified and trained staff and that, together with the competent authority, they should promote utilization of proper, fair and efficient selection methods.

Due to inadequacy of legislation in this area coupled with our present stage of economic development, adoption of this Recommendation would not be advisable. The Government does not, therefore, need to adopt this Recommendation.

RECOMMENDATION NO. 189
GENERAL CONDITIONS TO STIMULATE JOB CREATION IN SMALL AND MEDIUM-SIZED ENTERPRISES

The Recommendation was adopted by the General Conference of the ILO against a backdrop of recognition of the need for the pursuit of economic, social, and spiritual well-being of individuals, families, communities and nations and the role of small and medium-sized enterprises as a critical factor in economic growth and development and that such enterprises are increasingly responsible for the creation of the majority of jobs throughout the world.

In order to promote the fundamental role of small and medium-sized enterprises, countries that adopt this Recommendation are advised to adopt appropriate enforcement mechanisms to safeguard workers' interests and

provide them with the basic protection available under other relevant instruments. The Recommendation also calls for full observance of both national and international labour standards, and pursuit of appropriate fiscal, monetary and employment policies to promote workers' protection and at the same time create an environment conducive to the growth and development of small and medium-sized enterprises.

The requirements this Recommendation sets for member states are too high and ambitious for a developing country like Kenya which is struggling to alleviate poverty among its people. In view of this fact, the Government does not need to adopt this Recommendation.

CONVENTION NO. 182
PROHIBITION AND IMMEDIATE ACTION FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOUR

The Convention was unanimously adopted by the representatives of the Government, Workers and Employers from all member-countries of the ILO during the 87th Session of the International Labour Conference at Geneva on 17th June, 1999.

The Convention was adopted against a background of a recognized need to adopt new instruments for the prohibition and elimination of the worst forms of child labour as the main priority for national and international action including international co-operation and assistance.

The Convention complements Convention No. 138 on Minimum Age for Admission to Employment which remains a fundamental instrument on Elimination of child labour and which Kenya ratified in 1979.

Adoption of Convention No. 182 was also based upon the belief that the effective elimination of the worst forms of child labour requires immediate and comprehensive action, taking into account the importance of free basic education and the need to remove the children concerned from all such work and provide for their rehabilitation and social integration while addressing the needs of their families.

The Convention requires each Member-State that ratifies it to take immediate and effective measures to prohibit and eliminate the worst forms of child labour as a matter of urgency.

For the purpose of the Convention, the term "child" applies to all persons under the age of 18.
The Convention lists down the types of work which comprise "the worst forms of child labour" as follows:-

i) All forms of slavery, sale of children, debt bondage and serfdom and forced or compulsory recruitment of children in armed conflict.
ii) Use of a child in prostitution or in pornographic production or performances.
iii) Use of a child for such illicit activities as drug production and trafficking.
iv) Work which, by its nature or circumstances in which it is carried out is likely to harm the health, safety or morals of children.

The Convention also requires that after consultation with the worker and the employer organizations, each Member-State (that ratifies it) establishes appropriate mechanisms to monitor the implementation of the Convention and also design and implement programmes of action to eliminate the worst forms of child labour. Such programmes should be designed and implemented in consultation with the relevant government institutions and employers' and workers' organizations, taking into consideration the views of other concerned groups.

Finally, the Convention calls upon Member-States to take steps to assist one another in giving effect to the provisions of the Convention through enhanced international co-operation and/or assistance including support for social and economic development, poverty eradication programmes and universal education.

In Kenya, elimination of child labour is of primary concern. This was underscored by our ratification of Convention No. 138 on Minimum Age for Admission to employment and the programmes and activities (geared towards elimination of child labour) that are currently being implemented with direct government involvement that is based on political will and donor assistance from the ILO and friendly governments. The recent launching of the Poverty eradication Programme by His Excellency, the President also goes a long way into providing the necessary environment for the elimination of the worst forms of child labour as it addresses the issue of poverty which is the major cause of the problem.

With the programmes, activities and political will cited above, coupled with the fact that most of the types of work identified as "the worst forms of child labour" do not exist in Kenya, or if they do, they are only on a small scale, the stage is already set for Kenya to ratify the Convention.

Based on the foregoing, coupled with the fact that Kenya needs to identify with the rest of the international community in eliminating the problem of child labour and taking into account the commitment registered on this score by the African leaders at the 35th Assembly of Heads of State and Government of the OAU held in Algiers, Algeria in July, 1999, the Government needs to ratify this Convention as a matter of urgency.

It is therefore recommended that the Government ratifies ILO Convention No. 182.

RECOMMENDATION NO. 190
PROHIBITION AND IMMEDIATE ACTION FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOUR

Adopted on 17th June, 1999, the Recommendation supplements Convention No. 182 on the Worst Forms of Child Labour.

The Recommendation gives guidelines on how effect should be given to various provisions of the Convention. On Programmes of Action, the Recommendation emphasizes that such programmes should be designed and implemented urgently in consultation with relevant government institutions and employers' and workers' organizations and that views of all stakeholders including children and their families should be taken into account.

The Recommendation also points out that in determining "hazardous work", consideration should be given to, among others, work which exposes children to physical, psychological and sexual abuse, work with dangerous machinery, equipment and tools, hazardous substances, long hours of work and night-work, etc.

On implementation, the Recommendation explains the kind of data that should be compiled and how this should be done and transmitted to the International Labour Office. Establishment of national mechanisms to monitor the implementation of national provisions as well as responsibility in

the event of non-compliance are also mentioned.

The Recommendation also stresses co-operation with international efforts aimed at prohibition and elimination of the worst forms of child labour by, among others, detecting and prosecuting those involved in the sale and trafficking of children.

Based on the reasons outlined under Convention No. 182 (above), the Government needs to adopt Recommendation No. 190.

PROTOCOL OF 1996
TO THE MERCHANT SHIPPING (MINIMUM STANDARDS) CONVENTION NO. 147

The Protocol requires Member-States that have ratified Convention No. 147 to extend the list of Conventions appearing in the Appendix to the principal Convention. It applies to countries that have ratified the Convention. Kenya has not ratified it.

In view of the foregoing, the Government does not need to ratify the Protocol.

INSTRUMENT OF AMENDMENT, 1997
CONSTITUTION OF THE ILO

This Instrument was adopted to pave way for amendment of Article 19 of the Constitution of the ILO. The amendment of the Article will enable the ILO to abrogate International Labour Conventions if, on the proposal of the Governing Body, the Conference considers by a two-thirds majority that the Convention concerned has become obsolete.

The Instrument provides for amendment of the Constitution of the ILO by insertion of a new paragraph (i.e. Paragraph 9) immediately after Paragraph 8. It reads as follows:

> ***"9. Acting on a proposal of the Governing Body, the Conference may, by a majority of two-thirds of the votes cast by the delegates present, abrogate any Convention adopted in accordance with the provisions of this article if it appears that the Convention has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the Organization."***

To enable the ILO abrogate International labour conventions if and when they become obsolete (thereby becoming no longer able to make a useful contribution to attaining the objectives of the organization), it is necessary that Kenya joins the rest of the international community and registers her support to the ILO to enable it realize this noble objective.

In view of these facts, the Government needs to ratify this Instrument.

Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-fourth Session on 6 June 1951, and

Having decided upon the adoption of certain proposals with regard to the principle of equal remuneration for men and women workers for work of equal value, which is the seventh item on the agenda of the session, and

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

adopts this twenty-ninth day of June of the year one thousand nine hundred and fifty-one the following Convention, which may be cited as the Equal Remuneration Convention, 1951:

Article 1

For the purpose of this Convention —

(a) the term "remuneration" includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment;

(b) the term "equal remuneration for men and women workers for work of equal value" refers to rates of remuneration established without discrimination based on sex.

Article 2

1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

2. This principle may be applied by means of —

(a) national laws or regulations;

(b) legally established or recognised machinery for wage determination;

* Ed.: This Convention came into force on 23 May 1953.

(c) collective agreements between employers and workers; or

(d) a combination of these various means.

Article 3

1. Where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.

2. The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or, where such rates are determined by collective agreements, by the parties thereto.

3. Differential rates between workers which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value.

Article 4

Each Member shall co-operate as appropriate with the employers' and workers' organisations concerned for the purpose of giving effect to the provisions of this Convention.

Article 5

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 6

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 7

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of article 35 of the Constitution of the International Labour Organisation shall indicate —

(a) the territories in respect of which the Member concerned undertakes that the provisions of the Convention shall be applied without modification;

(b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;

(c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;

(d) the territories in respect of which it reserves its decisions pending further consideration of the position.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservation made in its original declaration in virtue of subparagraph (b), (c) or (d) of paragraph 1 of this Article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 9, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 8

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 4 or 5 of article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications, it shall give details of the said modifications.

2. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

3. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 9, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this

Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 12

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides —

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

The English and French versions of the text of this Convention are equally authoritative.

Recommendation No. 90

Recommendation concerning Equal Remuneration for Men and Women Workers for Work of Equal Value

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-fourth Session on 6 June 1951, and

Having decided upon the adoption of certain proposals with regard to the principle of equal remuneration for men and women workers for work of equal value, which is the seventh item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Equal Remuneration Convention, 1951,

adopts this twenty-ninth day of June of the year one thousand nine hundred and fifty-one the following Recommendation, which may be cited as the Equal Remuneration Recommendation, 1951:

Whereas the Equal Remuneration Convention, 1951, lays down certain general principles concerning equal remuneration for men and women workers for work of equal value;

Whereas the Convention provides that the application of the principle of equal remuneration for men and women workers for work of equal value shall be promoted or ensured by means appropriate to the methods in operation for determining rates of remuneration in the countries concerned;

Whereas it is desirable to indicate certain procedures for the progressive application of the principles laid down in the Convention;

Whereas it is at the same time desirable that all Members should, in applying these principles, have regard to methods of application which have been found satisfactory in certain countries;

The Conference recommends that each Member should, subject to the provisions of Article 2 of the Convention, apply the following provisions and report to the International Labour Office as requested by the Governing Body concerning the measures taken to give effect thereto:

1. Appropriate action should be taken, after consultation with the workers' organisations concerned or, where such organisations do not exist, with the workers concerned —

(a) to ensure the application of the principle of equal remuneration for men and women workers for work of equal value to all employees of central government departments or agencies; and

(b) to encourage the application of the principle to employees of state, provincial or local government departments or agencies, where these have jurisdiction over rates of remuneration.

2. Appropriate action should be taken, after consultation with the employers' and workers' organisations concerned, to ensure, as rapidly as practicable, the application of the principle of equal remuneration for men and women workers for work of equal value in all occupations, other than those mentioned in Paragraph 1, in which rates of remuneration are subject to statutory regulation or public control, particularly as regards —

(a) the establishment of minimum or other wage rates in industries and services where such rates are determined under public authority;

(b) industries and undertakings operated under public ownership or control; and

(c) where appropriate, work executed under the terms of public contracts.

3. (1) Where appropriate in the light of the methods in operation for the determination of rates of remuneration, provision should be made by legal enactment for the general application of the principle of equal remuneration for men and women workers for work of equal value.

(2) The competent public authority should take all necessary and appropriate measures to ensure that employers and workers are fully informed as to such legal requirements and, where appropriate, advised on their application.

4. When, after consultation with the organisations of workers and employers concerned, where such exist, it is not deemed feasible to implement immediately the principle of equal remuneration for men and women workers for work of equal value, in respect of employment covered by Paragraph 1, 2 or 3, appropriate provision should be made or caused to be made, as soon as possible, for its progressive application, by such measures as —

(a) decreasing the differentials between rates of remuneration for men and rates of remuneration for women for work of equal value;

(b) where a system of increments is in force, providing equal increments for men and women workers performing work of equal value.

5. Where appropriate for the purpose of facilitating the determination of rates of remuneration in accordance with the principle of equal remuneration for men and women workers for work of equal value, each Member should, in agreement with the employers' and workers' organisations concerned, establish or encourage the establishment of methods for objective appraisal of the work to be performed, whether by job analysis or by other procedures, with a view to providing a classification of jobs without regard to sex; such methods should be applied in accordance with the provisions of Article 2 of the Convention.

6. In order to facilitate the application of the principle of equal remuneration for men and women workers for work of equal value, appropriate action should be taken, where necessary, to raise the productive efficiency of women workers by such measures as —

(a) ensuring that workers of both sexes have equal or equivalent facilities for vocational guidance or employment counselling, for vocational training and for placement;

(b) taking appropriate measures to encourage women to use facilities for vocational guidance or employment counselling, for vocational training and for placement;

(c) providing welfare and social services which meet the needs of women workers, particularly those with family responsibilities, and financing such services from general public funds or from social security or industrial welfare funds financed by payments made in respect of workers without regard to sex; and

(d) promoting equality of men and women workers as regards access to occupations and posts without prejudice to the provisions of international regulations and of national laws and regulations concerning the protection of the health and welfare of women.

7. Every effort should be made to promote public understanding of the grounds on which it is considered that the principle of equal remuneration for men and women workers for work of equal value should be implemented.

8. Such investigations as may be desirable to promote the application of the principle should be undertaken.

Convention concerning Discrimination in Respect of Employment and Occupation *

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-second Session on 4 June 1958, and

Having decided upon the adoption of certain proposals with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and

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

Considering that the Declaration of Philadelphia affirms that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity, and

Considering further that discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights,

adopts this twenty-fifth day of June of the year one thousand nine hundred and fifty-eight the following Convention, which may be cited as the Discrimination (Employment and Occupation) Convention, 1958:

Article 1

1. For the purpose of this Convention the term "discrimination" includes —

(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

Ed.: This Convention came into force on 15 June 1960.

3. For the purpose of this Convention the terms "employment" and "occupation" include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

Article 2

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, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

Article 3

Each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice —

(a) to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of this policy;

(b) to enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;

(c) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;

(d) to pursue the policy in respect of employment under the direct control of a national authority;

(e) to ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;

(f) to indicate in its annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action.

Article 4

Any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State shall not be deemed to be discrimination, provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice.

Article 5

1. Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination.

2. Any Member may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as

sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination.

Article 6

Each Member which ratifies this Convention undertakes to apply it to non-metropolitan territories in accordance with the provisions of the Constitution of the International Labour Organisation.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the

attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 12

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides —

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

The English and French versions of the text of this Convention are equally authoritative.

Recommendation No. 111

Recommendation concerning Discrimination in Respect of Employment and Occupation

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-second Session on 4 June 1958, and

Having decided upon the adoption of certain proposals with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Discrimination (Employment and Occupation) Convention, 1958,

adopts this twenty-fifth day of June of the year one thousand nine hundred and fifty-eight the following Recommendation, which may be cited as the Discrimination (Employment and Occupation) Recommendation, 1958:

The Conference recommends that each Member should apply the following provisions:

I. DEFINITIONS

1. (1) For the purpose of this Recommendation the term "discrimination" includes —

(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

(2) Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof is not deemed to be discrimination.

(3) For the purpose of this Recommendation the terms "employment" and "occupation" include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

II. FORMULATION AND APPLICATION OF POLICY

2. Each Member should formulate a national policy for the prevention of discrimination in employment and occupation. This policy should be applied by means of legislative measures, collective agreements between representative employers' and workers' organisations or in any other manner consistent with national conditions and practice, and should have regard to the following principles:

(a) the promotion of equality of opportunity and treatment in employment and occupation is a matter of public concern;

(b) all persons should, without discrimination, enjoy equality of opportunity and treatment in respect of —

(i) access to vocational guidance and placement services;

(ii) access to training and employment of their own choice on the basis of individual suitability for such training or employment;

(iii) advancement in accordance with their individual character, experience, ability and diligence;

(iv) security of tenure of employment;

(v) remuneration for work of equal value;

(vi) conditions of work including hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment;

(c) government agencies should apply non-discriminatory employment policies in all their activities;

(d) employers should not practise or countenance discrimination in engaging or training any person for employment, in advancing or retaining such person in employment, or in fixing terms and conditions of employment; nor should any person or organisation obstruct or interfere, either directly or indirectly, with employers in pursuing this principle;

(e) in collective negotiations and industrial relations the parties should respect the principle of equality of opportunity and treatment in employment and occupation, and should ensure that collective agreements contain no provisions of a discriminatory character in respect of access to, training for, advancement in or retention of employment or in respect of the terms and conditions of employment;

(f) employers' and workers' organisations should not practise or countenance discrimination in respect of admission, retention of membership or participation in their affairs.

3. Each Member should —

(a) ensure application of the principles of non-discrimination —

(i) in respect of employment under the direct control of a national authority;

(ii) in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;

(b) promote their observance, where practicable and necessary, in respect of other employment and other vocational guidance, vocational training and placement services by such methods as —

(i) encouraging state, provincial or local government departments or agencies and industries and undertakings operated under public ownership or control to ensure the application of the principles;

(ii) making eligibility for contracts involving the expenditure of public funds dependent on observance of the principles;

(iii) making eligibility for grants to training establishments and for a licence to operate a private employment agency or a private vocational guidance office dependent on observance of the principles.

4. Appropriate agencies, to be assisted where practicable by advisory committees composed of representatives of employers' and workers' organisations, where such exist, and of other interested bodies, should be established for the purpose of promoting application of the policy in all fields of public and private employment, and in particular —

(a) to take all practicable measures to foster public understanding and acceptance of the principles of non-discrimination;

(b) to receive, examine and investigate complaints that the policy is not being observed and, if necessary by conciliation, to secure the correction of any practices regarded as in conflict with the policy; and

(c) to consider further any complaints which cannot be effectively settled by conciliation and to render opinions or issue decisions concerning the manner in which discriminatory practices revealed should be corrected.

5. Each Member should repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy.

6. Application of the policy should not adversely affect special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status are generally recognised to require special protection or assistance.

7. Any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State should not be deemed to be discrimination, provided that the individual concerned has the right to appeal to a competent body established in accordance with national practice.

8. With respect to immigrant workers of foreign nationality and the members of their families, regard should be had to the provisions of the Migration for Employment Convention (Revised), 1949, relating to equality of treatment and the provisions of the Migration for Employment Recommendation (Revised), 1949, relating to the lifting of restrictions on access to employment.

9. There should be continuing co-operation between the competent authorities, representatives of employers and workers and appropriate bodies to consider what further positive measures may be necessary in the light of national conditions to put the principles of non-discrimination into effect.

III. CO-ORDINATION OF MEASURES FOR THE PREVENTION OF DISCRIMINATION IN ALL FIELDS

10. The authorities responsible for action against discrimination in employment and occupation should co-operate closely and continuously with the authorities responsible for action against discrimination in other fields in order that measures taken in all fields may be co-ordinated.

Convention No. 175

Convention concerning Part-Time Work *

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 81st Session on 7 June 1994, and

Noting the relevance, for part-time workers, of the provisions of the Equal Remuneration Convention, 1951, the Discrimination (Employment and Occupation) Convention, 1958, and the Workers with Family Responsibilities Convention and Recommendation, 1981, and

Noting the relevance for these workers of the Employment Promotion and Protection against Unemployment Convention, 1988, and the Employment Policy (Supplementary Provisions) Recommendation, 1984, and

Recognizing the importance of productive and freely chosen employment for all workers, the economic importance of part-time work, the need for employment policies to take into account the role of part-time work in facilitating additional employment opportunities, and the need to ensure protection for part-time workers in the areas of access to employment, working conditions and social security, and

Having decided upon the adoption of certain proposals with regard to part-time work, which is the fourth item on the agenda of the session, and

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

adopts this twenty-fourth day of June of the year one thousand nine hundred and ninety-four the following Convention, which may be cited as the Part-Time Work Convention, 1994:

Article 1

For the purposes of this Convention:

(a) the term "part-time worker" means an employed person whose normal hours of work are less than those of comparable full-time workers;

(b) the normal hours of work referred to in subparagraph (a) may be calculated weekly or on average over a given period of employment;

(c) the term "comparable full-time worker" refers to a full-time worker who:

* Ed.: This Convention had not received the necessary number of ratifications to come into force by 15 May 1996.

(i) has the same type of employment relationship;

(ii) is engaged in the same or a similar type of work or occupation; and

(iii) is employed in the same establishment or, when there is no comparable full-time worker in that establishment, in the same enterprise or, when there is no comparable full-time worker in that enterprise, in the same branch of activity,

as the part-time worker concerned;

(d) full-time workers affected by partial unemployment, that is by a collective and temporary reduction in their normal hours of work for economic, technical or structural reasons, are not considered to be part-time workers.

Article 2

This Convention does not affect more favourable provisions applicable to part-time workers under other international labour Conventions.

Article 3

1. This Convention applies to all part-time workers, it being understood that a Member may, after consulting the representative organizations of employers and workers concerned, exclude wholly or partly from its scope particular categories of workers or of establishments when its application to them would raise particular problems of a substantial nature.

2. Each Member having ratified this Convention which avails itself of the possibility afforded in the preceding paragraph shall, in its reports on the application of the Convention under article 22 of the Constitution of the International Labour Organization, indicate any particular category of workers or of establishments thus excluded and the reasons why this exclusion was or is still judged necessary.

Article 4

Measures shall be taken to ensure that part-time workers receive the same protection as that accorded to comparable full-time workers in respect of:

(a) the right to organize, the right to bargain collectively and the right to act as workers' representatives;

(b) occupational safety and health;

(c) discrimination in employment and occupation.

Article 5

Measures appropriate to national law and practice shall be taken to ensure that part-time workers do not, solely because they work part time, receive a basic wage which, calculated proportionately on an hourly, performance-related, or piece-rate

basis, is lower than the basic wage of comparable full-time workers, calculated according to the same method.

Article 6

Statutory social security schemes which are based on occupational activity shall be adapted so that part-time workers enjoy conditions equivalent to those of comparable full-time workers; these conditions may be determined in proportion to hours of work, contributions or earnings, or through other methods consistent with national law and practice.

Article 7

Measures shall be taken to ensure that part-time workers receive conditions equivalent to those of comparable full-time workers in the fields of:

(a) maternity protection;

(b) termination of employment;

(c) paid annual leave and paid public holidays; and

(d) sick leave,

it being understood that pecuniary entitlements may be determined in proportion to hours of work or earnings.

Article 8

1. Part-time workers whose hours of work or earnings are below specified thresholds may be excluded by a Member:

(a) from the scope of any of the statutory social security schemes referred to in Article 6, except in regard to employment injury benefits;

(b) from the scope of any of the measures taken in the fields covered by Article 7, except in regard to maternity protection measures other than those provided under statutory social security schemes.

2. The thresholds referred to in paragraph 1 shall be sufficiently low as not to exclude an unduly large percentage of part-time workers.

3. A Member which avails itself of the possibility provided for in paragraph 1 above shall:

(a) periodically review the thresholds in force;

(b) in its reports on the application of the Convention under article 22 of the Constitution of the International Labour Organization, indicate the thresholds in force, the reasons therefor and whether consideration is being given to the progressive extension of protection to the workers excluded.

4. The most representative organizations of employers and workers shall be consulted on the establishment, review and revision of the thresholds referred to in this Article.

Article 9

1. Measures shall be taken to facilitate access to productive and freely chosen part-time work which meets the needs of both employers and workers, provided that the protection referred to in Articles 4 to 7 is ensured.

2. These measures shall include:

(a) the review of laws and regulations that may prevent or discourage recourse to or acceptance of part-time work;

(b) the use of employment services, where they exist, to identify and publicize possibilities for part-time work in their information and placement activities;

(c) special attention, in employment policies, to the needs and preferences of specific groups such as the unemployed, workers with family responsibilities, older workers, workers with disabilities and workers undergoing education or training.

3. These measures may also include research and dissemination of information on the degree to which part-time work responds to the economic and social aims of employers and workers.

Article 10

Where appropriate, measures shall be taken to ensure that transfer from full-time to part-time work or vice versa is voluntary, in accordance with national law and practice.

Article 11

The provisions of this Convention shall be implemented by laws or regulations, except in so far as effect is given to them by means of collective agreements or in any other manner consistent with national practice. The most representative organizations of employers and workers shall be consulted before any such laws or regulations are adopted.

Article 12

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 13

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General.

2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

Article 14

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 15

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations communicated to him by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention will come into force.

Article 16

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciations registered by him in accordance with the provisions of the preceding Articles.

Article 17

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 18

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides —

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the

provisions of Article 14 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 19

The English and French versions of the text of this Convention are equally authoritative.

Recommendation No. 182

Recommendation concerning Part-Time Work

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 81st Session on 7 June 1994, and

Having decided upon the adoption of certain proposals with regard to part-time work, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Part-Time Work Convention, 1994,

adopts this twenty-fourth day of June of the year one thousand nine hundred and ninety-four the following Recommendation, which may be cited as the Part-Time Work Recommendation, 1994:

1. The provisions of this Recommendation should be considered in conjunction with those of the Part-Time Work Convention, 1994 (hereafter referred to as "the Convention").

2. For the purposes of this Recommendation:

(a) the term "part-time worker" means an employed person whose normal hours of work are less than those of comparable full-time workers;

(b) the normal hours of work referred to in clause (a) may be calculated weekly or on average over a given period of employment;

(c) the term "comparable full-time worker" refers to a full-time worker who:

(i) has the same type of employment relationship;

(ii) is engaged in the same or a similar type of work or occupation; and

(iii) is employed in the same establishment or, when there is no comparable full-time worker in that establishment, in the same enterprise or, when there is no comparable full-time worker in that enterprise, in the same branch of activity,

as the part-time worker concerned;

(d) full-time workers affected by partial unemployment, that is by a collective and temporary reduction in their normal hours of work for economic, technical or structural reasons, are not considered to be part-time workers.

3. This Recommendation applies to all part-time workers.

4. In accordance with national law and practice, employers should consult the representatives of the workers concerned on the introduction or extension of part-time work on a broad scale, on the rules and procedures applying to such work and on the protective and promotional measures that may be appropriate.

5. Part-time workers should be informed of their specific conditions of employment in writing or by any other means consistent with national law and practice.

6. The adaptations to be made in accordance with Article 6 of the Convention to statutory social security schemes which are based on occupational activity should aim at:

(a) if appropriate, progressively reducing threshold requirements based on earnings or hours of work as a condition for coverage by these schemes;

(b) as appropriate, granting to part-time workers minimum or flat-rate benefits, in particular old-age, sickness, invalidity and maternity benefits, as well as family allowances;

(c) accepting in principle that part-time workers whose employment has come to an end or been suspended and who are seeking only part-time employment meet the condition of availability for work required for the payment of unemployment benefits;

(d) reducing the risk that part-time workers may be penalized by schemes which:

(i) subject the right to benefits to a qualifying period, expressed in terms of periods of contribution, of insurance or of employment during a given reference period; or

(ii) fix the amount of benefits by reference both to the average of former earnings and to the length of the periods of contribution, of insurance or of employment.

7. (1) Where appropriate, threshold requirements for access to coverage under private occupational schemes which supplement or replace statutory social security schemes should be progressively reduced to allow part-time workers to be covered as widely as possible.

(2) Part-time workers should be protected by such schemes under conditions equivalent to those of comparable full-time workers. Where appropriate, these conditions may be determined in proportion to hours of work, contributions or earnings.

8. (1) As appropriate, threshold requirements based on hours of work or earnings as specified under Article 8 of the Convention in the fields referred to in its Article 7 should be progressively reduced.

(2) The periods of service required as a condition for protection in the fields referred to in Article 7 of the Convention should not be longer for part-time workers than for comparable full-time workers.

9. Where part-time workers have more than one job, their total hours of work, contributions or earnings should be taken into account in determining whether they meet threshold requirements in statutory social security schemes which are based on occupational activity.

10. Part-time workers should benefit on an equitable basis from financial compensation, additional to basic wages, which is received by comparable full-time workers.

11. All appropriate measures should be taken to ensure that as far as practicable part-time workers have access on an equitable basis to the welfare facilities and social services of the establishment concerned; these facilities and services should, to the extent possible, be adapted to take into account the needs of part-time workers.

12. (1) The number and scheduling of hours of work of part-time workers should be established taking into account the interests of the worker as well as the needs of the establishment.

(2) As far as possible, changes in the agreed work schedule and work beyond scheduled hours should be subject to restrictions and to prior notice.

(3) The system of compensation for work beyond the agreed work schedule should be subject to negotiations in accordance with national law and practice.

13. In accordance with national law and practice, part-time workers should have access on an equitable basis, and as far as possible under equivalent conditions, to all forms of leave available to comparable full-time workers, in particular paid educational leave, parental leave and leave in cases of illness of a child or another member of a worker's immediate family.

14. Where appropriate, the same rules should apply to part-time workers as to comparable full-time workers with respect to scheduling of annual leave and work on customary rest days and public holidays.

15. Where appropriate, measures should be taken to overcome specific constraints on the access of part-time workers to training, career opportunities and occupational mobility.

16. Provisions of statutory social security schemes based on occupational activity that may discourage recourse to or acceptance of part-time work should be adapted, in particular those which:

(a) result in proportionately higher contributions for part-time workers unless these are justified by corresponding proportionately higher benefits;

(b) without reasonable grounds, significantly reduce the unemployment benefits of unemployed workers who temporarily accept part-time work;

(c) overemphasize, in the calculation of old-age benefits, the reduced income from part-time work undertaken solely during the period preceding retirement.

17. Measures should be considered by employers to facilitate access to part-time work at all levels of the enterprise, including skilled and managerial positions where appropriate.

18. (1) Where appropriate, employers should give consideration to:

(a) requests by workers for transfer from full-time to part-time work that becomes available in the enterprise; and

(b) requests by workers for transfer from part-time to full-time work that becomes available in the enterprise.

(2) Employers should provide timely information to the workers on the availability of part-time and full-time positions in the establishment, in order to facilitate transfers from full-time to part-time work or vice versa.

19. A worker's refusal to transfer from full-time to part-time work or vice versa should not in itself constitute a valid reason for termination of employment, without prejudice to termination, in accordance with national law and practice, for other reasons such as may arise from the operational requirements of the establishment concerned.

20. Where national or establishment-level conditions permit, workers should be enabled to transfer to part-time work in justified cases, such as pregnancy or the need to care for a young child or a disabled or sick member of a worker's immediate family, and subsequently to return to full-time work.

21. Where obligations on employers depend on the number of the workers they employ, part-time workers should be counted as full-time workers. Nevertheless, where appropriate, part-time workers may be counted proportionately to their hours of work, it being understood that where such obligations refer to the protection mentioned in Article 4 of the Convention, they should be counted as full-time workers.

22. Information should be disseminated on the protective measures that apply to part-time work and on practical arrangements for various part-time work schemes.

Convention 176

CONVENTION CONCERNING SAFETY AND HEALTH IN MINES

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-Second Session on 6 June 1995, and

Noting the relevant International Labour Conventions and Recommendations and, in particular, the Abolition of Forced Labour Convention, 1957; the Radiation Protection Convention and Recommendation, 1960; the Guarding of Machinery Convention and Recommendation, 1963; the Employment Injury Benefits Convention and Recommendation, 1964; the Minimum Age (Underground Work) Convention and Recommendation, 1965; the Medical Examination of Young Persons (Underground Work) Convention, 1965; the Working Environment (Air Pollution, Noise and Vibration) Convention and Recommendation, 1977; the Occupational Safety and Health Convention and Recommendation, 1981; the Occupational Health Services Convention and Recommendation, 1985; the Asbestos Convention and Recommendation, 1986; the Safety and Health in Construction Convention and Recommendation, 1988; the Chemicals Convention and Recommendation, 1990; and the Prevention of Major Industrial Accidents Convention and Recommendation, 1993, and

Considering that workers have a need for, and a right to, information, training and genuine consultation on and participation in the preparation and implementation of safety and health measures concerning the hazards and risks they face in the mining industry, and

Recognizing that it is desirable to prevent any fatalities, injuries or ill health affecting workers or members of the public, or damage to the environment arising from mining operations, and

Having regard to the need for cooperation between the International Labour Organization, the World Health Organization, the International Atomic Energy Agency and other relevant institutions and noting the relevant instruments, codes of practice, codes and guidelines issued by these organizations, and

Having decided upon the adoption of certain proposals with regard to safety and health in mines, which is the fourth item on the agenda of the session, and

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

adopts this twenty-second day of June of the year one thousand nine hundred and ninety-five the following Convention, which may be cited as the Safety and Health in Mines Convention, 1995:

PART I. DEFINITIONS

Article 1

1. For the purpose of this Convention, the term "mine" covers –

(a) surface or underground sites where the following activities, in particular, take place:
  (i) exploration for minerals, excluding oil and gas, that involves the mechanical disturbance of the ground;
  (ii) extraction of minerals, excluding oil and gas;
  (iii) preparation, including crushing, grinding, concentration or washing of the extracted material; and
(b) all machinery, equipment, appliances, plant, buildings and civil engineering structures used in conjunction with the activities referred to in (a) above.

2. For the purpose of this Convention, the term "employer" means any physical or legal person who employs one or more workers in a mine and, as the context requires, the operator, the principal contractor, contractor or subcontractor.

Part II. Scope and means of application

Article 2

1. This Convention applies to all mines.

2. After consultations with the most representative organizations of employers and workers concerned, the competent authority of a Member which ratifies the Convention:
(a) may exclude certain categories of mines from the application of the Convention, or certain provisions thereof, if the overall protection afforded at these mines under national law and practice is not inferior to that which would result from the full application of the provisions of the Convention;
(b) shall, in the case of exclusion of certain categories of mines pursuant to clause (a) above, make plans for progressively covering all mines.

3. A Member which ratifies the Convention and avails itself of the possibility afforded in paragraph 2(a) above shall indicate, in its reports on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organization, any particular category of mines thus excluded and the reasons for the exclusion.

Article 3

In the light of national conditions and practice and after consultations with the most representative organizations of employers and workers concerned, the Member shall formulate, carry out and periodically review a coherent policy on safety and health in mines, particularly with regard to the measures to give effect to the provisions of the Convention.

Article 4

1. The measures for ensuring application of the Convention shall be prescribed by national laws and regulations.

2. Where appropriate, these national laws and regulations shall be supplemented by:
(a) technical standards, guidelines or codes of practice; or
(b) other means of application consistent with national practice,

as identified by the competent authority.

Article 5

1. National laws and regulations pursuant to Article 4, paragraph 1, shall designate the competent authority that is to monitor and regulate the various aspects of safety and health in mines.

2. Such national laws and regulations shall provide for:
(a) the supervision of safety and health in mines;
(b) the inspection of mines by inspectors designated for the purpose by the competent authority;
(c) the procedures for reporting and investigating fatal and serious accidents, dangerous occurrences and mine disasters, each as defined by national laws or regulations;
(d) the compilation and publication of statistics on accidents, occupational diseases and dangerous occurrences, each as defined by national laws or regulations;
(e) the power of the competent authority to suspend or restrict mining activities on safety and health grounds until the condition giving rise to the suspension or restriction has been corrected; and
(f) the establishment of effective procedures to ensure the implementation of the rights of workers and their representatives to be consulted on matters and to participate in measures relating to safety and health at the workplace.

3. Such national laws and regulations shall provide that the manufacture, storage, transport and use of explosives and initiating devices at the mine shall be carried out by or under the direct supervision of competent and authorized persons.

4. Such national laws and regulations shall specify:
(a) requirements relating to mine rescue, first aid and appropriate medical facilities;
(b) an obligation to provide and maintain adequate self-rescue respiratory devices for workers in underground coal mines and, where necessary, in other underground mines;
(c) protective measures to secure abandoned mine workings so as to eliminate or minimize risks to safety and health;
(d) requirements for the safe storage, transportation and disposal of hazardous substances used in the mining process and waste produced at the mine; and
(e) where appropriate, an obligation to supply sufficient sanitary conveniences and facilities to wash, change and eat, and to maintain them in hygienic condition.

5. Such national laws and regulations shall provide that the employer in charge of the mine shall ensure that appropriate plans of workings are prepared before the start of operation and, in the event of any significant modification, that such plans are brought up to date periodically and kept available at the mine site.

Part III. Preventive and protective measures at the mine

A. Responsibilities of employers

Article 6

In taking preventive and protective measures under this Part of the Convention, the employer shall assess the risk and deal with it in the following order of priority:

(a) eliminate the risk;
(b) control the risk at source;
(c) minimize the risk by means that include the design of safe work systems; and
(d) in so far as the risk remains, provide for the use of personal protective equipment,

having regard to what is reasonable, practicable and feasible, and to good practice and the exercise of due diligence.

Article 7

Employers shall take all necessary measures to eliminate or minimize the risks to safety and health in mines under their control, and in particular:

(a) ensure that the mine is designed, constructed and provided with electrical, mechanical and other equipment, including a communication system, to provide conditions for safe operation and a healthy working environment;
(b) ensure that the mine is commissioned, operated, maintained and decommissioned in such a way that workers can perform the work assigned to them without endangering their safety and health or that of other persons;
(c) take steps to maintain the stability of the ground in areas to which persons have access in the context of their work;
(d) whenever practicable, provide, from every underground workplace, two exits, each of which is connected to separate means of egress to the surface;
(e) ensure the monitoring, assessment and regular inspection of the working environment to identify the various hazards to which the workers may be exposed and to assess their level of exposure;
(f) ensure adequate ventilation for all underground workings to which access is permitted;
(g) in respect of zones susceptible to particular hazards, draw up and implement an operating plan and procedures to ensure a safe system of work and the protection of workers;
(h) take measures and precautions appropriate to the nature of a mine operation to prevent, detect and combat the start and spread of fires and explosions; and
(i) ensure that when there is serious danger to the safety and health of workers, operations are stopped and workers are evacuated to a safe location.

Article 8

The employer shall prepare an emergency response plan, specific to each mine, for reasonably foreseeable industrial and natural disasters.

Article 9

Where workers are exposed to physical, chemical or biological hazards, the employer shall:

(a) inform the workers, in a comprehensible manner, of the hazards associated with their work, the health risks involved and relevant preventive and protective measures;
(b) take appropriate measures to eliminate or minimize the risks resulting from exposure to those hazards;
(c) where adequate protection against risk of accident or injury to health including exposure to adverse conditions cannot be ensured by other means, provide and maintain at no cost to the worker suitable protective equipment,

clothing as necessary and other facilities defined by national laws or regulations; and
(d) provide workers who have suffered from an injury or illness at the workplace with first aid, appropriate transportation from the workplace and access to appropriate medical facilities.

Article 10

The employer shall ensure that:

(a) adequate training and retraining programmes and comprehensible instructions are provided for workers, at no cost to them, on safety and health matters as well as on the work assigned;
(b) in accordance with national laws and regulations, adequate supervision and control are provided on each shift to secure the safe operation of the mine;
(c) a system is established so that the names of all persons who are underground can be accurately known at any time, as well as their probable location;
(d) all accidents and dangerous occurrences, as defined by national laws or regulations, are investigated and appropriate remedial action is taken; and
(e) a report, as specified by national laws and regulations, is made to the competent authority on accidents and dangerous occurrences.

Article 11

On the basis of general principles of occupational health and in accordance with national laws and regulations, the employer shall ensure the provision of regular health surveillance of workers exposed to occupational health hazards specific to mining.

Article 12

Whenever two or more employers undertake activities at the same mine, the employer in charge of the mine shall coordinate the implementation of all measures concerning the safety and health of workers and shall be held primarily responsible for the safety of the operations. This shall not relieve individual employers from responsibility for the implementation of all measures concerning the safety and health of their workers.

B. Rights and duties of workers and their representatives

Article 13

1. Under the national laws and regulations referred to in Article 4, workers shall have the following rights:

(a) to report accidents, dangerous occurrences and hazards to the employer and to the competent authority;
(b) to request and obtain, where there is cause for concern on safety and health grounds, inspections and investigations to be conducted by the employer and by the competent authority;
(c) to know and be informed of workplace hazards that may affect their safety or health;
(d) to obtain information, relevant to their safety or health, held by the employer or the competent authority;

(e) to remove themselves from any location at the mine when circumstances arise which appear, with reasonable justification, to pose a serious danger to their safety or health; and

(f) to collectively select safety and health representatives.

2. The safety and health representatives referred to in paragraph 1(f) above shall, in accordance with national laws and regulations, have the following rights:

(a) to represent workers on all aspects of workplace safety and health, including where applicable, the exercise of the rights provided in paragraph 1 above;

(b) to:

(i) participate in inspections and investigations conducted by the employer and by the competent authority at the workplace; and

(ii) monitor and investigate safety and health matters;

(c) to have recourse to advisers and independent experts;

(d) to consult with the employer in a timely fashion on safety and health matters, including policies and procedures;

(e) to consult with the competent authority; and

(f) to receive, relevant to the area for which they have been selected, notice of accidents and dangerous occurrences.

3. Procedures for the exercise of the rights referred to in paragraphs 1 and 2 above shall be specified:

(a) by national laws and regulations; and

(b) through consultations between employers and workers and their representatives.

4. National laws and regulations shall ensure that the rights referred to in paragraphs 1 and 2 above can be exercised without discrimination or retaliation.

Article 14

Under national laws and regulations, workers shall have the duty, in accordance with their training:

(a) to comply with prescribed safety and health measures;

(b) to take reasonable care for their own safety and health and that of other persons who may be affected by their acts or omissions at work, including the proper care and use of protective clothing, facilities and equipment placed at their disposal for this purpose;

(c) to report forthwith to their immediate supervisor any situation which they believe could present a risk to their safety or health or that of other persons, and which they cannot properly deal with themselves; and

(d) to cooperate with the employer to permit compliance with the duties and responsibilities placed on the employer pursuant to the Convention.

C. Cooperation

Article 15

Measures shall be taken, in accordance with national laws and regulations, to encourage cooperation between employers and workers and their representatives to promote safety and health in mines.

Part IV. Implementation

Article 16

The Member shall:

(a) take all necessary measures, including the provision of appropriate penalties and corrective measures, to ensure the effective enforcement of the provisions of the Convention; and

(b) provide appropriate inspection services to supervise the application of the measures to be taken in pursuance of the Convention and provide these services with the resources necessary for the accomplishment of their tasks.

Part V. Final Provisions

Article 17

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 18

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

Article 19

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 20

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations communicated by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article 21

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with

article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 22

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 23

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides –

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 19 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 24

The English and French versions of the text of this Convention are equally authoritative.

Recommendation No. 183

Recommendation concerning Safety and Health in Mines

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-second Session on 6 June 1995, and

Noting the relevant international labour Conventions and Recommendations and, in particular, the Abolition of Forced Labour Convention, 1957; the Radiation Protection Convention and Recommendation, 1960; the Guarding of Machinery Convention and Recommendation, 1963; the Employment Injury Benefits Convention and Recommendation, 1964; the Minimum Age (Underground Work) Convention and Recommendation, 1965; the Medical Examination of Young Persons (Underground Work) Convention, 1965; the Working Environment (Air Pollution, Noise and Vibration) Convention and Recommendation, 1977; the Occupational Safety and Health Convention and Recommendation, 1981; the Occupational Health Services Convention and Recommendation, 1985; the Asbestos Convention and Recommendation, 1986; the Safety and Health in Construction Convention and Recommendation, 1988; the Chemicals Convention and Recommendation, 1990; and the Prevention of Major Industrial Accidents Convention and Recommendation, 1993, and

Considering that workers have a need for, and a right to, information, training and genuine consultation on and participation in the preparation and implementation of safety and health measures concerning the hazards and risks they face in the mining industry, and

Recognizing that it is desirable to prevent any fatalities, injuries or ill health affecting workers or members of the public or damage to the environment arising from mining operations, and

Having regard to the need for cooperation between the International Labour Organization, the World Health Organization, the International Atomic Energy Agency and other relevant institutions and noting the relevant instruments, codes of practice, codes and guidelines issued by these organizations, and

Having decided upon the adoption of certain proposals with regard to safety and health in mines, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Safety and Health in Mines Convention,

adopts this twenty-second day of June of the year one thousand nine hundred and ninety-five the following Recommendation, which may be cited as the Safety and Health in Mines Recommendation, 1995:

I. GENERAL PROVISIONS

1. The provisions of this Recommendation supplement those of the Safety and Health in Mines Convention, 1995 (hereafter referred to as "the Convention"), and should be applied in conjunction with them.

2. This Recommendation applies to all mines.

3. (1) In the light of national conditions and practice and after consultation with the most representative organizations of employers and workers concerned, a Member should formulate, carry out and periodically review a coherent policy on safety and health in mines.

(2) The consultations provided for by Article 3 of the Convention should include consultations with the most representative organizations of employers and workers on the effect of the length of working hours, night work and shift work on workers' safety and health. After such consultations, the Member should take the necessary measures in relation to working time and, in particular, to maximum daily working hours and minimum daily rest periods.

4. The competent authority should have properly qualified and trained staff with the appropriate skills, and sufficient technical and professional support, to inspect, investigate, assess and advise on the matters dealt with in the Convention and to ensure compliance with national laws and regulations.

5. Measures should be taken to encourage and promote:

(a) research into and exchange of information on safety and health in mines at the national and international level;

(b) specific assistance by the competent authority to small mines with a view to:

(i) assisting in transfer of technical know-how;

(ii) establishing preventive safety and health programmes; and

(iii) encouraging cooperation and consultation between employers and workers and their representatives; and

(c) programmes or systems for the rehabilitation and reintegration of workers who have sustained occupational injuries or illnesses.

6. Requirements relating to the supervision of safety and health in mines pursuant to Article 5, paragraph 2, of the Convention should, where appropriate, include those concerning:

(a) certification and training;

(b) inspection of the mine, mining equipment and installations;

(c) supervision of the handling, transportation, storage and use of explosives and of hazardous substances used or produced in the mining process;

(d) performance of work on electrical equipment and installations; and

(e) supervision of workers.

7. Requirements pursuant to Article 5, paragraph 4, of the Convention, could provide that the suppliers of equipment, appliances, hazardous products and substances to the mine should ensure their compliance with national standards on safety and health, label products clearly and provide comprehensible information and instructions.

8. Requirements relating to mine rescue and first aid pursuant to Article 5, paragraph 4(a), of the Convention and to appropriate medical facilities for emergency care could cover:

(a) organizational arrangements;

(b) equipment to be provided;

(c) standards for training;

(d) training of workers and participation in drills;

(e) the appropriate number of trained persons to be available;

(f) an appropriate communication system;

(g) an effective system to give warning of danger;

(h) provision and maintenance of means of escape and rescue;

(i) establishment of a mine rescue team or teams;

(j) periodic medical assessment of suitability of, and regular training for, the persons on the mine rescue team or teams;

(k) medical attention and transportation to receive medical attention, both at no cost to workers who have suffered an injury or illness at the workplace;

(l) coordination with local authorities;

(m) measures to promote international cooperation in this field.

9. Requirements pursuant to Article 5, paragraph 4(b), of the Convention, could cover the specifications and standards of the type of self-rescuers to be provided and, in particular, in the case of mines susceptible to gas outbursts and other mines where appropriate, the provision of self-contained respiratory devices.

10. National laws and regulations should prescribe measures for the safe use and maintenance of remote control equipment.

11. National laws and regulations should specify that the employer should take appropriate measures for the protection of workers working alone or in isolation.

II. PREVENTIVE AND PROTECTIVE MEASURES AT THE MINE

12. Employers should undertake hazard assessment and risk analysis and then develop and implement, where appropriate, systems to manage the risk.

13. In order to maintain the stability of the ground, in accordance with Article 7(c) of the Convention, the employer should take all appropriate measures to:

(a) monitor and control the movement of strata;

(b) as may be necessary, provide effective support of the roof, sides and floor of the mine workings, except for those areas where the mining methods selected allow for the controlled collapse of the ground;

(c) monitor and control the sides of surface mines to prevent material from falling or sliding into the pit and endangering workers; and

(d) ensure that dams, lagoons, tailings and other such impoundments are adequately designed, constructed and controlled to prevent dangers from sliding material or collapse.

14. Pursuant to Article 7(d) of the Convention, separate means of egress should be as independent of each other as possible; arrangements should be made and equipment provided for the safe evacuation of workers in case of danger.

15. Pursuant to Article 7(f) of the Convention, all underground mine workings to which workers have access, and other areas as necessary, should be ventilated in an appropriate manner to maintain an atmosphere:

(a) in which the risk of explosions is eliminated or minimized;

(b) in which working conditions are adequate, having regard to the working method being used and the physical demands placed on the workers; and

(c) that complies with national standards on dusts, gases, radiation and climatic conditions; where national standards do not exist, the employer should give consideration to international standards.

16. The particular hazards referred to in Article 7(g) of the Convention requiring an operating plan and procedures might include:

(a) mine fires and explosions;

(b) gas outbursts;

(c) rockbursts;

(d) an inrush of water or semi-solids;

(e) rockfalls;

(f) susceptibility of areas to seismic movements;

(g) hazards related to work carried out near dangerous openings or under particularly difficult geological circumstances;

(h) loss of ventilation.

17. Measures that employers could take pursuant to Article 7(h) of the Convention should include, where applicable, prohibiting persons from carrying underground any item, object or substance which could initiate a fire, explosion or dangerous occurrence.

18. Pursuant to Article 7(i) of the Convention, mine facilities should include, where appropriate, sufficient fireproof and self-contained chambers to provide refuge for workers in the event of an emergency. The self-contained chambers should be easily identifiable and accessible, particularly when visibility is poor.

19. The emergency response plan referred to in Article 8 of the Convention might include:

(a) effective site emergency plans;

(b) provision for the cessation of work and evacuation of the workers in an emergency;

(c) adequate training in emergency procedures and in the use of equipment;

(d) adequate protection of the public and the environment;

(e) provision of information to, and consultation with, appropriate bodies and organizations.

20. The hazards referred to in Article 9 of the Convention might include:

(a) airborne dusts;

(b) flammable, toxic, noxious and other mine gases;

(c) fumes and hazardous substances;

(d) exhaust fumes from diesel engines;

(e) oxygen deficiency;

(f) radiation from rock strata, equipment or other sources;

(g) noise and vibration;

(h) extreme temperatures;

(i) high levels of humidity;

(j) insufficient lighting or ventilation;

(k) hazards related to work carried out at high altitudes or extreme depths, or in confined spaces;

(l) hazards associated with manual handling;

(m) hazards related to mechanical equipment and electrical installations;

(n) hazards resulting from a combination of any of the above.

21. The measures referred to in Article 9 of the Convention might include:

(a) technical and organizational measures applied to relevant mining activities or to the plant, machinery, equipment, appliances or structures;

(b) where it is not possible to have recourse to the measures referred to in (a) above, other effective measures, including the use of personal protective equipment and protective clothing at no cost to the worker;

(c) where reproductive health hazards and risks have been identified, training and special technical and organizational measures, including the right to alternative work, where appropriate, without any loss of salary, especially during health risk periods such as pregnancy and breast-feeding;

(d) regular monitoring and inspection of areas where hazards are present or likely to be present.

22. The types of protective equipment and facilities referred to in Article 9(c) of the Convention could include:

(a) roll-over and falling object protective structures;

(b) equipment seat belts and harnesses;

(c) fully enclosed pressurized cabins;
(d) self-contained rescue chambers;
(e) emergency showers and eyewash stations.

23. In implementing Article 10(b) of the Convention, employers should:

(a) ensure appropriate inspections of each workplace at the mine, and in particular, of the atmosphere, ground conditions, machinery, equipment and appliances therein, including where necessary pre-shift inspections; and
(b) keep written records of inspections, defects and corrective measures and make such records available at the mine.

24. Where appropriate, the health surveillance referred to in Article 11 of the Convention should, at no cost to the worker and without any discrimination or retaliation whatsoever:

(a) provide the opportunity to undergo medical examination related to the requirements of the tasks to be performed, prior to or just after commencing employment and thereafter on a continuing basis; and
(b) provide, where possible, for reintegration or rehabilitation of workers unable to undertake their normal duties due to occupational injury or illness.

25. Pursuant to Article 5, paragraph 4(e), of the Convention, employers should, where appropriate, provide and maintain at no cost to the worker:

(a) sufficient and suitable toilets, showers, wash-basins and changing facilities which are, where appropriate, gender-specific;
(b) adequate facilities for the storage, laundering and drying of clothes;
(c) adequate supplies of potable drinking-water in suitable places; and
(d) adequate and hygienic facilities for taking meals.

III. RIGHTS AND DUTIES OF WORKERS AND THEIR REPRESENTATIVES

26. Pursuant to Article 13 of the Convention, workers and their safety and health representatives should receive or have access to, where appropriate, information which should include:

(a) where practicable, notice of any safety- or health-related visit to the mine by the competent authority;
(b) reports of inspections conducted by the competent authority or the employer, including inspections of machinery or equipment;
(c) copies of orders or instructions issued by the competent authority in respect of safety and health matters;
(d) reports of accidents, injuries, instances of ill health and other occurrences affecting safety and health prepared by the competent authority or the employer;

(e) information and notices on all hazards at work including hazardous, toxic or harmful materials, agents or substances used at the mine;
(f) any other documentation concerning safety and health that the employer is required to maintain;
(g) immediate notification of accidents and dangerous occurrences; and
(h) any health studies conducted in respect of hazards present in the workplace.

27. Provisions to be made pursuant to Article 13, paragraph 1(e), of the Convention could include requirements for:

(a) notification of supervisors and safety and health representatives of the danger referred to in that provision;
(b) participation by senior representatives of the employer and representatives of the workers in endeavouring to resolve the issue;
(c) participation, where necessary, by a representative of the competent authority to assist in resolution of the issue;
(d) non-loss of pay for the worker and, where appropriate, assignment to suitable alternative work;
(e) notification, to be given to any worker who is requested to perform work in the area concerned, of the fact that another worker has refused to work there and of the reasons therefor.

28. Pursuant to Article 13, paragraph 2, of the Convention, the rights of safety and health representatives should include, where appropriate, the right:

(a) to appropriate training during working time, without loss of pay, on their rights and functions as safety and health representatives and on safety and health matters;
(b) of access to appropriate facilities necessary to perform their functions;
(c) to receive their normal pay for all time spent exercising their rights and performing their functions as safety and health representatives; and
(d) to assist and advise workers who have removed themselves from a workplace because they believe their safety or health has been endangered.

29. Safety and health representatives should, where appropriate, give reasonable notice to the employer of their intention to monitor or investigate safety and health matters, as provided for in Article 13, paragraph 2(b)(ii), of the Convention.

30. (1) All persons should have a duty to:

(a) refrain from arbitrarily disconnecting, changing or removing safety devices fitted to machinery, equipment, appliances, tools, plant and buildings; and
(b) use such safety devices correctly.

(2) Employers should have a duty to provide workers with appropriate training and instructions so as to enable them to comply with the duties described in subparagraph (1) above.

IV. COOPERATION

31. Measures to encourage cooperation as provided for in Article 15 of the Convention should include:

(a) the establishment of cooperative mechanisms such as safety and health committees, with equal representation of employers and workers, and having such powers and functions as may be prescribed, including powers to conduct joint inspections;

(b) the appointment by the employer of suitably qualified and experienced persons to promote safety and health;

(c) the training of workers and their safety and health representatives;

(d) the provision of ongoing safety and health awareness programmes for workers;

(e) the ongoing exchange of information and experience on safety and health in mines;

(f) the consultation of workers and their representatives by the employer in establishing safety and health policy and procedures; and

(g) the inclusion, by the employer, of workers' representatives in the investigation of accidents and dangerous occurrences, as provided in Article 10(d) of the Convention.

V. OTHER PROVISIONS

32. There should be no discrimination or retaliation against any worker who exercises rights provided by national laws and regulations or agreed upon by the employers, workers and their representatives.

33. Due regard should be given to the possible impact of mining activity on the surrounding environment and on the safety of the public. In particular, this should include the control of subsidence, vibration, fly-rock, harmful contaminants in the water, air or soil, the safe and effective management of waste tips and the rehabilitation of mine sites.

Convention 177

CONVENTION CONCERNING HOME WORK

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-third Session on 4 June 1996, and

Recalling that many international labour Conventions and Recommendations laying down standards of general application concerning working conditions are applicable to homeworkers, and

Noting that the particular conditions characterizing home work make it desirable to improve the application of those Conventions and Recommendations to homeworkers, and to supplement them by standards which take into account the special characteristics of home work, and

Having decided upon the adoption of certain proposals with regard to home work, which is the fourth item on the agenda of the session, and

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

adopts, this twentieth day of June of the year one thousand nine hundred and ninety-six, the following Convention, which may be cited as the Home Work Convention, 1996:

Article 1

For the purposes of this Convention:

(a) the term "home work" means work carried out by a person, to be referred to as a homeworker,

(i) in his or her home or in other premises of his or her choice, other than the workplace of the employer;

(ii) for remuneration;

(iii) which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used,

unless this person has the degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations or court decisions;

(b) persons with employee status do not become homeworkers within the meaning of this Convention simply by occasionally performing their work as employees at home, rather than at their usual workplaces;

(c) the term "employer" means a person, natural or legal, who, either directly or through an intermediary, whether or not intermediaries are provided for in national legislation, gives out home work in pursuance of his or her business activity.

Article 2

This Convention applies to all persons carrying out home work within the meaning of Article 1.

Article 3

Each Member which has ratified this Convention shall adopt, implement and periodically review a national policy on home work aimed at improving the situation of homeworkers, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations concerned with homeworkers and those of employers of homeworkers.

Article 4

1. The national policy on home work shall promote, as far as possible, equality of treatment between homeworkers and other wage earners, taking into account the special characteristics of home work and, where appropriate, conditions applicable to the same or a similar type of work carried out in an enterprise.

2. Equality of treatment shall be promoted, in particular, in relation to:

(a) the homeworkers' right to establish or join organizations of their own choosing and to participate in the activities of such organizations;
(b) protection against discrimination in employment and occupation;
(c) protection in the field of occupational safety and health;
(d) remuneration;
(e) statutory social security protection;
(f) access to training;
(g) minimum age for admission to employment or work; and
(h) maternity protection.

Article 5

The national policy on home work shall be implemented by means of laws and regulations, collective agreements, arbitration awards or in any other appropriate manner consistent with national practice.

Article 6

Appropriate measures shall be taken so that labour statistics include, to the extent possible, home work.

Article 7

National laws and regulations on safety and health at work shall apply to home work, taking account of its special characteristics, and shall establish conditions under which certain types of work and the use of certain substances may be prohibited in home work for reasons of safety and health.

Article 8

Where the use of intermediaries in home work is permitted, the respective responsibilities of employers and intermediaries shall be determined by laws and regulations or by court decisions, in accordance with national practice.

Article 9

1. A system of inspection consistent with national law and practice shall ensure compliance with the laws and regulations applicable to home work.

2. Adequate remedies, including penalties where appropriate, in case of violation of these laws and regulations shall be provided for and effectively applied.

Article 10

This Convention does not affect more favourable provisions applicable to homeworkers under other international labour Conventions.

Article 11

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 12

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

Article 13

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 14

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations communicated by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article 15

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 16

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 17

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides –

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 13 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 18

The English and French versions of the text of this Convention are equally authoritative.

Recommendation 184

RECOMMENDATION CONCERNING HOME WORK

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-third Session on 4 June 1996, and

Recalling that many international labour Conventions and Recommendations laying down standards of general application concerning working conditions are applicable to homeworkers, and

Noting that the particular conditions characterizing home work make it desirable to improve the application of those Conventions and Recommendations to homeworkers, and to supplement them by standards which take into account the special characteristics of home work, and

Having decided upon the adoption of certain proposals with regard to home work, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Home Work Convention, 1996;

adopts, this twentieth day of June of the year one thousand nine hundred and ninety-six, the following Recommendation, which may be cited as the Home Work Recommendation, 1996:

I. Definitions and scope of application

1. For the purposes of this Recommendation:

(a) the term "home work" means work carried out by a person, to be referred to as a homeworker,

  (i) in his or her home or in other premises of his or her choice, other than the workplace of the employer;

  (ii) for remuneration;

  (iii) which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used,

unless this person has the degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations or court decisions;

(b) persons with employee status do not become homeworkers within the meaning of this Recommendation simply by occasionally performing their work as employees at home, rather than at their usual workplaces;

(c) the term "employer" means a person, natural or legal, who, either directly or through an intermediary, whether or not intermediaries are provided for in national legislation, gives out home work in pursuance of his or her business activity.

2. This Recommendation applies to all persons carrying out home work within the meaning of Paragraph 1.

II. General provisions

3. (1) Each Member should, according to national law and practice, designate an authority or authorities entrusted with the formulation and implementation of the national policy on home work referred to in Article 3 of the Convention.

(2) As far as possible, use should be made of tripartite bodies or organizations of employers and workers in the formulation and implementation of this national policy.

(3) In the absence of organizations concerned with homeworkers or organizations of employers of homeworkers, the authority or authorities referred to in subparagraph (1) should make suitable arrangements to permit these workers and employers to express their opinions on this national policy and on the measures adopted to implement it.

4. Detailed information, including data classified according to sex, on the extent and characteristics of home work should be compiled and kept up to date to serve as a basis for the national policy on home work and for the measures adopted to implement it. This information should be published and made publicly available.

5. (1) A homeworker should be kept informed of his or her specific conditions of employment in writing or in any other appropriate manner consistent with national law and practice.

(2) This information should include, in particular:

(a) the name and address of the employer and the intermediary, if any;

(b) the scale or rate of remuneration and the methods of calculation; and

(c) the type of work to be performed.

III. Supervision of home work

6. The competent authority at the national level and, where appropriate, at the regional, sectoral or local levels, should provide for registration of employers of homeworkers and of any intermediaries used by such employers. For this purpose, such authority should specify the information employers should submit or keep at the authority's disposal.

7. (1) Employers should be required to notify the competent authority when they give out home work for the first time.

(2) Employers should keep a register of all homeworkers, classified according to sex, to whom they give work.

(3) Employers should also keep a record of work assigned to a homeworker which shows:

(a) the time allocated;

(b) the rate of remuneration;

(c) costs incurred, if any, by the homeworker and the amount reimbursed in respect of them;

(d) any deductions made in accordance with national laws and regulations; and

(e) the gross remuneration due and the net remuneration paid, together with the date of payment.

(4) A copy of the record referred to in subparagraph (3) should be provided to the homeworker.

8. In so far as it is compatible with national law and practice concerning respect for privacy, labour inspectors or other officials entrusted with enforcing provisions applicable to home work should be allowed to enter the parts of the home or other private premises in which the work is carried out.

9. In cases of serious or repeated violations of the laws and regulations applicable to home work, appropriate measures should be taken, including the possible prohibition of giving out home work, in accordance with national law and practice.

IV. Minimum age

10. National laws and regulations concerning minimum age for admission to employment or work should apply to home work.

V. The rights to organize and to bargain collectively

11. Legislative or administrative restrictions or other obstacles to:

(a) the exercise of the right of homeworkers to establish their own organizations or to join the workers' organizations of their choice and to participate in the activities of such organizations; and

(b) the exercise of the right of organizations of homeworkers to join trade union federations or confederations,

should be identified and eliminated.

12. Measures should be taken to encourage collective bargaining as a means of determining the terms and conditions of work of homeworkers.

VI. Remuneration

13. Minimum rates of wages should be fixed for home work, in accordance with national law and practice.

14. (1) Rates of remuneration of homeworkers should be fixed preferably by collective bargaining, or in its absence, by:

(a) decisions of the competent authority, after consulting the most representative organizations of employers and of workers as well as organizations concerned with homeworkers and those of employers of homeworkers, or where the latter organizations do not exist, representatives of homeworkers and of employers of homeworkers; or

(b) other appropriate wage-fixing machinery at the national, sectoral or local levels.

(2) Where rates of remuneration are not fixed by one of the means in subparagraph (1) above, they should be fixed by agreement between the homeworker and the employer.

15. For specified work paid by the piece, the rate of remuneration of a homeworker should be comparable to that received by a worker in the enterprise of the employer, or if there is no such worker, in another enterprise in the branch of activity and region concerned.

16. Homeworkers should receive compensation for:

(a) costs incurred in connection with their work, such as those relating to the use of energy and water, communications and maintenance of machinery and equipment; and

(b) time spent in maintaining machinery and equipment, changing tools, sorting, unpacking and packing, and other such operations.

17. (1) National laws and regulations concerning the protection of wages should apply to homeworkers.

(2) National laws and regulations should ensure that pre-established criteria are set for deductions and should protect homeworkers against unjustified deductions for defective work or spoilt materials.

(3) Homeworkers should be paid either on delivery of each completed work assignment or at regular intervals of not more than one month.

18. Where an intermediary is used, the intermediary and the employer should be made jointly and severally liable for payment of the remuneration due to homeworkers, in accordance with national law and practice.

VII. Occupational safety and health

19. The competent authority should ensure the dissemination of guidelines concerning the safety and health regulations and precautions that employers and homeworkers are to observe. Where practicable, these guidelines should be translated into languages understood by homeworkers

20. Employers should be required to:

(a) inform homeworkers of any hazards that are known or ought to be known to the employer associated with the work given to them and of the precautions to be taken, and provide them, where appropriate, with the necessary training;

(b) ensure that machinery, tools or other equipment provided to homeworkers are equipped with appropriate safety devices and take reasonable steps to ensure that they are properly maintained; and

(c) provide homeworkers free of charge with any necessary personal protective equipment.

21. Homeworkers should be required to:

(a) comply with prescribed safety and health measures;

(b) take reasonable care for their own safety and health and that of other persons who may be affected by their acts or omissions at work, including the proper use of materials, machinery, tools and other equipment placed at their disposal.

22. (1) A homeworker who refuses to carry out work which he or she has reasonable justification to believe presents an imminent and serious danger to his or her safety or health should be protected from undue consequences in a manner consistent with national conditions and practice. The homeworker should report the situation to the employer without delay.

(2) In the event of an imminent and serious danger to the safety or health of a homeworker, his or her family or the public, as determined by a labour inspector or other public safety official, the continuation of home work should be prohibited until appropriate measures have been taken to remedy the situation.

VIII. Hours of work, rest periods and leave

23. A deadline to complete a work assignment should not deprive a homeworker of the possibility to have daily and weekly rest comparable to that enjoyed by other workers.

24. National laws and regulations should establish the conditions under which homeworkers should be entitled to benefit, as other workers, from paid public holidays, annual holidays with pay and paid sick leave.

IX. Social security and maternity protection

25. Homeworkers should benefit from social security protection. This could be done by:

(a) extending existing social security provisions to homeworkers;

(b) adapting social security schemes to cover homeworkers; or

(c) developing special schemes or funds for homeworkers.

26. National laws and regulations in the field of maternity protection should apply to homeworkers.

X. Protection in case of termination of employment

27. Homeworkers should benefit from the same protection as that provided to other workers with respect to termination of employment.

XI. Resolution of disputes

28. The competent authority should ensure that there are mechanisms for the resolution of disputes between a homeworker and an employer or any intermediary used by the employer.

XII. Programmes related to home work

29. (1) Each Member should, in cooperation with organizations of employers and workers, promote and support programmes which:

(a) inform homeworkers of their rights and the kinds of assistance available to them;

(b) raise awareness of home-work-related issues among employers' and workers' organizations, non-governmental organizations and the public at large;

(c) facilitate the organization of homeworkers in organizations of their own choosing, including cooperatives;

(d) provide training to improve homeworkers' skills (including non-traditional skills, leadership and negotiating skills), productivity, employment opportunities and income-earning capacity;

(e) provide training which is carried out as close as practicable to the workers' homes and does not require unnecessary formal qualifications;

(f) improve homeworkers' safety and health such as by facilitating their access to equipment, tools, raw materials and other essential materials that are safe and of good quality;

(g) facilitate the creation of centres and networks for homeworkers in order to provide them with information and services and reduce their isolation;

(h) facilitate access to credit, improved housing and child care; and

(i) promote recognition of home work as valid work experience.

(2) Access to these programmes should be ensured to rural homeworkers.

(3) Specific programmes should be adopted to eliminate child labour in home work.

XIII. Access to information

30. Where practicable, information concerning the rights and protection of homeworkers and the obligations of employers towards homeworkers, as well as the programmes referred to in Paragraph 29, should be provided in languages understood by homeworkers.

Convention 178

CONVENTION CONCERNING THE INSPECTION OF SEAFARERS' WORKING AND LIVING CONDITIONS

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office and having met in its Eighty-fourth Session on 8 October 1996, and

Noting the changes in the nature of the shipping industry and, as a consequence thereof, the changes in seafarers' working and living conditions since the Labour Inspection (Seamen) Recommendation, 1926, was adopted, and

Recalling the provisions of the Labour Inspection Convention and Recommendation, 1947, the Labour Inspection (Mining and Transport) Recommendation, 1947, and the Merchant Shipping (Minimum Standards) Convention, 1976, and

Recalling the entry into force of the United Nations Convention on the Law of the Sea, 1982, on 16 November 1994, and

Having decided upon the adoption of certain proposals with regard to the revision of the Labour Inspection (Seamen) Recommendation, 1926, which is the first item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention for flag State implementation only;

adopts, this twenty-second day of October of the year one thousand nine hundred and ninety-six, the following Convention, which may be cited as the Labour Inspection (Seafarers) Convention, 1996:

PART I. SCOPE AND DEFINITIONS

Article 1

1. Except as otherwise provided in this Article, this Convention applies to every seagoing ship, whether publicly or privately owned, which is registered in the territory of a Member for which the Convention is in force and is engaged in the transport of cargo or passengers for the purpose of trade or is employed for any other commercial purpose. For the purpose of this Convention, a ship that is on the register of two Members is deemed to be registered in the territory of the Member whose flag it flies.

2. National laws or regulations shall determine which ships are to be regarded as seagoing ships for the purpose of this Convention.

3. This Convention applies to seagoing tugs.

4. This Convention does not apply to vessels less than 500 gross tonnage and, when not engaged in navigation, vessels such as oil rigs and drilling platforms. The

decision as to which vessels are covered by this paragraph shall be taken by the central coordinating authority in consultation with the most representative organizations of shipowners and seafarers.

5. To the extent the central coordinating authority deems it practicable, after consulting the representative organizations of fishing vessel owners and fishermen, the provisions of this Convention shall apply to commercial maritime fishing vessels.

6. In the event of any doubt as to whether or not any ships are to be regarded as engaged in commercial maritime operations or commercial maritime fishing for the purpose of this Convention, the question shall be determined by the central coordinating authority after consulting the organizations of shipowners, seafarers and fishermen concerned.

7. For the purpose of this Convention:

(a) the term "central coordinating authority" means ministers, government departments or other public authorities having power to issue and supervise the implementation of regulations, orders or other instructions having the force of law in respect of inspection of seafarers' working and living conditions in relation to any ship registered in the territory of the Member;

(b) the term "inspector" means any civil servant or other public official with responsibility for inspecting any aspect of seafarers' working and living conditions, as well as any other person holding proper credentials performing an inspection for an institution or organization authorized by the central coordinating authority in accordance with Article 2, paragraph 3;

(c) the term "legal provisions" includes, in addition to laws and regulations, arbitration awards and collective agreements upon which the force of law is conferred;

(d) the term "seafarers" means persons who are employed in any capacity on board a seagoing ship to which the Convention applies. In the event of any doubt as to whether any categories of persons are to be regarded as seafarers for the purpose of this Convention, the question shall be determined by the central coordinating authority after consulting the organizations of shipowners and seafarers concerned;

(e) the term "seafarers' working and living conditions" means the conditions such as those relating to the standards of maintenance and cleanliness of shipboard living and working areas, minimum age, articles of agreement, food and catering, crew accommodation, recruitment, manning, qualifications, hours of work, medical examinations, prevention of occupational accidents, medical care, sickness and injury benefits, social welfare and related matters, repatriation, terms and conditions of employment which are subject to national laws and regulations, and freedom of association as defined in the Freedom of Association and Protection of the Right to Organise Convention, 1948, of the International Labour Organization.

PART II. ORGANIZATION OF INSPECTION

Article 2

1. Each Member for which the Convention is in force shall maintain a system of inspection of seafarers' working and living conditions.

2. The central coordinating authority shall coordinate inspections wholly or partly concerned with seafarers' working and living conditions and shall establish principles to be observed.

3. The central coordinating authority shall in all cases be responsible for the inspection of seafarers' working and living conditions. It may authorize public institutions or other organizations it recognizes as competent and independent to carry out inspections of seafarers' working and living conditions on its behalf. It shall maintain and make publicly available a list of such institutions or organizations.

Article 3

1. Each Member shall ensure that all ships registered in its territory are inspected at intervals not exceeding three years and, when practicable, annually, to verify that the seafarers' working and living conditions on board conform to national laws and regulations.

2. If a Member receives a complaint or obtains evidence that a ship registered in its territory does not conform to national laws and regulations in respect of seafarers' working and living conditions, the Member shall take measures to inspect the ship as soon as practicable.

3. In cases of substantial changes in construction or accommodation arrangements, the ship shall be inspected within three months of such changes.

Article 4

Each Member shall appoint inspectors qualified for the performance of their duties and shall take the necessary steps to satisfy itself that inspectors are available in sufficient number to meet the requirements of this Convention.

Article 5

1. Inspectors shall have the status and conditions of service to ensure that they are independent of changes of government and of improper external influences.

2. Inspectors provided with proper credentials shall be empowered:

(a) to board a ship registered in the territory of the Member and to enter premises as necessary for inspection;

(b) to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed;

(c) to require that deficiencies are remedied; and

(d) where they have grounds to believe that a deficiency constitutes a significant danger to seafarers' health and safety, to prohibit, subject to any right of

appeal to a judicial or administrative authority, a ship from leaving port until necessary measures are taken, the ship not being unreasonably detained or delayed.

Article 6

1. When an inspection is conducted or when measures are taken under this Convention, all reasonable efforts shall be made to avoid a ship being unreasonably detained or delayed.

2. If a ship is unreasonably detained or delayed, the shipowner or operator of the ship shall be entitled to compensation for any loss or damage suffered. In any instance of alleged unreasonable detention or delay, the burden of proof shall lie with the shipowner or operator of the ship.

PART III. PENALTIES

Article 7

1. Adequate penalties for violations of the legal provisions enforceable by inspectors and for obstructing inspectors in the performance of their duties shall be provided for by national laws or regulations and shall be effectively enforced.

2. Inspectors shall have the discretion to give warnings and advice instead of instituting or recommending proceedings.

PART IV. REPORTS

Article 8

1. The central coordinating authority shall maintain records of inspections of seafarers' working and living conditions.

2. It shall publish an annual report on inspection activities, including a list of institutions and organizations authorized to carry out inspections on its behalf. This report shall be published within a reasonable time after the end of the year to which it relates and in any case within six months.

Article 9

1. Inspectors shall submit a report of each inspection to the central coordinating authority. One copy of the report in English or in the working language of the ship shall be furnished to the master of the ship and another copy shall be posted on the ship's notice board for the information of the seafarers or sent to their representatives.

2. In case of an inspection pursuant to a major incident, the report shall be submitted as soon as practicable but not later than one month following the conclusion of the inspection.

PART V. FINAL PROVISIONS

Article 10

This Convention supersedes the Labour Inspection (Seamen) Recommendation, 1926.

Article 11

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 12

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General

3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

Article 13

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 14

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations communicated by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article 15

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with Article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 16

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 17

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides —

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 13 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 18

The English and French versions of the text of this Convention are equally authoritative.

Recommendation 185

RECOMMENDATION CONCERNING THE INSPECTION OF SEAFARERS' WORKING AND LIVING CONDITIONS

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office and having met in its Eighty-fourth Session on 8 October 1996, and

Having decided upon the adoption of certain proposals with regard to the revision of the Labour Inspection (Seamen) Recommendation, 1926, which is the first item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Labour Inspection (Seafarers) Convention, 1996;

adopts, this twenty-second day of October of the year one thousand nine hundred and ninety-six, the following Recommendation, which may be cited as the Labour Inspection (Seafarers) Recommendation, 1996:

I. COOPERATION AND COORDINATION

1. The central coordinating authority should make appropriate arrangements to promote effective cooperation between public institutions and other organizations concerned with seafarers' working and living conditions.

2. To ensure cooperation between inspectors, shipowners, seafarers and their respective organizations, and in order to maintain or improve seafarers' working and living conditions, the central coordinating authority should consult the representatives of such organizations at regular intervals as to the best means of attaining these ends. The manner of such consultation should be determined by the central coordinating authority after consulting with shipowners' and seafarers' organizations.

II. ORGANIZATION OF INSPECTION

3. The central coordinating authority and any other service or authority wholly or partly concerned with the inspection of seafarers' working and living conditions should have the resources necessary to fulfil their functions.

4. The number of inspectors should be sufficient to secure the efficient discharge of their duties and should be determined with due regard to:

(a) the importance of the duties which the inspectors have to perform, in particular the number, nature and size of ships liable to inspection and the number and complexity of the legal provisions to be enforced;

(b) the material means placed at the disposal of the inspectors; and

(c) the practical conditions under which inspections must be carried out in order to be effective.

5. The system of inspection of seafarers' working and living conditions should permit inspectors:

(a) to alert the central coordinating authority to any deficiency or abuse not specifically covered by existing legal provisions and submit proposals to it for the improvement of laws and regulations; and

(b) to board ships and enter relevant premises freely and without previous notice at any hour of the day or night.

6. The central coordinating authority should:

(a) establish simple procedures to enable it to receive information in confidence concerning possible infringements of legal provisions presented by seafarers directly or through representatives, and enable inspectors to investigate such matters promptly;

(b) enable masters, crew members or representatives of the seafarers to call for an inspection when they consider it necessary; and

(c) supply technical information and advice to shipowners and seafarers and organizations concerned as to the most effective means of complying with the legal provisions and improving seafarers' working and living conditions.

III. STATUS, DUTIES AND POWERS OF INSPECTORS

7. (1) Subject to any conditions for recruitment to the public service which may be prescribed by national laws or regulations, inspectors should have qualifications and adequate training to perform their duties and where possible should have a maritime education or experience as a seafarer. They should have adequate knowledge of seafarers' working and living conditions and of the English language.

(2) The means for ascertaining such qualifications should be determined by the central coordinating authority.

8. Measures should be taken to provide inspectors with appropriate further training during their employment.

9. Each Member should take the necessary measures so that duly qualified technical experts and specialists may be called upon, as needed, to assist in the work of inspectors.

10. Inspectors should not be entrusted with duties which might, because of their number or nature, interfere with effective inspection or prejudice in any way their authority or impartiality in their relations with shipowners, seafarers or other interested parties.

11. All inspectors should be provided with conveniently situated premises, equipment and means of transport adequate for the efficient performance of their duties.

12. (1) Inspectors provided with proper credentials should be empowered:

(a) to question the master, seafarer or any other person, including the shipowner or the shipowner's representative, on any matter concerning the application

of the legal provisions in the presence of a witness that the person may have requested;

(b) to require the production of any books, log books, registers, certificates or other documents or information directly related to matters subject to inspection, in order to check conformity with the legal provisions;

(c) to enforce the posting of notices required by the legal provisions; and

(d) to take or remove, for the purposes of analysis, samples of products, cargo, drinking-water, provisions and materials and substances used or handled.

(2) The shipowner or the shipowner's representative, and where appropriate the seafarer, should be notified of any sample being taken or removed in accordance with subparagraph (1)(d) or should be present at the time a sample is taken or removed. The quantity of such a sample should be properly recorded by the inspector.

13. When commencing a ship inspection, inspectors should provide notification of their presence to the master or person in charge and, where appropriate, to the seafarers or their representatives.

14. The central coordinating authority should be notified of any occupational injuries or diseases affecting seafarers in such cases and in such manner as may be prescribed by national laws or regulations.

15. Inspectors should:

(a) be prohibited from having any direct or indirect interest in any operation which they are called upon to inspect;

(b) subject to appropriate penalties or disciplinary measures, not reveal, even after leaving service, any commercial secrets or confidential working processes or information of a personal nature which may come to their knowledge in the course of their duties;

(c) treat as confidential the source of any complaint alleging a danger or deficiency in relation to seafarers' working and living conditions or an infringement of legal provisions and give no intimation to the shipowner, the shipowner's representative or the operator of the ship that an inspection was made as a consequence of such a complaint; and

(d) have discretion, following an inspection, to bring immediately to the attention of the shipowner, the operator of the ship or the master deficiencies which may affect the health and safety of those on board ship.

IV. REPORTS

16. The annual report published by the central coordinating authority in accordance with Article 8, paragraph 2, of the Convention should also contain:

(a) a list of laws and regulations in force relevant to seafarers' working and living conditions and any amendments which have come into operation during the year;

(b) details of the organization of the system of inspection referred to in Article 2 of the Convention;

(c) statistics of ships or other premises liable to inspection and of ships and other premises actually inspected;

(d) statistics of seafarers subject to the laws and regulations referred to in subparagraph (a) of this paragraph;

(e) statistics and information on infringements of legislation, penalties imposed and cases of detention of ships; and

(f) statistics of occupational injuries and diseases affecting seafarers.

17. The reports referred to in Article 9 of the Convention should be drawn up in such manner and should deal with such subject matter as may be prescribed by the central coordinating authority.

Convention 179

CONVENTION CONCERNING THE RECRUITMENT AND PLACEMENT OF SEAFARERS

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-Fourth Session on 8 October 1996, and

Noting the provisions of the Seamen's Articles of Agreement Convention, 1926, the Freedom of Association and Protection of the Right to Organise Convention, 1948, the Employment Service Convention and Recommendation, 1948, the Right to Organise and Collective Bargaining Convention, 1949, the Seafarers' Engagement (Foreign Vessels) Recommendation, 1958, the Discrimination (Employment and Occupation) Convention, 1958, the Employment of Seafarers (Technical Developments) Recommendation, 1970, the Minimum Age Convention, 1973, the Continuity of Employment (Seafarers) Convention and Recommendation, 1976, the Merchant Shipping (Minimum Standards) Convention, 1976, the Repatriation of Seafarers Convention (Revised), 1987, and the Labour Inspection (Seafarers) Convention, 1996, and

Recalling the entry into force of the United Nations Convention on the Law of the Sea, 1982, on 16 November 1994, and

Having decided upon the adoption of certain proposals with regard to the revision of the Placing of Seamen Convention, 1920, which is the third item on the agenda of the session, and

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

adopts, this twenty-second day of October of the year one thousand nine hundred and ninety-six, the following Convention, which may be cited as the Recruitment and Placement of Seafarers Convention, 1996:

Article 1

1. For the purpose of this Convention:

(a) the term "competent authority" means the minister, designated official, government department or other authority having power to issue regulations, orders or other instructions having the force of law in respect of the recruitment and placement of seafarers;

(b) the term "recruitment and placement service" means any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting seafarers on behalf of employers or placing seafarers with employers;

(c) the term "shipowner" means the owner of the ship or any other organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for operation of the ship from the shipowner and who on assuming such responsibilities has agreed to take over all the attendant duties and responsibilities;

(d) the term "seafarer" means any person who fulfils the conditions to be employed or engaged in any capacity on board a seagoing ship other than a government ship used for military or non-commercial purposes.

2. To the extent it deems practicable, after consultation with the representative organizations of fishing-vessel owners and fishermen or those of owners of maritime mobile offshore units and seafarers serving on such units, as the case may be, the competent authority may apply the provisions of the Convention to fishermen or to seafarers serving on maritime mobile offshore units.

Article 2

1. Nothing in the provisions of this Convention shall be deemed to:

(a) prevent a Member from maintaining a free public recruitment and placement service for seafarers in the framework of a policy to meet the needs of seafarers and shipowners, whether it forms part of or is coordinated with a public employment service for all workers and employers;

(b) impose on a Member the obligation to establish a system for the operation of private recruitment and placement services.

2. Where private recruitment and placement services have been or are to be established, they shall be operated within the territory of a Member only in conformity with a system of licensing or certification or other form of regulation. This system shall be established, maintained, modified or changed only after consultation with representative organizations of shipowners and seafarers. Undue proliferation of such private recruitment and placement services shall not be encouraged.

3. Nothing in this Convention shall affect the right of a Member to apply its laws and regulations to ships flying its flag in relation to the recruitment and placement of seafarers.

Article 3

Nothing in this Convention shall in any manner prejudice the ability of a seafarer to exercise basic human rights, including trade union rights.

Article 4

1. A Member shall, by means of national laws or applicable regulations:

(a) ensure that no fees or other charges for recruitment or for providing employment to seafarers are borne directly or indirectly, in whole or in part, by the seafarer; for this purpose, costs of the national statutory medical examination, certificates, a personal travel document and the national seafarer's book shall not be deemed to be "fees or other charges for recruitment";

(b) determine whether and under which conditions recruitment and placement services may place or recruit seafarers abroad;

(c) specify, with due regard to the right to privacy and the need to protect confidentiality, the conditions under which seafarers' personal data may be processed by recruitment and placement services including the collection, storage, combination and communication of such data to third parties;

(d) determine the conditions under which the licence, certificate or similar authorization of a recruitment and placement service may be suspended or withdrawn in case of violation of relevant laws and regulations; and

(e) specify, where a regulatory system other than a system of licensing or certification exists, the conditions under which recruitment and placement services can operate, as well as sanctions applicable in case of violation of these conditions.

2. A Member shall ensure that the competent authority:

(a) closely supervise all recruitment and placement services;

(b) grant or renew the licence, certificate, or similar authorization only after having verified that the recruitment and placement service concerned meets the requirements of national laws and regulations;

(c) require that the management and staff of recruitment and placement services for seafarers should be adequately trained persons having relevant knowledge of the maritime industry;

(d) prohibit recruitment and placement services from using means, mechanisms or lists intended to prevent or deter seafarers from gaining employment;

(e) require that recruitment and placement services adopt measures to ensure, as far as practicable, that the employer has the means to protect seafarers from being stranded in a foreign port; and

(f) ensure that a system of protection, by way of insurance or an equivalent appropriate measure, is established to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service to meet its obligations to them.

Article 5

1. All recruitment and placement services shall maintain a register of all seafarers recruited or placed through them, to be available for inspection by the competent authority.

2. All recruitment and placement services shall ensure that:

(a) any seafarer recruited or placed by them is qualified and holds the documents necessary for the job concerned;

(b) contracts of employment and articles of agreement are in accordance with applicable laws, regulations and collective agreements;

(c) seafarers are informed of their rights and duties under their contracts of employment and the articles of agreement prior to or in the process of engagement; and

(d) proper arrangements are made for seafarers to examine their contracts of employment and the articles of agreement before and after they are signed and for them to receive a copy of the contract of employment.

3. Nothing in paragraph 2 above shall be understood as diminishing the obligations and responsibilities of the shipowner or the master.

Article 6

1. The competent authority shall ensure that adequate machinery and procedures exist for the investigation, if necessary, of complaints concerning the activities of recruitment and placement services, involving, as appropriate, representatives of shipowners and seafarers.

2. All recruitment and placement services shall examine and respond to any complaint concerning their activities and shall advise the competent authority of any unresolved complaint.

3. Where complaints concerning working or living conditions on board ships are brought to the attention of the recruitment and placement services, they shall forward such complaints to the appropriate authority.

4. Nothing in this Convention shall prevent the seafarer from bringing any complaint directly to the appropriate authority.

Article 7

This Convention revises the Placing of Seamen Convention, 1920

Article 8

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 9

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

4. The ratification by a Member of this Convention shall, as from the date it has come into force, constitute an act of immediate denunciation of the Placing of Seamen Convention, 1920.

Article 10

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 11

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations communicated by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article 12

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with Article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 13

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 14

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides —

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 10 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 15

The English and French versions of the text of this Convention are equally authoritative.

Recommendation 186

RECOMMENDATION CONCERNING THE RECRUITMENT AND PLACEMENT OF SEAFARERS

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-fourth Session on 8 October 1996, and

Having decided upon the adoption of certain proposals with regard to the revision of the Placing of Seamen Convention, 1920, which is the third item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Recruitment and Placement of Seafarers Convention, 1996;

adopts, this twenty-second day of October of the year one thousand nine hundred and ninety-six, the following Recommendation, which may be cited as the Recruitment and Placement of Seafarers Recommendation, 1996:

1. The competent authority should:

(a) take the necessary measures to promote effective cooperation among recruitment and placement services, whether public or private;

(b) take account of the needs of the maritime industry at both the national and international levels, when developing training programmes for seafarers, with the participation of shipowners, seafarers and the relevant training institutions;

(c) make suitable arrangements for the cooperation of representative organizations of shipowners and seafarers in the organization and operation of the public recruitment and placement services where they exist;

(d) maintain an arrangement for the collection and analysis of all relevant information on the maritime labour market, including:

(i) the current and prospective supply of seafarers classified by age, sex, rank and qualifications and the industry's requirements, the collection of data on age and sex being admissible only for statistical purposes or if used in the framework of a programme to prevent discrimination based on age and sex;

(ii) the availability of employment on national and foreign ships;

(iii) continuity of employment;

(iv) the placement of apprentices, cadets and other trainees; and

(v) vocational guidance to prospective seafarers;

(e) ensure that the staff responsible for the supervision of recruitment and placement services be adequately trained and have relevant knowledge of the maritime industry;

(f) prescribe or approve operational standards and encourage the adoption of codes of conduct and ethical practices for these services; and

(g) promote continued supervision on the basis of a system of quality standards.

2. The operational standards referred to in Paragraph 1(f) should include provisions dealing with:

(a) the qualifications and training required of the management and staff of recruitment and placement services, which should include knowledge of the maritime sector, particularly of relevant maritime international instruments on training, certification and labour standards;

(b) the keeping of a register of seafarers seeking employment at sea; and

(c) matters pertaining to medical examinations, vaccinations, seafarers' documents and such other items as may be required for the seafarer to gain employment.

3. In particular, the operational standards referred to in Paragraph 1(f) should provide that each recruitment and placement service:

(a) maintain, with due regard to the right to privacy and the need to protect confidentiality, full and complete records of the seafarers covered by its recruitment and placement system, which should include but not be limited to:
  (i) the seafarers' qualifications;
  (ii) record of employment;
  (iii) personal data relevant to employment;
  (iv) medical data relevant to employment;

(b) maintain up-to-date crew lists of the vessels for which it provides crew and ensure that there is a means by which it can be contacted in an emergency at all hours;

(c) have formal procedures to ensure that seafarers are not subject to exploitation by the agency or its personnel with regard to the offer of engagement on particular ships or by particular companies;

(d) have formal procedures to prevent the opportunities for exploitation of seafarers arising from the issue of joining advances or any other financial transaction between the employer and the seafarer which are handled by it;

(e) clearly publicize costs which the seafarer will bear by way of medical or documentary clearance;

(f) ensure that seafarers are advised of any particular conditions applicable to the job for which they are to be engaged and of particular employers' policies relating to their employment;

(g) have formal procedures which are in accordance with the principles of natural justice for dealing with cases of incompetence or indiscipline consistent with national laws and practice and, where applicable, with collective agreements;

(h) have formal procedures to ensure, as far as practicable, that certificates of competency and medical certificates of seafarers submitted for employment are up-to-date and have not been fraudulently obtained and that employment references are verified;

(i) have formal procedures to ensure that requests for information or advice by families of seafarers while they are at sea are dealt with promptly and sympathetically and at no cost; and

(j) as a matter of policy, supply seafarers only to employers who offer terms and conditions of employment to seafarers which comply with applicable laws or regulations or collective agreements.

4. International cooperation should be encouraged between Members and relevant organizations and may include:

(a) the systematic exchange of information on the maritime industry and labour market on a bilateral, regional and multilateral basis;

(b) the exchange of information on maritime labour legislation;

(c) the harmonization of policies, working methods and legislation governing recruitment and placement of seafarers;

(d) the improvement of procedures and conditions for the international recruitment and placement of seafarers; and

(e) workforce planning, taking account of the supply of and demand for seafarers and the requirements of the maritime industry.

Convention 180

CONVENTION CONCERNING SEAFARERS' HOURS OF WORK AND THE MANNING OF SHIPS

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-fourth Session on 8 October 1996, and,

Noting the provisions of the Merchant Shipping (Minimum Standards) Convention, 1976 and the Protocol of 1996 thereto; and the Labour Inspection (Seafarers) Convention, 1996, and

Recalling the relevant provisions of the following instruments of the International Maritime Organization: International Convention for the Safety of Life at Sea, 1974, as amended, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995, Assembly resolution A 481 (XII) (1981) on Principles of Safe Manning, Assembly resolution A 741 (18) (1993) on the International Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code), and Assembly resolution A 772 (18) (1993) on Fatigue Factors in Manning and Safety, and

Recalling the entry into force of the United Nations Convention on the Law of the Sea, 1982, on 16 November 1994, and

Having decided upon the adoption of certain proposals with regard to the revision of the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958, and the Wages, Hours of Work and Manning (Sea) Recommendation, 1958, which is the second item of the agenda of the session, and

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

adopts, this twenty-second day of October of the year one thousand nine hundred and ninety-six, the following Convention, which may be cited as the Seafarers' Hours of Work and the Manning of Ships Convention, 1996:

PART I. SCOPE AND DEFINITIONS

Article 1

1. This Convention applies to every seagoing ship, whether publicly or privately owned, which is registered in the territory of any Member for which the Convention is in force and is ordinarily engaged in commercial maritime operations. For the purpose of this Convention, a ship that is on the register of two Members is deemed to be registered in the territory of the Member whose flag it flies.

2. To the extent it deems practicable, after consulting the representative organizations of fishing-vessel owners and fishermen, the competent authority shall apply the provisions of this Convention to commercial maritime fishing.

3. In the event of doubt as to whether or not any ships are to be regarded as seagoing ships or engaged in commercial maritime operations or commercial maritime fishing for the purpose of the Convention, the question shall be determined by the competent authority after consulting the organizations of shipowners, seafarers and fishermen concerned.

4. This Convention does not apply to wooden vessels of traditional build such as dhows and junks.

Article 2

For the purpose of this Convention:

(a) the term "competent authority" means the minister, government department or other authority having power to issue regulations, orders or other instructions having the force of law in respect of seafarers' hours of work or rest or the manning of ships;

(b) the term "hours of work" means time during which a seafarer is required to do work on account of the ship;

(c) the term "hours of rest" means time outside hours of work; this term does not include short breaks;

(d) the term "seafarer" means any person defined as such by national laws or regulations or collective agreements who is employed or engaged in any capacity on board a seagoing ship to which this Convention applies;

(e) the term "shipowner" means the owner of the ship or any other organization or person, such as the manager or bareboat charterer, who has assumed the responsibility for the operation of the ship from the shipowner and who on assuming such responsibility has agreed to take over all the attendant duties and responsibilities.

PART II. SEAFARERS' HOURS OF WORK AND HOURS OF REST

Article 3

Within the limits set out in Article 5, there shall be fixed either a maximum number of hours of work which shall not be exceeded in a given period of time, or a minimum number of hours of rest which shall be provided in a given period of time.

Article 4

A Member which ratifies this Convention acknowledges that the normal working hours' standard for seafarers, like that for other workers, shall be based on an eight-hour day with one day of rest per week and rest on public holidays. However, this shall not prevent the Member from having procedures to authorize or register a collective agreement which determines seafarers' normal working hours on a basis no less favourable than this standard.

Article 5

1. The limits on hours of work or rest shall be as follows:

(a) maximum hours of work shall not exceed:

(i) 14 hours in any 24-hour period; and

(ii) 72 hours in any seven-day period;

or

(b) minimum hours of rest shall not be less than:

(i) ten hours in any 24-hour period; and

(ii) 77 hours in any seven-day period.

2. Hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length, and the interval between consecutive periods of rest shall not exceed 14 hours.

3. Musters, fire-fighting and lifeboat drills, and drills prescribed by national laws and regulations and by international instruments shall be conducted in a manner that minimizes the disturbance of rest periods and does not induce fatigue.

4. In respect of situations when a seafarer is on call, such as when a machinery space is unattended, the seafarer shall have an adequate compensatory rest period if the normal period of rest is disturbed by call-outs to work.

5. If no collective agreement or arbitration award exists or if the competent authority determines that the provisions in the agreement or award in respect of paragraph 3 or 4 are inadequate, the competent authority shall determine such provisions to ensure the seafarers concerned have sufficient rest.

6. Nothing in paragraphs 1 and 2 shall prevent the Member from having national laws or regulations or a procedure for the competent authority to authorize or register collective agreements permitting exceptions to the limits set out. Such exceptions shall, as far as possible, follow the standards set out but may take account of more frequent or longer leave periods or the granting of compensatory leave for watchkeeping seafarers or seafarers working on board ships on short voyages.

7. The Member shall require the posting, in an easily accessible place, of a table with the shipboard working arrangements, which shall contain for every position at least:

(a) the schedule of service at sea and service in port; and

(b) the maximum hours of work or the minimum hours of rest required by the laws, regulations or collective agreements in force in the flag State.

8. The table referred to in paragraph 7 shall be established in a standardized format in the working language or languages of the ship and in English.

Article 6

No seafarer under 18 years of age shall work at night. For the purpose of this Article, "night" means a period of at least nine consecutive hours, including the interval from midnight to five a.m. This provision need not be applied when the

effective training of young seafarers between the ages of 16 and 18 in accordance with established programmes and schedules would be impaired.

Article 7

1. Nothing in this Convention shall be deemed to impair the right of the master of a ship to require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea.

2. In accordance with paragraph 1, the master may suspend the schedule of hours of work or hours of rest and require a seafarer to perform any hours of work necessary until the normal situation has been restored.

3. As soon as practicable after the normal situation has been restored, the master shall ensure that any seafarers who have performed work in a scheduled rest period are provided with an adequate period of rest.

Article 8

1. The Member shall require that records of seafarers' daily hours of work or of their daily hours of rest be maintained to allow monitoring of compliance with the provisions set out in Article 5. The seafarer shall receive a copy of the records pertaining to him or her which shall be endorsed by the master, or a persor authorized by the master, and by the seafarer.

2. The competent authority shall determine the procedures for keeping such records on board, including the intervals at which the information shall be recorded. The competent authority shall establish the format of the records of the seafarers' hours of work or of their hours of rest taking into account any available International Labour Organization guidelines or shall use any standard format prepared by the Organization. The format shall be established in the language or languages provided by Article 5, paragraph 8.

3. A copy of the relevant provisions of the national legislation pertaining to this Convention and the relevant collective agreements shall be kept on board and be easily accessible to the crew.

Article 9

The competent authority shall examine and endorse the records referred to in Article 8, at appropriate intervals, to monitor compliance with the provisions governing hours of work or hours of rest that give effect to this Convention.

Article 10

If the records or other evidence indicate infringement of provisions governing hours of work or hours of rest, the competent authority shall require that measures, including if necessary the revision of the manning of the ship, are taken so as to avoid future infringements.

PART III. MANNING OF SHIPS

Article 11

1. Every ship to which this Convention applies shall be sufficiently, safely and efficiently manned, in accordance with the minimum safe manning document or an equivalent issued by the competent authority.

2. When determining, approving or revising manning levels, the competent authority shall take into account:

(a) the need to avoid or minimize, as far as practicable, excessive hours of work, to ensure sufficient rest and to limit fatigue; and

(b) the international instruments identified in the Preamble.

Article 12

No person under 16 years of age shall work on a ship.

PART IV. RESPONSIBILITIES OF SHIPOWNERS AND MASTERS

Article 13

The shipowner shall ensure that the master is provided with the necessary resources for the purpose of compliance with obligations under this Convention, including those relating to the appropriate manning of the ship. The master shall take all necessary steps to ensure that the requirements on seafarers' hours of work and rest arising from this Convention are complied with.

PART V. APPLICATION

Article 14

A Member which ratifies this Convention shall be responsible for the application of its provisions by means of laws or regulations, except where effect is given by collective agreements, arbitration awards or court decisions.

Article 15

The Member shall:

(a) take all necessary measures, including the provision of appropriate sanctions and corrective measures, to ensure the effective enforcement of the provisions of this Convention;

(b) have appropriate inspection services to supervise the application of the measures taken in pursuance of this Convention and provide them with the necessary resources for this purpose; and

(c) after consulting shipowners' and seafarers' organizations, have procedures to investigate complaints relating to any matter contained in this Convention.

PART VI. FINAL PROVISIONS

Article 16

This Convention revises the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958; the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949; the Wages, Hours of Work and Manning (Sea) Convention, 1946; and the Hours of Work and Manning (Sea) Convention, 1936. As from the date this Convention has come into force, the above-listed Conventions shall cease to be open to ratification.

Article 17

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 18

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

2. This Convention shall come into force six months after the date on which the ratifications of five Members, three of which each have a least one million gross tonnage of shipping, have been registered with the Director-General of the International Labour Office.

3. Thereafter, this Convention shall come into force for any Member six months after the date on which its ratification has been registered.

Article 19

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 20

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations communicated by the Members of the Organization.

2. When the conditions provided for in Article 18, paragraph 2, above have been fulfilled, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article 21

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with Article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 22

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 23

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides —

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 19 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 24

The English and French versions of the text of this Convention are equally authoritative.

Recommendation 187

RECOMMENDATION CONCERNING SEAFARERS' WAGES AND HOURS OF WORK AND THE MANNING OF SHIPS

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-fourth Session on 8 October 1996, and

Noting the provisions of the Protection of Wages Convention, 1949; the Minimum Wage-Fixing Convention, 1970, the Seafarers' Annual Leave with Pay Convention, 1976, the Merchant Shipping (Minimum Standards) Convention, 1976, the Repatriation of Seafarers Convention (Revised), 1987, the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992, and the International Convention on Maritime Liens and Mortgages, 1993, and

Having decided upon the adoption of certain proposals with regard to the revision of the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 and the Wages, Hours of Work and Manning (Sea) Recommendation, 1958, which is the second item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Seafarers' Hours of Work and the Manning of Ships Convention, 1996;

adopts this twenty-second day of October of the year one thousand nine hundred and ninety-six, the following Recommendation, which may be cited as the Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation, 1996:

I. SCOPE AND DEFINITIONS

1. (1) This Recommendation applies to every seagoing ship, whether publicly or privately owned, which is registered in the territory of the Member and is ordinarily engaged in commercial maritime operations.

(2) To the extent it deems practicable, after consulting the representative organizations of fishing-vessel owners and fishermen, the competent authority should apply the provisions of this Recommendation to commercial maritime fishing.

(3) In the event of doubt as to whether or not any ships are to be regarded as seagoing ships or engaged in commercial maritime operations or commercial maritime fishing for the purposes of this Recommendation, the question should be determined by the competent authority after consulting the organizations of shipowners, seafarers and fishermen concerned.

(4) This Recommendation does not apply to wooden vessels of traditional build such as dhows and junks.

2. For the purpose of this Recommendation:

(a) the term "basic pay or wages" means the pay, however composed, for normal hours of work; it does not include payments for overtime worked, bonuses, allowances, paid leave or any other additional remuneration;

(b) the term "competent authority" means the minister, government department or other authority having power to issue regulations, orders or other instructions having the force of law in respect of seafarers' wages, hours of work or rest or the manning of ships;

(c) the term "consolidated wage" means a wage or salary which includes the basic wage and ıer pay-related benefits; a consolidated wage may include compensation for all overtime hours which are worked and all other pay-related benefits, or it may include only certain benefits in a partial consolidation;

(d) the term "hours of work" means time during which a seafarer is required to do work on account of the ship;

(e) the term "overtime" means time worked in excess of the normal hours of work;

(f) the term "seafarer" means any person defined as such by national laws or regulations or collective agreements who is employed or engaged in any capacity on board a seagoing ship to which this Recommendation applies; and

(g) the term "shipowner" means the owner of the ship or any other organization or person, such as the manager or bareboat charterer, who has assumed the responsibility for the operation of the ship from the shipowner and who on assuming such responsibility has agreed to take over all the attendant duties and responsibilities.

II. SEAFARERS' WAGES

3. For seafarers whose remuneration includes separate compensation for overtime worked:

(a) for the purpose of calculating wages, the normal hours of work at sea and in port should not exceed eight hours per day;

(b) for the purpose of calculating overtime, the number of normal hours per week covered by the basic pay or wages should be prescribed by national laws or regulations, if not determined by collective agreements, but should not exceed 48 hours per week; collective agreements may provide for a different but not less favourable treatment;

(c) the rate or rates of compensation for overtime, which should be not less than one and one-quarter times the basic pay or wages per hour, should be prescribed by national laws or regulations or by collective agreements; and

(d) records of all overtime worked should be maintained by the master, or a person assigned by the master, and endorsed by the seafarer at regular intervals.

4. For seafarers whose wages are fully or partially consolidated.

(a) the collective agreement, articles of agreement, contract of employment and letter of engagement should specify clearly the amount of remuneration payable to the seafarer and where appropriate the number of hours of work expected of the seafarer in return for this remuneration, and any additional allowances which might be due in addition to the consolidated wage, and in which circumstances;

(b) where hourly overtime is payable for hours worked in excess of those covered by the consolidated wage, the hourly rate should be not less than one and one-quarter times the basic rate corresponding to the normal hours of work as defined in Paragraph 3; the same principle should be applied to the overtime hours included in the consolidated wage;

(c) remuneration for that portion of the fully or partially consolidated wage representing the normal hours of work as defined in Paragraph 3(a) should be no less than the applicable minimum wage; and

(d) for seafarers whose wages are partially consolidated, records of all overtime worked should be maintained and endorsed as provided in Paragraph 3(d).

5. National laws or regulations or collective agreements may provide for compensation for overtime or for work performed on the weekly day of rest and on public holidays by at least equivalent time off duty and off the ship or additional leave in lieu of remuneration or any other compensation so provided.

6. National laws and regulations adopted after consulting the representative organizations of seafarers and shipowners or, as appropriate, collective agreements should take into account the following principles:

(a) equal remuneration for work of equal value should apply to all seafarers employed upon the same ship without discrimination based upon race, colour, sex, religion, political opinion, national extraction or social origin;

(b) the articles of agreement or other agreement specifying the applicable wages or wage rates should be carried on board the ship; information on the amount of wages or wage rates should be made available to each seafarer, either by providing at least one signed copy of the relevant information to the seafarer in a language which the seafarer understands, or by posting a copy of the agreement in a place accessible to the crew or by some other appropriate means;

(c) wages should be paid in legal tender; where appropriate, they may be paid by bank transfer, bank cheque, postal cheque or money order;

(d) wages should be paid monthly or at some other regular interval, and on termination of engagement all remuneration due should be paid without undue delay;

(e) adequate penalties or other appropriate remedies should be imposed by the competent authorities where shipowners unduly delay, or fail to make, payment of all remuneration due;

(f) wages should be paid directly to the seafarer or to the seafarer's designated bank account unless he or she requests otherwise in writing;

(g) subject to subparagraph (h), the shipowner should impose no limit on the seafarer's freedom to dispose of his or her remuneration;

(h) deduction from remuneration should be permitted only if:

(i) there is an express provision therefor in national laws or regulations or in an applicable collective agreement;

(ii) the seafarer has been informed, in the manner deemed most appropriate by the competent authority, of the conditions for such deductions; and

(iii) they do not in total exceed the limit that may have been established by national laws or regulations or collective agreements or court decisions for making such deductions;

(i) no deductions should be made from a seafarer's remuneration in respect of obtaining or retaining employment;

(j) the competent authority should have the power to inspect stores and services provided on board ship to ensure that fair and reasonable prices are applied for the benefit of the seafarers concerned; and

(k) to the extent that seafarers' claims for wages and other sums due in respect of their employment are not secured in accordance with the provisions of the International Convention on Maritime Liens and Mortgages, 1993, such claims should be protected in accordance with the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992, of the International Labour Organization.

7. The Member should, after consulting with shipowners' and seafarers' organizations, have procedures to investigate complaints relating to any matter contained in this Recommendation.

III. MINIMUM WAGES

8. (1) Without prejudice to the principle of free collective bargaining, the Member should, after consulting representative organizations of shipowners and seafarers, establish procedures for determining minimum wages for seafarers. Representative organizations of shipowners and seafarers should participate in the operation of such procedures.

(2) When establishing such procedures and in fixing minimum wages, due regard should be given to international labour standards concerning minimum wage fixing, as well as the following principles:

(a) the level of minimum wages should take into account the nature of maritime employment, manning levels of ships, and seafarers' normal hours of work; and

(b) the level of minimum wages should be adjusted to take into account changes in the cost of living and in the needs of seafarers.

(3) The competent authority should ensure:

(a) by means of a system of supervision and sanctions, that wages are paid at not less than the rate or rates fixed; and

(b) that any seafarer who has been paid at a rate lower than the minimum wage is enabled to recover, by an inexpensive and expeditious judicial or other procedure, the amount by which he or she has been underpaid.

IV. MINIMUM MONTHLY BASIC PAY OR WAGE FIGURE FOR ABLE SEAMEN

9. For the purpose of this Part, the term "able seaman" means any seafarer who is deemed to be competent to perform any duty which may be required of a rating serving in the deck department, other than the duties of a leading or specialist rating, or any seafarer who is defined as an able seaman in accordance with national laws, regulations or practice, or collective agreement.

10. The basic pay or wages for a calendar month of service for an able seaman should be no less than the amount periodically set by the Joint Maritime Commission or another body authorized by the Governing Body of the International Labour Office. Upon a decision of the Governing Body, the Director-General of the ILO shall notify any revised amount to the Members of the International Labour Organization. As of 1 January 1995, the amount set by the Joint Maritime Commission was 385 United States dollars.

11. Nothing in this Part should be deemed to prejudice arrangements agreed between shipowners or their organizations and seafarers' organizations with regard to the regulation of standard minimum terms and conditions of employment, provided such terms and conditions are recognized by the competent authority.

V. EFFECT ON EARLIER RECOMMENDATION

12. This Recommendation supersedes the Wages, Hours of Work and Manning (Sea) Recommendation, 1958.

Convention 181

CONVENTION ON PRIVATE EMPLOYMENT AGENCIES

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-fifth Session on 3 June 1997, and

Noting the provisions of the Fee-Charging Employment Agencies Convention (Revised), 1949, and

Being aware of the importance of flexibility in the functioning of labour markets, and

Recalling that the International Labour Conference at its 81st Session, 1994, held the view that the ILO should proceed to revise the Fee-Charging Employment Agencies Convention (Revised), 1949, and

Considering the very different environment in which private employment agencies operate, when compared to the conditions prevailing when the above-mentioned Convention was adopted, and

Recognizing the role which private employment agencies may play in a well-functioning labour market, and

Recalling the need to protect workers against abuses, and

Recognizing the need to guarantee the right to freedom of association and to promote collective bargaining and social dialogue as necessary components of a well-functioning industrial relations system, and

Noting the provisions of the Employment Service Convention, 1948, and

Recalling the provisions of the Forced Labour Convention, 1930, the Freedom of Association and the Protection of the Right to Organise Convention, 1948, the Right to Organise and Collective Bargaining Convention, 1949, the Discrimination (Employment and Occupation) Convention, 1958, the Employment Policy Convention, 1964, the Minimum Age Convention, 1973, the Employment Promotion and Protection against Unemployment Convention, 1988, and the provisions relating to recruitment and placement in the Migration for Employment Convention (Revised), 1949, and the Migrant Workers (Supplementary Provisions) Convention, 1975, and

Having decided upon the adoption of certain proposals with regard to the revision of the Fee-Charging Employment Agencies Convention (Revised), 1949, which is the fourth item on the agenda of the session, and

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

adopts, this nineteenth day of June of the year one thousand nine hundred and ninety-seven, the following Convention, which may be cited as the Private Employment Agencies Convention, 1997:

Article 1

1. For the purpose of this Convention the term "private employment agency" means any natural or legal person, independent of the public authorities, which provides one or more of the following labour market services:

(a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom;

(b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to below as a "user enterprise") which assigns their tasks and supervises the execution of these tasks;

(c) other services relating to jobseeking, determined by the competent authority after consulting the most representative employers' and workers' organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment.

2. For the purpose of this Convention, the term "workers" includes jobseekers.

3. For the purpose of this Convention, the term "processing of personal data of workers" means the collection, storage, combination, communication or any other use of information related to an identified or identifiable worker.

Article 2

1. This Convention applies to all private employment agencies.

2. This Convention applies to all categories of workers and all branches of economic activity. It does not apply to the recruitment and placement of seafarers.

3. One purpose of this Convention is to allow the operation of private employment agencies as well as the protection of the workers using their services, within the framework of its provisions.

4. After consulting the most representative organizations of employers and workers concerned, a Member may:

(a) prohibit, under specific circumstances, private employment agencies from operating in respect of certain categories of workers or branches of economic activity in the provision of one or more of the services referred to in Article 1, paragraph 1;

(b) exclude, under specific circumstances, workers in certain branches of economic activity, or parts thereof, from the scope of the Convention or from certain of its provisions, provided that adequate protection is otherwise assured for the workers concerned.

5. A Member which ratifies this Convention shall specify, in its reports under article 22 of the Constitution of the International Labour Organization, any prohibition or exclusion of which it avails itself under paragraph 4 above, and give the reasons therefor.

Article 3

1. The legal status of private employment agencies shall be determined in accordance with national law and practice, and after consulting the most representative organizations of employers and workers.

2. A Member shall determine the conditions governing the operation of private employment agencies in accordance with a system of licensing or certification, except where they are otherwise regulated or determined by appropriate national law and practice.

Article 4

Measures shall be taken to ensure that the workers recruited by private employment agencies providing the services referred to in Article 1 are not denied the right to freedom of association and the right to bargain collectively.

Article 5

1. In order to promote equality of opportunity and treatment in access to employment and to particular occupations, a Member shall ensure that private employment agencies treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, or any other form of discrimination covered by national law and practice, such as age or disability.

2. Paragraph 1 of this Article shall not be implemented in such a way as to prevent private employment agencies from providing special services or targeted programmes designed to assist the most disadvantaged workers in their jobseeking activities.

Article 6

The processing of personal data of workers by private employment agencies shall be:

(a) done in a manner that protects this data and ensures respect for workers' privacy in accordance with national law and practice;

(b) limited to matters related to the qualifications and professional experience of the workers concerned and any other directly relevant information.

Article 7

1. Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.

2. In the interest of the workers concerned, and after consulting the most representative organizations of employers and workers, the competent authority may authorize exceptions to the provisions of paragraph 1 above in respect of certain categories of workers, as well as specified types of services provided by private employment agencies.

3. A Member which has authorized exceptions under paragraph 2 above shall, in its reports under article 22 of the Constitution of the International Labour Organization, provide information on such exceptions and give the reasons therefor.

Article 8

1. A Member shall, after consulting the most representative organizations of employers and workers, adopt all necessary and appropriate measures, both within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses.

2. Where workers are recruited in one country for work in another, the Members concerned shall consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment.

Article 9

A Member shall take measures to ensure that child labour is not used or supplied by private employment agencies.

Article 10

The competent authority shall ensure that adequate machinery and procedures, involving as appropriate the most representative employers' and workers' organizations, exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies.

Article 11

A Member shall, in accordance with national law and practice, take the necessary measures to ensure adequate protection for the workers employed by private employment agencies as described in Article 1, paragraph 1(b) above, in relation to:

(a) freedom of association;
(b) collective bargaining;
(c) minimum wages;
(d) working time and other working conditions;
(e) statutory social security benefits;
(f) access to training;
(g) occupational safety and health;
(h) compensation in case of occupational accidents or diseases;
(i) compensation in case of insolvency and protection of workers' claims;
(j) maternity protection and benefits, and parental protection and benefits.

Article 12

A Member shall determine and allocate, in accordance with national law and practice, the respective responsibilities of private employment agencies providing the services referred to in paragraph 1(b) of Article 1 and of user enterprises in relation to:

(a) collective bargaining;
(b) minimum wages;

(c) working time and other working conditions;
(d) statutory social security benefits;
(e) access to training;
(f) protection in the field of occupational safety and health;
(g) compensation in case of occupational accidents or diseases;
(h) compensation in case of insolvency and protection of workers' claims;
(i) maternity protection and benefits, and parental protection and benefits.

Article 13

1. A Member shall, in accordance with national law and practice and after consulting the most representative organizations of employers and workers, formulate, establish and periodically review conditions to promote cooperation between the public employment service and private employment agencies.

2. The conditions referred to in paragraph 1 above shall be based on the principle that the public authorities retain final authority for:

(a) formulating labour market policy;
(b) utilizing or controlling the use of public funds earmarked for the implementation of that policy.

3. Private employment agencies shall, at intervals to be determined by the competent authority, provide to that authority the information required by it, with due regard to the confidential nature of such information:

(a) to allow the competent authority to be aware of the structure and activities of private employment agencies in accordance with national conditions and practices;
(b) for statistical purposes.

4. The competent authority shall compile and, at regular intervals, make this information publicly available.

Article 14

1. The provisions of this Convention shall be applied by means of laws or regulations or by any other means consistent with national practice, such as court decisions, arbitration awards or collective agreements.

2. Supervision of the implementation of provisions to give effect to this Convention shall be ensured by the labour inspection service or other competent public authorities.

3. Adequate remedies, including penalties where appropriate, shall be provided for and effectively applied in case of violations of this Convention.

Article 15

This Convention does not affect more favourable provisions applicable under other international labour Conventions to workers recruited, placed or employed by private employment agencies.

Article 16

This Convention revises the Fee-Charging Employment Agencies Convention (Revised), 1949, and the Fee-Charging Employment Agencies Convention, 1933.

Article 17

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 18

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member 12 months afte · the date on which its ratification has been registered.

Article 19

1 A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 20

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and acts of denunciation communicated by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article 21

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 22

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 23

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides –

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 19 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 24

The English and French versions of the text of this Convention are equally authoritative.

Recommendation 188

RECOMMENDATION CONCERNING PRIVATE EMPLOYMENT AGENCIES

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-fifth Session on 3 June 1997, and

Having decided upon the adoption of certain proposals with regard to the revision of the Fee-Charging Employment Agencies Convention (Revised), 1949, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Private Employment Agencies Convention, 1997;

adopts, this nineteenth day of June of the year one thousand nine hundred and ninety-seven, the following Recommendation, which may be cited as the Private Employment Agencies Recommendation, 1997:

I. General provisions

1. The provisions of this Recommendation supplement those of the Private Employment Agencies Convention, 1997, (referred to as "the Convention") and should be applied in conjunction with them.

2. (1) Tripartite bodies or organizations of employers and workers should be involved as far as possible in the formulation and implementation of provisions to give effect to the Convention.

(2) Where appropriate, national laws and regulations applicable to private employment agencies should be supplemented by technical standards, guidelines, codes of ethics, self-regulatory mechanisms or other means consistent with national practice.

3. Members should, as may be appropriate and practicable, exchange information and experiences on the contributions of private employment agencies to the functioning of the labour market and communicate this to the International Labour Office.

II. Protection of workers

4. Members should adopt all necessary and appropriate measures to prevent and to eliminate unethical practices by private employment agencies. These measures may include laws or regulations which provide for penalties, including prohibition of private employment agencies engaging in unethical practices.

5. Workers employed by private employment agencies as defined in Article 1.1(b) of the Convention should, where appropriate, have a written contract of employment specifying their terms and conditions of employment. As a minimum requirement, these workers should be informed of their conditions of employment before the effective beginning of their assignment.

6. Private employment agencies should not make workers available to a user enterprise to replace workers of that enterprise who are on strike.

7. The competent authority should combat unfair advertising practices and misleading advertisements, including advertisements for non-existent jobs.

8. Private employment agencies should:

(a) not knowingly recruit, place or employ workers for jobs involving unacceptable hazards or risks or where they may be subjected to abuse or discriminatory treatment of any kind;

(b) inform migrant workers, as far as possible in their own language or in a language with which they are familiar, of the nature of the position offered and the applicable terms and conditions of employment.

9. Private employment agencies should be prohibited, or by other means prevented, from drawing up and publishing vacancy notices or offers of employment in ways that directly or indirectly result in discrimination on grounds such as race, colour, sex, age, religion, political opinion, national extraction, social origin, ethnic origin, disability, marital or family status, sexual orientation or membership of a workers' organization.

10. Private employment agencies should be encouraged to promote equality in employment through affirmative action programmes.

11. Private employment agencies should be prohibited from recording, in files or registers, personal data which are not required for judging the aptitude of applicants for jobs for which they are being or could be considered.

12. (1) Private employment agencies should store the personal data of a worker only for so long as it is justified by the specific purposes for which they have been collected, or so long as the worker wishes to remain on a list of potential job candidates.

(2) Measures should be taken to ensure that workers have access to all their personal data as processed by automated or electronic systems, or kept in a manual file. These measures should include the right of workers to obtain and examine a copy of any such data and the right to demand that incorrect or incomplete data be deleted or corrected.

(3) Unless directly relevant to the requirements of a particular occupation and with the express permission of the worker concerned, private employment agencies should not require, maintain or use information on the medical status of a worker, or use such information to determine the suitability of a worker for employment.

13. Private employment agencies and the competent authority should take measures to promote the utilization of proper, fair and efficient selection methods.

14. Private employment agencies should have properly qualified and trained staff.

15. Having due regard to the rights and duties laid down in national law concerning termination of contracts of employment, private employment agencies providing the services referred to in paragraph 1(b) of Article 1 of the Convention should not:

(a) prevent the user enterprise from hiring an employee of the agency assigned to it;

(b) restrict the occupational mobility of an employee;

(c) impose penalties on an employee accepting employment in another enterprise.

III. Relationship between the public employment service and private employment agencies

16. Cooperation between the public employment service and private employment agencies in relation to the implementation of a national policy on organizing the labour market should be encouraged; for this purpose, bodies may be established that include representatives of the public employment service and private employment agencies, as well as of the most representative organizations of employers and workers.

17. Measures to promote cooperation between the public employment service and private employment agencies could include:

(a) pooling of information and use of common terminology so as to improve transparency of labour market functioning;

(b) exchanging vacancy notices;

(c) launching of joint projects, for example in training;

(d) concluding agreements between the public employment service and private employment agencies regarding the execution of certain activities, such as projects for the integration of the long-term unemployed;

(e) training of staff;

(f) consulting regularly with a view to improving professional practices.

Recommendation 189

RECOMMENDATION CONCERNING GENERAL CONDITIONS TO STIMULATE JOB CREATION IN SMALL AND MEDIUM-SIZED ENTERPRISES

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-sixth Session on 2 June 1998, and

Recognizing the need for the pursuit of the economic, social, and spiritual well-being and development of individuals, families, communities and nations,

Aware of the importance of job creation in small and medium-sized enterprises,

Recalling the resolution concerning the promotion of small and medium-sized enterprises adopted by the International Labour Conference at its 72nd Session, 1986, as well as the Conclusions set out in the resolution concerning employment policies in a global context, adopted by the Conference at its 83rd Session, 1996,

Noting that small and medium-sized enterprises, as a critical factor in economic growth and development, are increasingly responsible for the creation of the majority of jobs throughout the world, and can help create an environment for innovation and entrepreneurship,

Understanding the special value of productive, sustainable and quality jobs,

Recognizing that small and medium-sized enterprises provide the potential for women and other traditionally disadvantaged groups to gain access under better conditions to productive, sustainable and quality employment opportunities,

Convinced that promoting respect for the Forced Labour Convention, 1930, the Freedom of Association and Protection of the Right to Organise Convention, 1948, the Right to Organise and Collective Bargaining Convention, 1949, the Equal Remuneration Convention, 1951, the Abolition of Forced Labour Convention, 1957, and the Discrimination (Employment and Occupation) Convention, 1958, will enhance the creation of quality employment in small and medium-sized enterprises and in particular that promoting respect for the Minimum Age Convention and Recommendation, 1973, will help Members in their efforts to eliminate child labour,

Also convinced that the adoption of new provisions on job creation in small and medium-sized enterprises, to be taken into account together with:

(a) the relevant provisions of other international labour Conventions and Recommendations as appropriate, such as the Employment Policy Convention and Recommendation, 1964, and the Employment Policy (Supplementary Provisions) Recommendation, 1984, the Co-operatives (Developing Countries) Recommendation, 1966, the Human Resources

Development Convention and Recommendation, 1975, and the Occupational Safety and Health Convention and Recommendation, 1981, and

(b) other proven ILO initiatives promoting the role of small and medium-sized enterprises in sustainable job creation and encouraging adequate and common application of social protection, including Start and Improve Your Business and other programmes as well as the work of the International Training Centre of the ILO in training and skills enhancement,

will provide valuable guidance for Members in the design and implementation of policies on job creation in small and medium-sized enterprises,

Having decided upon the adoption of certain proposals with regard to general conditions to stimulate job creation in small and medium-sized enterprises, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation;

adopts this seventeenth day of June of the year one thousand nine hundred and ninety-eight the following Recommendation which may be cited as the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998.

I. Definition, purpose and scope

1. Members should, in consultation with the most representative organizations of employers and workers, define small and medium-sized enterprises by reference to such criteria as may be considered appropriate, taking account of national social and economic conditions, it being understood that this flexibility should not preclude Members from arriving at commonly agreed definitions for data collection and analysis purposes.

2. Members should adopt measures which are appropriate to national conditions and consistent with national practice in order to recognize and to promote the fundamental role that small and medium-sized enterprises can play as regards:

(a) the promotion of full, productive and freely chosen employment;

(b) greater access to income-earning opportunities and wealth creation leading to productive and sustainable employment;

(c) sustainable economic growth and the ability to react with flexibility to changes;

(d) increased economic participation of disadvantaged and marginalized groups in society;

(e) increased domestic savings and investment;

(f) training and development of human resources;

(g) balanced regional and local development;

(h) provision of goods and services which are better adapted to local market needs;

(i) access to improved quality of work and working conditions which may contribute to a better quality of life, as well as allow large numbers of people to have access to social protection;

(j) stimulating innovation, entrepreneurship, technology development and research;

(k) access to domestic and international markets; and

(l) the promotion of good relations between employers and workers.

3. In order to promote the fundamental role of small and medium-sized enterprises referred to in Paragraph 2, Members should adopt appropriate measures and enforcement mechanisms to safeguard the interests of workers in such enterprises by providing them with the basic protection available under other relevant instruments.

4. The provisions of this Recommendation apply to all branches of economic activity and all types of small and medium-sized enterprises, irrespective of the form of ownership (for example, private and public companies, cooperatives, partnerships, family enterprises, and sole proprietorships).

II. Policy and legal framework

5. In order to create an environment conducive to the growth and development of small and medium-sized enterprises, Members should:

(a) adopt and pursue appropriate fiscal, monetary and employment policies to promote an optimal economic environment (as regards, in particular, inflation, interest and exchange rates, taxation, employment and social stability);

(b) establish and apply appropriate legal provisions as regards, in particular, property rights, including intellectual property, location of establishments, enforcement of contracts, fair competition as well as adequate social and labour legislation;

(c) improve the attractiveness of entrepreneurship by avoiding policy and legal measures which disadvantage those who wish to become entrepreneurs.

6. The measures referred to in Paragraph 5 should be complemented by policies for the promotion of efficient and competitive small and medium-sized enterprises able to provide productive and sustainable employment under adequate social conditions. To this end, Members should consider policies that:

(1) create conditions which:

(a) provide for all enterprises, whatever their size or type:

(i) equal opportunity as regards, in particular, access to credit, foreign exchange and imported inputs; and

(ii) fair taxation;

(b) ensure the non-discriminatory application of labour legislation, in order to raise the quality of employment in small and medium-sized enterprises;

(c) promote observance by small and medium-sized enterprises of international labour standards related to child labour;

(2) remove constraints to the development and growth of small and medium-sized enterprises, arising in particular from:

(a) difficulties of access to credit and capital markets;

(b) low levels of technical and managerial skills;

(c) inadequate information;

(d) low levels of productivity and quality;

(e) insufficient access to markets;

(f) difficulties of access to new technologies;

(g) lack of transport and communications infrastructure;

(h) inappropriate, inadequate or overly burdensome registration, licensing, reporting and other administrative requirements, including those which are disincentives to the hiring of personnel, without prejudicing the level of conditions of employment, the effectiveness of labour inspection or the system of supervision of working conditions and related issues;

(i) insufficient support for research and development;

(j) difficulties in access to public and private procurement opportunities.

(3) include specific measures and incentives aimed at assisting and upgrading the informal sector to become part of the organized sector.

7. With a view to the formulation of such policies Members should, where appropriate:

(1) collect national data on the small and medium-sized enterprise sector, covering inter alia quantitative and qualitative aspects of employment, while ensuring that this does not result in undue administrative burdens for small and medium-sized enterprises;

(2) undertake a comprehensive review of the impact of existing policies and regulations on small and medium-sized enterprises, with particular attention to the impact of structural adjustment programmes on job creation;

(3) review labour and social legislation, in consultation with the most representative organizations of employers and workers, to determine whether:

(a) such legislation meets the needs of small and medium-sized enterprises, while ensuring adequate protection and working conditions for their workers;

(b) there is a need for supplementary measures as regards social protection, such as voluntary schemes, cooperative initiatives and others;

(c) such social protection extends to workers in small and medium-sized enterprises and there are adequate provisions to ensure compliance with social security regulations in areas such as medical care, sickness, unemployment, old-age, employment injury, family, maternity, invalidity and survivors' benefits.

8. In times of economic difficulties, governments should seek to provide strong and effective assistance to small and medium-sized enterprises and their workers.

9. In formulating these policies, Members:

(1) may consult, in addition to the most representative organizations of employers and workers, other concerned and competent parties as they deem appropriate;

(2) should take into account other policies in such areas as fiscal and monetary matters, trade and industry, employment, labour, social protection, gender equality, occupational safety and health and capacity-building through education and training;

(3) should establish mechanisms to review these policies, in consultation with the most representative organizations of employers and workers, and to update them.

III. Development of an enterprise culture

10. Members should adopt measures, drawn up in consultation with the most representative organizations of employers and workers, to create and strengthen an

enterprise culture which favours initiatives, enterprise creation, productivity, environmental consciousness, quality, good labour and industrial relations, and adequate social practices which are equitable. To this end, Members should consider:

(1) pursuing the development of entrepreneurial attitudes, through the system and programmes of education, entrepreneurship and training linked to job needs and the attainment of economic growth and development, with particular emphasis being given to the importance of good labour relations and the multiple vocational and managerial skills needed by small and medium-sized enterprises;

(2) seeking, through appropriate means, to encourage a more positive attitude towards risk-taking and business failure by recognizing their value as a learning experience while at the same time recognizing their impact on both entrepreneurs and workers;

(3) encouraging a process of lifelong learning for all categories of workers and entrepreneurs;

(4) designing and implementing, with full involvement of the organizations of employers and workers concerned, awareness campaigns to promote:

(a) respect for the rule of law and workers' rights, better working conditions, higher productivity and improved quality of goods and services;

(b) entrepreneurial role models and award schemes, taking due account of the specific needs of women, and of disadvantaged and marginalized groups.

IV. Development of an effective service infrastructure

11. In order to enhance the growth, job-creation potential and competitiveness of small and medium-sized enterprises, consideration should be given to the availability and accessibility of a range of direct and indirect support services for them and their workers, to include:

(a) business pre-start-up, start-up and development assistance;

(b) business plan development and follow-up;

(c) business incubators;

(d) information services, including advice on government policies;

(e) consultancy and research services;

(f) managerial and vocational skills enhancement;

(g) promotion and development of enterprise-based training;

(h) support for training in occupational safety and health;

(i) assistance in upgrading the literacy, numeracy, computer competencies and basic education levels of managers and employees;

(j) access to energy, telecommunications and physical infrastructure such as water, electricity, premises, transportation and roads, provided directly or through private sector intermediaries;

(k) assistance in understanding and applying labour legislation, including provisions on workers' rights, as well as in human resources development and the promotion of gender equality;

(l) legal, accounting and financial services;

(m) support for innovation and modernization;

(n) advice regarding technology;
(o) advice on the effective application of information and communication technologies to the business process;
(p) access to capital markets, credit and loan guarantees;
(q) advice in finance, credit and debt management;
(r) export promotion and trade opportunities in national and international markets;
(s) market research and marketing assistance;
(t) assistance in product design, development and presentation;
(u) quality management, including quality testing and measurement;
(v) packaging services;
(w) environmental management services.

12. As far as possible, the support services referred to in Paragraph 11 should be designed and provided to ensure optimum relevance and efficiency through such means as:

(a) adapting the services and their delivery to the specific needs of small and medium-sized enterprises, taking into account prevailing economic, social and cultural conditions, as well as differences in terms of size, sector and stage of development;
(b) ensuring active involvement of small and medium-sized enterprises and the most representative organizations of employers and workers in the determination of the services to be offered;
(c) involving the public and private sector in the delivery of such services through, for example, organizations of employers and workers, semi-public organizations, private consultants, technology parks, business incubators and small and medium-sized enterprises themselves;
(d) decentralizing the delivery of services, thereby bringing them as physically close to small and medium-sized enterprises as possible;
(e) promoting easy access to an integrated range of effective services through "single window" arrangements or referral services;
(f) aiming towards self-sustainability for service providers through a reasonable degree of cost recovery from small and medium-sized enterprises and other sources, in such a manner as to avoid distorting the markets for such services and to enhance the employment creation potential of small and medium-sized enterprises;
(g) ensuring professionalism and accountability in the management of service delivery;
(h) establishing mechanisms for continuous monitoring, evaluation and updating of services.

13. Services should be designed to include productivity-enhancing and other approaches which promote efficiency and help small and medium-sized enterprises to sustain competitiveness in domestic and international markets, while at the same time improving labour practices and working conditions.

14. Members should facilitate access of small and medium-sized enterprises to finance and credit under satisfactory conditions. In this connection:

(1) credit and other financial services should as far as possible be provided on commercial terms to ensure their sustainability, except in the case of particularly vulnerable groups of entrepreneurs;

(2) supplementary measures should be taken to simplify administrative procedures, reduce transaction costs and overcome problems related to inadequate collateral by, for example, the creation of non-governmental financial retail agencies and development finance institutions addressing poverty alleviation;

(3) small and medium-sized enterprises may be encouraged to organize in mutual guarantee associations;

(4) the creation of venture capital and other organizations, specializing in assistance to innovative small and medium-sized enterprises, should be encouraged.

15. Members should consider appropriate policies to improve all aspects of employment in small and medium-sized enterprises by ensuring the non-discriminatory application of protective labour and social legislation.

16. Members should, in addition:

(1) facilitate, where appropriate, the development of organizations and institutions which can effectively support the growth and competitiveness of small and medium-sized enterprises. In this regard, consultation with the most representative organizations of employers and workers should be considered;

(2) consider adequate measures to promote cooperative linkages between small and medium-sized enterprises and larger enterprises. In this connection, measures should be taken to safeguard the legitimate interests of the small and medium-sized enterprises concerned and of their workers;

(3) consider measures to promote linkages between small and medium-sized enterprises to encourage the exchange of experience as well the sharing of resources and risks. In this connection, small and medium-sized enterprises might be encouraged to form structures such as consortia, networks and production and service cooperatives, taking into account the importance of the role of organizations of employers and workers;

(4) consider specific measures and incentives for persons aspiring to become entrepreneurs among selected categories of the population, such as women, long-term unemployed, persons affected by structural adjustment or restrictive and discriminatory practices, disabled persons, demobilized military personnel, young persons including graduates, older workers, ethnic minorities and indigenous and tribal peoples. The detailed identification of these categories should be carried out taking into account national socio-economic priorities and circumstances;

(5) consider special measures to improve communication and relations between government agencies and small and medium-sized enterprises as well as the most representative organizations of such enterprises, in order to improve the effectiveness of government policies aimed at job creation;

(6) encourage support for female entrepreneurship, recognizing the growing importance of women in the economy, through measures designed specifically for women who are or wish to become entrepreneurs.

V. Roles of organizations of employers and workers

17. Organizations of employers or workers should consider contributing to the development of small and medium-sized enterprises in the following ways:

(a) articulating to governments the concerns of small and medium-sized enterprises or their workers, as appropriate;

(b) providing direct support services in such areas as training, consultancy, easier access to credit, marketing, advice on industrial relations and promoting linkages with larger enterprises;

(c) cooperating with national, regional and local institutions as well as with intergovernmental regional organizations which provide support to small and medium-sized enterprises in such areas as training, consultancy, business start-up and quality control;

(d) participating in councils, task forces and other bodies at national, regional and local levels established to deal with important economic and social issues, including policies and programmes, affecting small and medium-sized enterprises;

(e) promoting and taking part in the development of economically beneficial and socially progressive restructuring (by such means as retraining and promotion of self-employment) with appropriate social safety nets;

(f) participating in the promotion of exchange of experience and establishment of linkages between small and medium-sized enterprises;

(g) participating in the monitoring and analysis of social and labour-market issues affecting small and medium-sized enterprises, concerning such matters as terms of employment, working conditions, social protection and vocational training, and promoting corrective action as appropriate;

(h) participating in activities to raise quality and productivity, as well as to promote ethical standards, gender equality and non-discrimination;

(i) preparing studies on small and medium-sized enterprises, collecting statistical and other types of information relevant to the sector, including statistics disaggregated by gender and age, and sharing this information, as well as lessons of best practice, with other national and international organizations of employers and workers;

(j) providing services and advice on workers' rights, labour legislation and social protection for workers in small and medium-sized enterprises.

18. Small and medium-sized enterprises and their workers should be encouraged to be adequately represented, in full respect for freedom of association. In this connection, organizations of employers and workers should consider widening their membership base to include small and medium-sized enterprises.

VI. International cooperation

19. Appropriate international cooperation should be encouraged in the following areas:

(a) establishment of common approaches to the collection of comparable data, to support policy-making;

(b) exchange of information, disaggregated by gender, age and other relevant variables, on best practices in terms of policies and programmes to create jobs and to raise the quality of employment in small and medium-sized enterprises;

(c) creation of linkages between national and international bodies and institutions that are involved in the development of small and medium-sized enterprises, including organizations of employers and workers, in order to facilitate:

(i) exchange of staff, experiences and ideas;

(ii) exchange of training materials, training methodologies and reference materials;

(iii) compilation of research findings and other quantitative and qualitative data, disaggregated by gender and age, on small and medium-sized enterprises and their development;

(iv) establishment of international partnerships and alliances of small and medium-sized enterprises, subcontracting arrangements and other commercial linkages;

(v) development of new mechanisms, utilizing modern information technology, for the exchange of information among governments, employers' organizations and workers' organizations on experience gained with regard to the promotion of small and medium-sized enterprises;

(d) international meetings and discussion groups on approaches to job creation through the development of small and medium-sized enterprises, including support for female entrepreneurship. Similar approaches for job creation and entrepreneurship will be helpful for disadvantaged and marginalized groups;

(e) systematic research in a variety of contexts and countries into key success factors for promoting small and medium-sized enterprises which are both efficient and capable of creating jobs providing good working conditions and adequate social protection;

(f) promotion of access by small and medium-sized enterprises and their workers to national and international databases on such subjects as employment opportunities, market information, laws and regulations, technology and product standards.

20. Members should promote the contents of this Recommendation with other international bodies. Members should also be open to cooperation with those bodies, where appropriate, when evaluating and implementing the provisions of this Recommendation, and take into consideration the prominent role played by the ILO in the promotion of job creation in small and medium-sized enterprises.

Convention 182

CONVENTION CONCERNING THE PROHIBITION AND IMMEDIATE ACTION FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOUR

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 87th Session on 1 June 1999, and

Considering the need to adopt new instruments for the prohibition and elimination of the worst forms of child labour, as the main priority for national and international action, including international cooperation and assistance, to complement the Convention and the Recommendation concerning Minimum Age for Admission to Employment, 1973, which remain fundamental instruments on child labour, and

Considering that the effective elimination of the worst forms of child labour requires immediate and comprehensive action, taking into account the importance of free basic education and the need to remove the children concerned from all such work and to provide for their rehabilitation and social integration while addressing the needs of their families, and

Recalling the resolution concerning the elimination of child labour adopted by the International Labour Conference at its 83rd Session in 1996, and

Recognizing that child labour is to a great extent caused by poverty and that the long-term solution lies in sustained economic growth leading to social progress, in particular poverty alleviation and universal education, and

Recalling the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989, and

Recalling the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998, and

Recalling that some of the worst forms of child labour are covered by other international instruments, in particular the Forced Labour Convention, 1930, and the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956, and

Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session, and

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

adopts this seventeenth day of June of the year one thousand nine hundred and ninety-nine the following Convention, which may be cited as the Worst Forms of Child Labour Convention, 1999.

Article 1

Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

Article 2

For the purposes of this Convention, the term "child" shall apply to all persons under the age of 18.

Article 3

For the purposes of this Convention, the term "the worst forms of child labour" comprises:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Article 4

1. The types of work referred to under Article 3(d) shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraphs 3 and 4 of the Worst Forms of Child Labour Recommendation, 1999.

2. The competent authority, after consultation with the organizations of employers and workers concerned, shall identify where the types of work so determined exist.

3. The list of the types of work determined under paragraph 1 of this Article shall be periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned.

Article 5

Each Member shall, after consultation with employers' and workers' organizations, establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to this Convention.

Article 6

1. Each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labour.

2. Such programmes of action shall be designed and implemented in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of other concerned groups as appropriate.

Article 7

1. Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.

2. Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:

(a) prevent the engagement of children in the worst forms of child labour;

(b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;

(c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;

(d) identify and reach out to children at special risk; and

(e) take account of the special situation of girls.

3. Each Member shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention.

Article 8

Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education.

Article 9

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 10

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

Article 11

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 12

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and acts of denunciation communicated by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article 13

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 14

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 15

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides —

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 11 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 16

The English and French versions of the text of this Convention are equally authoritative.

Recommendation 190

RECOMMENDATION CONCERNING THE PROHIBITION AND IMMEDIATE ACTION FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOUR

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 87th Session on 1 June 1999, and

Having adopted the Worst Forms of Child Labour Convention, 1999, and

Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Worst Forms of Child Labour Convention, 1999;

adopts this seventeenth day of June of the year one thousand nine hundred and ninety-nine the following Recommendation, which may be cited as the Worst Forms of Child Labour Recommendation, 1999.

1. The provisions of this Recommendation supplement those of the Worst Forms of Child Labour Convention, 1999 (hereafter referred to as "the Convention"), and should be applied in conjunction with them.

I. PROGRAMMES OF ACTION

2. The programmes of action referred to in Article 6 of the Convention should be designed and implemented as a matter of urgency, in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of the children directly affected by the worst forms of child labour, their families and, as appropriate, other concerned groups committed to the aims of the Convention and this Recommendation. Such programmes should aim at, inter alia:

(a) identifying and denouncing the worst forms of child labour;

(b) preventing the engagement of children in or removing them from the worst forms of child labour, protecting them from reprisals and providing for their rehabilitation and social integration through measures which address their educational, physical and psychological needs;

(c) giving special attention to:

  (i) younger children;

  (ii) the girl child;

  (iii) the problem of hidden work situations, in which girls are at special risk;

  (iv) other groups of children with special vulnerabilities or needs;

(d) identifying, reaching out to and working with communities where children are at special risk;

(e) informing, sensitizing and mobilizing public opinion and concerned groups, including children and their families.

II. HAZARDOUS WORK

3. In determining the types of work referred to under Article 3(d) of the Convention, and in identifying where they exist, consideration should be given, inter alia, to:

(a) work which exposes children to physical, psychological or sexual abuse;

(b) work underground, under water, at dangerous heights or in confined spaces;

(c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;

(d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;

(e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

4. For the types of work referred to under Article 3(d) of the Convention and Paragraph 3 above, national laws or regulations or the competent authority could, after consultation with the workers' and employers' organizations concerned, authorize employment or work as from the age of 16 on condition that the health, safety and morals of the children concerned are fully protected, and that the children have received adequate specific instruction or vocational training in the relevant branch of activity.

III. IMPLEMENTATION

5. (1) Detailed information and statistical data on the nature and extent of child labour should be compiled and kept up to date to serve as a basis for determining priorities for national action for the abolition of child labour, in particular for the prohibition and elimination of its worst forms as a matter of urgency.

(2) As far as possible, such information and statistical data should include data disaggregated by sex, age group, occupation, branch of economic activity, status in employment, school attendance and geographical location. The importance of an effective system of birth registration, including the issuing of birth certificates, should be taken into account.

(3) Relevant data concerning violations of national provisions for the prohibition and elimination of the worst forms of child labour should be compiled and kept up to date.

6. The compilation and processing of the information and data referred to in Paragraph 5 above should be carried out with due regard for the right to privacy.

7. The information compiled under Paragraph 5 above should be communicated to the International Labour Office on a regular basis.

8. Members should establish or designate appropriate national mechanisms to monitor the implementation of national provisions for the prohibition and elimination

of the worst forms of child labour, after consultation with employers' and workers' organizations.

9. Members should ensure that the competent authorities which have responsibilities for implementing national provisions for the prohibition and elimination of the worst forms of child labour cooperate with each other and coordinate their activities.

10. National laws or regulations or the competent authority should determine the persons to be held responsible in the event of non-compliance with national provisions for the prohibition and elimination of the worst forms of child labour.

11. Members should, in so far as it is compatible with national law, cooperate with international efforts aimed at the prohibition and elimination of the worst forms of child labour as a matter of urgency by:

(a) gathering and exchanging information concerning criminal offences, including those involving international networks;

(b) detecting and prosecuting those involved in the sale and trafficking of children, or in the use, procuring or offering of children for illicit activities, for prostitution, for the production of pornography or for pornographic performances;

(c) registering perpetrators of such offences.

12. Members should provide that the following worst forms of child labour are criminal offences:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; and

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties, or for activities which involve the unlawful carrying or use of firearms or other weapons.

13. Members should ensure that penalties including, where appropriate, criminal penalties are applied for violations of the national provisions for the prohibition and elimination of any type of work referred to in Article 3(d) of the Convention.

14. Members should also provide as a matter of urgency for other criminal, civil or administrative remedies, where appropriate, to ensure the effective enforcement of national provisions for the prohibition and elimination of the worst forms of child labour, such as special supervision of enterprises which have used the worst forms of child labour, and, in cases of persistent violation, consideration of temporary or permanent revoking of permits to operate.

15. Other measures aimed at the prohibition and elimination of the worst forms of child labour might include the following:

(a) informing, sensitizing and mobilizing the general public, including national and local political leaders, parliamentarians and the judiciary;

(b) involving and training employers' and workers' organizations and civic organizations;

(c) providing appropriate training for the government officials concerned, especially inspectors and law enforcement officials, and for other relevant professionals;

(d) providing for the prosecution in their own country of the Member's nationals who commit offences under its national provisions for the prohibition and immediate elimination of the worst forms of child labour even when these offences are committed in another country;

(e) simplifying legal and administrative procedures and ensuring that they are appropriate and prompt;

(f) encouraging the development of policies by undertakings to promote the aims of the Convention;

(g) monitoring and giving publicity to best practices on the elimination of child labour;

(h) giving publicity to legal or other provisions on child labour in the different languages or dialects;

(i) establishing special complaints procedures and making provisions to protect from discrimination and reprisals those who legitimately expose violations of the provisions of the Convention, as well as establishing helplines or points of contact and ombudspersons;

(j) adopting appropriate measures to improve the educational infrastructure and the training of teachers to meet the needs of boys and girls;

(k) as far as possible, taking into account in national programmes of action:

(i) the need for job creation and vocational training for the parents and adults in the families of children working in the conditions covered by the Convention; and

(ii) the need for sensitizing parents to the problem of children working in such conditions.

16. Enhanced international cooperation and/or assistance among Members for the prohibition and effective elimination of the worst forms of child labour should complement national efforts and may, as appropriate, be developed and implemented in consultation with employers' and workers' organizations. Such international cooperation and/or assistance should include:

(a) mobilizing resources for national or international programmes;

(b) mutual legal assistance;

(c) technical assistance including the exchange of information;

(d) support for social and economic development, poverty eradication programmes and universal education.

PROTOCOL OF 1996 TO THE MERCHANT SHIPPING (MINIMUM STANDARDS) CONVENTION, 1976

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office and having met in its Eighty-fourth Session on 8 October 1996, and

Noting the provisions of Article 2 of the Merchant Shipping (Minimum Standards) Convention, 1976 (referred to below as "the principal Convention"), which states in part that:

"Each Member which ratifies this Convention undertakes —

(a) to have laws or regulations laying down, for ships registered in its territory —

(i) safety standards, including standards of competency, hours of work and manning, so as to ensure the safety of life on board ship;

(ii) appropriate social security measures; and

(iii) shipboard conditions of employment and shipboard living arrangements, in so far as these, in the opinion of the Member, are not covered by collective agreements or laid down by competent courts in a manner equally binding on the shipowners and seafarers concerned;

and to satisfy itself that the provisions of such laws and regulations are substantially equivalent to the Conventions or Articles of Conventions referred to in the Appendix to this Convention, in so far as the Member is not otherwise bound to give effect to the Conventions in question"; and

Noting also the provisions of Article 4, paragraph 1, of the principal Convention, which states that:

"If a Member which has ratified this Convention and in whose port a ship calls in the normal course of its business or for operational reasons receives a complaint or obtains evidence that the ship does not conform to the standards of this Convention, after it has come into force, it may prepare a report addressed to the government of the country in which the ship is registered, with a copy to the Director-General of the International Labour Office, and may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health"; and

Recalling the Discrimination (Employment and Occupation) Convention, 1958, Article 1, paragraph 1, of which states that:

"For the purpose of this Convention the term 'discrimination' includes —

(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social

origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies"; and

Recalling the entry into force of the United Nations Convention on the Law of the Sea, 1982, on 16 November 1994, and

Recalling the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995, of the International Maritime Organization,

Having decided on the adoption of certain proposals with regard to the partial revision of the principal Convention, which is the fourth item on the agenda of the session, and

Having determined that these proposals should take the form of a Protocol to the principal Convention;

adopts, this twenty-second day of October one thousand nine hundred and ninety-six, the following Protocol, which may be cited as the Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976:

Article 1

1. Each Member which ratifies this Protocol shall extend the list of Conventions appearing in the Appendix to the principal Convention to include the Conventions in Part A of the Supplementary Appendix and such Conventions listed in Part B of that Appendix as it accepts, if any, in accordance with Article 3 below.

2. Extension to the Convention listed in Part A of the Supplementary Appendix that is not yet in force shall take effect only when that Convention comes into force.

Article 2

A Member may ratify this Protocol at the same time as or at any time after it ratifies the principal Convention, by communicating its formal ratification of the Protocol to the Director-General of the International Labour Office for registration.

Article 3

1. Each Member which ratifies this Protocol shall, where applicable, in a declaration accompanying the instrument of ratification, specify which Convention or Conventions listed in Part B of the Supplementary Appendix it accepts.

2. A Member which has not accepted all of the Conventions listed in Part B of the Supplementary Appendix may, by subsequent declaration communicated to the Director-General of the International Labour Office, specify which other Convention or Conventions it accepts.

Article 4

1. For the purposes of Article 1, paragraph 1, and Article 3 of this Protocol, the competent authority shall hold prior consultations with the representative organizations of shipowners and seafarers.

2. The competent authority shall, as soon as practicable, make available to the representative organizations of shipowners and seafarers information as to ratifications, declarations and denunciations notified by the Director-General of the International Labour Office in conformity with Article 8, paragraph 1, below.

Article 5

For the purpose of this Protocol, the Repatriation of Seafarers Convention (Revised), 1987, shall, in the case of a Member which accepts that Convention, be regarded as a replacement of the Repatriation of Seamen Convention, 1926.

Article 6

1. This Protocol shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

2. This Protocol shall come into force 12 months after the date on which the ratifications of five Members, three of which each have at least one million gross tonnage of shipping, have been registered.

3. Thereafter, this Protocol shall come into force for any Member 12 months after the date on which its ratification has been registered.

Article 7

A Member which has ratified this Protocol may denounce it whenever the principal Convention is open to denunciation in accordance with its Article 7, by an act communicated to the Director-General of the International Labour Office for registration. Denunciation of this Protocol shall not take effect until one year after the date on which it is registered.

Article 8

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications, declarations and acts of denunciation communicated by the Members of the Organization.

2. When the conditions provided for in Article 6, paragraph 2, above have been fulfilled, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Protocol shall come into force.

Article 9

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with

article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 10

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Protocol and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 11

For the purposes of revising this Protocol and closing it to ratification, the provisions of Article 11 of the principal Convention shall apply *mutatis mutandis*.

Article 12

The English and French versions of the text of this Protocol are equally authoritative.

Supplementary Appendix

Part A

Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133)
and
Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)

Part B

Seafarers' Identity Documents Convention, 1958 (No. 108)
Workers' Representatives Convention, 1971 (No. 135)
Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164)
Repatriation of Seafarers Convention (Revised), 1987 (No. 166)

Instrument

INSTRUMENT FOR THE AMENDMENT OF THE CONSTITUTION OF THE INTERNATIONAL LABOUR ORGANISATION

The General Conference of the International Labour Organisation,
Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-fifth Session on 3 June 1997,
and
Having decided upon the adoption of an amendment to the Constitution of the International Labour Organisation, a question which is included in the seventh item on the agenda of the Session; adopts, the nineteenth day of June of the year one thousand nine hundred and ninety-seven, the following instrument for the amendment of the Constitution of the International labour Organisation, which may be cited as the Constitution of the International Labour Organisation Instrument of Amendment, 1997.

Article 1

As from the date of the coming into force of this Instrument of Amendment, article 19 of the Constitution of the International Labour Organisation shall be amended by the insertion after paragraph 8 of the following new paragraph:

> "9. Acting on a proposal of the Governing Body, the Conference may, by a majority of two-thirds of the votes cast by the delegates present, abrogate any Convention adopted in accordance with the provisions of this article if it appears that the Convention has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the Organisation."

Article 2

Two copies of this Instrument of Amendment shall be authenticated by the signatures of the President of the Conference and of the Director-General of the International Labour Office. One of these copies shall be deposited in the archives of the International Labour Office and the other shall be communicated to the Secretary-General of the United Nations for registration in accordance with article 102 of the Charter of the United Nations. The Director-General will communicate a certified copy of the Instrument to all the Members of the International Labour Organisation.

Article 3

1. The formal ratifications or acceptances of this Instrument of Amendment shall be communicated to the Director-General of the International Labour Office, who shall notify the Members of the Organisation of the receipt thereof.

2. This Instrument of Amendment will come into force in accordance with the provisions of article 36 of the Constitution of the International Labour Organsation.

3. On the coming into force of this Instrument, the Director-General of the International labour Office shall so notify all the members of the International labour Organisation and the Secretary-General of the United Nations.

The foregoing is the authentic text of the instrument duly adopted by the General Conference of the International Labour Organisation during its Eighty-fifth Session which was held at Geneva and declared closed the 19 June 1997.