INDUSTRIAL RELATIONS

Application of the Principles of the Right to Organise and to Bargain Collectively, Collective Agreements, Conciliation and Arbitration, and Co-operation between Public Authorities and Employers' and Workers' Organisations

Eighth Item on the Agenda

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INTRODUCTION

At its 30th Session, the International Labour Conference decided to place on the agenda of its 31st Session the question of: (a) the application of the principles of the right to organise and to bargain collectively; (b) collective agreements; (c) conciliation and arbitration; (d) co-operation between public authorities and employers' and workers' organisations. It also decided that this question should be dealt with under the double-discussion procedure.

In accordance with the Standing Orders of the Conference, the Office prepared, and despatched to Governments in November 1947, a preliminary report on the law and practice concerning industrial relations containing four questionnaires on this subject. 1 The Governments were asked to send replies to the questionnaires as soon as possible, and in any case not later than 1 March 1948.

By 1 April 1948, the latest possible date in view of the preparation of the report, the Office had received replies from the Governments of the following 26 countries: Australia, Austria, Belgium, Bulgaria, Canada, China, Costa Rica, Denmark, Finland, France, Iceland, India, Iraq, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Panama, Poland, Portugal, Sweden, Switzerland, the Union of South Africa, the United Kingdom and the United States. The reply of the Portuguese Government relates only to the first three questionnaires; those of the Governments of Iraq and Panama relate only to the fourth questionnaire. The Danish Government accompanied its reply with the statements relating to these questionnaires communicated to the Danish Ministry of Social Affairs by the Danish Employers' Confederation and the Confederation of Danish Trade Unions. The Government of Iceland confined itself to making a number of general observations without enter-
ing into the details of the various questions. The Government of the United States sent detailed answers with regard to the first questionnaire, but made general observations only with regard to the other three questionnaires. The Government of Uruguay sent to the Office documentary information concerning the existing situation in Uruguay with regard to the various matters dealt with in the questionnaires, but did not reply to the questions asked.

The Standing Orders of the Conference also require the Office to draw up a further report on the basis of the replies of the Governments, and in this report to indicate the principal questions which require consideration by the Conference. This is the purpose of the present report.

Chapter I comprises four parts in which are reproduced, grouped together under each separate question, the replies of the Governments to the four questionnaires. At the beginning of this chapter have been placed the "General observations relating to the questionnaires as a whole", and at the beginning of the replies to each of the four questionnaires will be found, under the heading of "General observations", the observations of an introductory or general nature concerning the particular questionnaire. Chapter II contains a short analysis of the replies and an explanation of the reasons which have led the Office to prepare in their present form the proposed conclusions submitted to the Conference as a basis for discussion. The proposed conclusions are included in Chapter III; they indicate the principal points which appear to require examination by the Conference.

If the Conference, at the first discussion of this question, at its 31st Session, decides that certain aspects of the subject of industrial relations are suitable to form the subject of one or several Conventions or Recommendations, it will adopt such conclusions as it thinks fit, and these conclusions will then constitute the basis for the preparation by the Office of draft texts to be sent to the Governments for consideration with a view to enabling the Conference to take final decisions on the question at its next session.
CHAPTER I

REPLIES OF THE GOVERNMENTS

General Observations relating to the Questionnaires as a Whole

ICELAND

In this country, the legislation which was enacted in 1938 dealing with trade unions and industrial disputes has proved beneficial, and no voice has so far been raised either for its abolition or for any radical changes in it. The legislation in question secures for the organisations of workers and employers alike a complete freedom of operation, and it assumes as a general principle collective agreements, covering individual organisations, groups of organisations, or whole industries. It is the opinion of the Icelandic Government that complete right of organisation having been secured, saddling the parties concerned (organisations of workers and employers) with full responsibility not to abuse the power of their respective organisations or to misuse it for an ulterior purpose, it is well to prescribe by legislation at any rate the fundamental principles of how to use the right to organise and to make collective agreements, and how to deal with disputes and their settlement, except as directly regards wages, which the Government considers should in every case be a matter of free agreement between the organisations of workers and employers.

The experience gained in Iceland of the legislation on trade unions and industrial disputes, which has now been in operation practically unaltered for ten years, indubitably indicates it as desirable that the State authority should concern itself with these matters.

It is specially to be mentioned, with reference to questionnaire IV (Co-operation at the Level of the Undertaking, at the Level of the Industry, at the National Level), that co-operation as there envisaged is little known in Iceland, but of course most undertakings in the country are on a small scale as compared with those in the more populous countries.

The course of development of these matters in Iceland has been for the independent organisations of employers and workers to initiate of their own free will the different innovations which subsequently have either been embodied in legislation or incorporated in collective agreements between the respective parties. But so far this has not happened to any appreciable extent in regard to the matters specified in questionnaire IV.

Of course the Icelandic Government will closely watch the progress of this matter, and, as regards questionnaires I-III, it is in favour of the adoption of an international Convention respecting the matters set out there.
Switzerland

In order to clarify at the outset the attitude of the Swiss Government to this complicated problem of industrial relations, it may be stated that, in the view of that Government, and referring to the words used by the Office itself to the effect that "the best method of guaranteeing the exercise of the right of association and negotiation is certainly that of spontaneous agreement between the parties", the State should not intervene except to encourage or sanction such agreement. In other words, the most essential factor is that of mutual confidence between employers and workers. Switzerland, therefore, does not possess special legislation governing relations between employers' and workers' organisations, or limiting their field of activity. These relations are based on the traditional Swiss spirit of liberty and are not impaired by difficulties resulting from the very great contrasts which are found in some other countries. The Federal Resolution of 1 October 1941/23 June 1943 respecting the declaration of collective contracts of employment as generally binding has tended, to a large degree, to promote harmonious co-operation between the main employers' and workers' associations. But this co-operation is equally fruitful on the level of the undertaking, where it is making constant progress.

Consequently, from the purely Swiss point of view, the Government would be inclined to consider it superfluous to adopt international regulations governing this matter, feeling that the movements in question might be left to develop and consolidate their mutual agreements. However, the Swiss Government is mindful of the objects pursued by the International Labour Organisation and of the efforts which it is making to improve the working and living conditions of wage-earners. Switzerland, therefore, would not oppose the international regulation of industrial relations. But only certain questions of principle should be dealt with under a Convention, the remaining questions being dealt with in one or several Recommendations.

The Swiss Government bases this view on what has already happened in Switzerland, but it is aware that the problem does not arise in the same way in other countries.

It is in this spirit that the Government now deals with the various questions asked, it being understood that its replies do no more than indicate the manner in which it considers that international regulations might be drawn up.

United States

As was noted in the questionnaire on "Freedom of Association and Protection of the Right to Organise", the 30th Session of the Conference was of the opinion that the principles of the right to organise and to bargain collectively, collective agreements, conciliation and arbitration, and co-operation between the public authorities and employers' and workers' organisations "form an essential part of the general problem of freedom of association and industrial relations". The United States Government agrees with this conclusion, and has considered the preliminary report on industrial relations in connection with its reply to the questionnaire on freedom of association.
It was necessary to consider and reply to the questionnaire on freedom of association before the preliminary report on industrial relations was received. It is clear that these two questionnaires are closely interrelated. Had the preliminary report on industrial relations been received at the time when the Government was preparing its reply to the questionnaire on freedom of association, certain of the answers to that questionnaire would have been amplified and would have expressed more fully the basis for those answers.

The proposed provisions under Parts II, III and IV of the Report VIII (1) deal largely with matters of procedure and structural organisation in the operating relationships between management and employees' associations and between such associations and government. The United States Government does not believe that the soundness of particular procedures and structural relationships in the field of collective bargaining, conciliation and arbitration, and general co-operation can be soundly evaluated until the underlying principles or guiding criteria with respect to the relative rights of employee associations, Governments and employers are more fully analysed, considered and discussed. To approach international regulations on the basis of procedural uniformity in this wide field cannot alleviate the necessity for careful consideration and clear understanding of such underlying principles or guiding criteria if real international agreement is to be obtained.

Many of the questions dealt with in Parts II, III and IV of the Report VIII (1) are based upon assumptions which are foreign to the principles which underlie the system of industrial relations and collective bargaining which prevails in the United States. The preliminary report accompanying the questionnaire recognises that widely varying economic and social conditions exist throughout the world. In approaching relations between employers, employee associations and Governments on a wholly procedural basis in Parts II, III and IV, however, the report seems to have underestimated the influence which such varying conditions exert on the total labour-management-Government relationship. Although considerations of these procedures would, of necessity, lead to a discussion in the Conference of their effects under widely varying economic and social patterns in the various countries, the framework of assumptions contained in the preliminary report and the expressions of views therein are not such as to enable the Members to contribute to such discussion in the most informed and organised manner possible. The United States Government believes that if these problems in the field of industrial relations are to be considered in the detail indicated, discussion of these problems in specific national contexts is unavoidable, and that, to facilitate the most effective consideration of these subjects, the report should contain further information relative to the various systems of industrial relations from country to country. Although it may not be possible to include a report for each country, at least the countries which represent the prevailing types of labour-management relations should be covered.

By attempting to encompass this tremendously important and wide field in the detail required, and to evaluate particular procedures under widely varying economic and social conditions in the countries affected, the Conference may be trying to accomplish too much in this first discussion. The Convention on freedom of association has not yet been adopted. Agreement with respect to its terms,
explored and evaluated in their relation to existing practices, and
delineated with all possible clarity and exactness, must be our
primary concern. It is extremely doubtful whether the forthcoming
session of the Conference, with its crowded agenda, can do more in the
field of industrial relations than consider the principles which shall
control in the application of the right to organise and to bargain
collectively.

For the reasons outlined above, the Government has replied
neither affirmatively nor negatively to the questions included under
questionnaires II, III and IV. In lieu thereof, the need is suggested
for first securing more comprehensive expression of the safeguards to
be provided for freedom of association and the principles to control
in the operation of free associations in the various fields of industrial
relations. It is likewise suggested that, as a means of assisting the
Conference in its discussion, additional factual material of the kind
described be included in the report which the Office prepares on the
basis of replies from the Governments and submits to the Conference
in accordance with Article 32, paragraph 2, of the Standing Orders of
the Conference.
QUESTIONNAIRE I

APPLICATION OF THE PRINCIPLES OF THE RIGHT TO ORGANISE AND TO BARGAIN COLLECTIVELY

General Observations

CANADA

The Dominion authorities have already taken action with respect to the policy indicated by the replies to questions 1, 2, 3(a), 3(b), 3(c), 4, 5(a), 5(b), 6, 7, 9, 10 and 11(a).

DENMARK

Referring to the enclosed copies of the replies received from the central organisations to the questions contained in the questionnaire, the Government begs to observe that the exercise of the right to organise, in conformity with the historical development in Denmark of the trade union movement and the corresponding organisations of the employers, has been left in the main to the parties themselves, within the framework laid down by the Danish Fundamental Act, section 85.

The parties have very largely regulated the right to organise and the procedure concerning the introduction and enforcement of collective agreements. The legislation which, in addition, has been carried through concerning these questions, is also due to the initiative of the central organisations, and subsequent legislation has likewise been carried through with the full approval of both organisations.

LUXEMBOURG

By the terms of Article 26 of the Constitution of the Grand Duchy of Luxembourg, dated 17 October 1868, Luxembourg nationals have the right of association, and this right may not be made subject to any preliminary authorisation. Social evolution between the two world wars led the Luxembourg legislature to regulate the application of this constitutional principle both with regard to the recognition by the State of freedom of association and with regard to the recognition of workers' trade unions by employers and their organisations.

The Grand-ducal Government makes reference in this connection to the introduction to its reply to the questionnaire concerning freedom of association and protection of the right to organise drawn
up by the International Labour Office in its Report VII. It desires, however, to refer also to the Act of 11 May 1936 concerning the right of association, and to emphasise that the application of this Act, and of the related provisions, guarantees to workers' associations, as to employers' associations, the safeguarding of all their legitimate interests in accordance with the principles analysed in Part I of Report VIII (1).

The Luxembourg Government can support the drawing-up of international regulations only if they are in conformity with the legislation and practice of the Grand Duchy. In its opinion, such regulations might take the form of a Convention, in accordance with the proposals made by the International Labour Office in Report VIII (1) referred to above.

With regard to the provisions of the regulations to be adopted, the Luxembourg Government is able to give an affirmative reply to questions 1, 2, 3, 4, 5, 6, 7, 9 and 10. Several of them have already been answered indirectly on the basis of the questionnaire in Report VII concerning freedom of association and protection of the right to organise.

I. Desirability and Form of International Regulations

1. Do you consider that the International Labour Conference should adopt international regulations concerning the application of the principles of the right to organise and to bargain collectively, in the form of a Convention?

Australia

1. Yes. A Convention on this subject is the logical extension of the proposed regulations concerning freedom of association and protection of the right to organise to be dealt with under agenda item VII.

Austria

1. The special importance, in relation to social and economic policy, of the right to organise, both of employees and employers, makes the adoption of international regulations concerning the right to organise appear desirable. In so far as they concern the basic principles of the right to organise and of co-operation between the parties to collective agreements, the international regulations should take the form of a Convention, so as to ensure the effective application of these principles.

Belgium

1. Yes. It is pointed out that, in Belgium, the right of collective organisation is recognised and protected by the Freedom of Association Act of 24 May 1921. The right of collective bargaining is ensured
by the Legislative Order of 9 June 1945 issuing rules for joint com-
mittees.

1. Yes.

BULGARIA

1. Yes.

CANADA

1. Yes.

CHINA

1. Yes, the International Labour Conference should adopt
international regulations concerning the application of the principles
of the right to organise and to bargain collectively in the form of a
Convention.

1. Yes.

COSTA RICA

1. Yes.

DENMARK

1. The Government answers in the affirmative, in agreement
with the central organisations of Danish employers and workers.

1. Yes.

FINLAND

1. Yes.

FRANCE

1. Yes.

INDIA

1. Yes.

LUXEMBOURG

1. Yes.

MEXICO

1. Yes.

NETHERLANDS

1. Yes.

NEW ZEALAND

1. Yes.

NORWAY

1. Yes.

POLAND

1. Yes.

PORTUGAL

1. Yes. However, it appears desirable to clarify the termino-
logy. Portugal draws a distinction between the right of organisation,
that is to say, the right to establish employers' and workers' organisations, and the right of association, that is to say, the right to join an organisation which already exists. The right to organise includes both these rights. The questionnaire employs synonymously the expressions "right to organise" and "right of organisation". Consequently, the Portuguese Government proposes that, in this case, the expression "right to organise" should replace the expression "right of organisation".

SWEDEN

1. Yes.

SWITZERLAND

1. Yes, while reserving the right to specify later the points of secondary importance which, in the view of the Swiss Government, should be dealt with by a Recommendation rather than by a Convention.

UNION OF SOUTH AFRICA

1. Yes.

UNITED KINGDOM

1. It is agreed to be desirable to draw up international regulations on this matter. How far this is practicable, and within what limits of scope, it is impossible to say, pending the discussion at the forthcoming Conference at San Francisco, at which His Majesty's Government proposes to take a full part. Nor, pending the results of these discussions, is His Majesty's Government in a position to express a view as to whether the international regulations, if found to be practicable, should take the form of a Convention or of a Recommendation, or partly of a Convention and partly of a Recommendation.

Accordingly, the following replies to the questions addressed to Governments must be read in the light of the foregoing observations, and affirmative answers to questions enquiring whether certain matters might be included in international regulations should be regarded as an expression of view that effective guarantee should be provided in regard to the matters in question rather than as agreeing that it would be practicable to provide for those matters in the international regulations.

UNITED STATES

1. Yes.

II. Guarantee of the Workers' Right to Organise

2. Do you consider that the international regulations should include provisions regarding the protection of the workers' right to organise?
3. If so, do you consider that the international regulations should prohibit all acts of anti-union discrimination on the part of the employer or his agents through which

(a) the employment of a worker is made dependent on the condition that he shall not join a union or shall withdraw from one to which he already belongs?

(b) a worker is prejudiced by reason of his membership of a union or his union activities?

(c) a worker is dismissed by reason of his membership of a union or his union activities?

**Australia**

2. Yes.

3. Yes.

**Austria**

2 and 3. The right of every employee to organise, which is generally the only means by which he can mitigate the effects of his position of dependence in the industrial system, requires adequate protection; this should therefore be established in the international Convention.

In particular, the Convention should prohibit any stipulations or acts on the part of the employers or their agents with a view to—

(1) employing only workers who are not members of a trade union;

(2) prejudicing workers who are members of a union in relation to workers who are not members of a union;

(3) dismissing workers by reason of membership of a union or union activities.

It may be concluded, indirectly, from this positive aspect of the protection of the right to organise, that workers who do not belong to a trade union should not be allowed to suffer prejudice from the employers or their agents in relation to workers who are members of a union. With a view to taking account of every aspect of the principle of freedom of association, the adoption of a provision should, therefore, be considered to supplement the positive protection by ensuring "the negative aspect of freedom of association", i.e. the freedom not to associate. The inclusion of a provision of this nature is considered essential by the employers' representatives.

The Austrian Works Councils Act of 28 March 1947 (Bundesgesetzblatt No. 97) places the union activities of employees under legal protection. In fact, the employees' representatives in an undertaking can contest the dismissal of any employee before the Conciliation Board, if the dismissal of such employee is attributable to his union activities. If the Conciliation Board upholds the objection, the dismissal is declared null and void.
BELGIUM

2. Yes. In its reply to the questions concerning freedom of association and protection of the right to organise, the Belgian Government expressed the view that international regulations should guarantee the exercise of the right to organise.

3. (a) Yes.
   (b) Yes.
   (c) Yes.

In fact, the legislation of Belgium, like that of the majority of countries, prohibits on the part of the employer or his agents all acts of anti-union discrimination in respect of employment, even where they are not accompanied by coercive acts falling within the provisions of the penal law.

BULGARIA

2. Yes.
3. (a) Yes.
   (b) Yes.
   (c) Yes.

CANADA

2. Yes.
3. (a) Yes.
   (b) Yes.
   (c) Yes.

CHINA

2. Yes, the international regulations should include provisions regarding the protection of the workers' right to organise.
3. Yes.

COSTA RICA

2. Yes.
3. (a) Yes.
   (b) Yes.
   (c) Yes.

DENMARK

2 and 3. The Government answers in the affirmative, in agreement with the central organisations of Danish employers and workers.

FINLAND

2. Yes.
3. (a) Yes. Supervisory staff, that is to say, those who, while representing the employer, supervise the work, should not join trade unions which have to ensure the interests of the workers who are placed under their control. Such staff should belong to a separate trade union for supervisory staff.
   (b) Yes.
   (c) Yes.
FRANCE

2. Yes. France has always attached considerable importance to this principle, which has been once more affirmed in the Preamble to the French Constitution of 27 October 1946 which provides: "Every man may defend his rights and interests by collective action and may join the union of his own choosing".

It is pointed out that in France the expression traditionally used is that of "freedom of association".

3. (a)-(c) Yes, such practices are characteristic violations of freedom of association.

INDIA

2. Yes.
3. Yes.

LUXEMBOURG

2. Yes.
3. Yes.

MEXICO

2. Yes, Mexico has recognised the principle of the protection of the right to organise.

3. (a) Yes. Mexican legislation contains explicit provisions, the application of which hitherto has raised no difficulties.

(b) and (c) Yes.

NETHERLANDS

2. Yes.
3. (a) Yes.
(b) Yes.
(c) Yes.

NEW ZEALAND

2. Yes.
3. (a) Yes.
(b) Yes.
(c) Yes.

NORWAY

2. Yes.
3. (a) Yes.
(b) Yes.
(c) Yes.

POLAND

2. Yes.
3. (a) Yes.
(b) Yes.
(c) Yes.

PORTUGAL

2. Yes, provided that the words "right to organise" are replaced by the words "right of association", as this second chapter concerns
only the protection of the right of the worker to join an already existing trade union or to withdraw from membership of it.

3. The Government accepts this principle. It proposes merely that the drafting should be simplified by deleting the words "of anti-union discrimination".

(a)-(c) No observations. In Portugal, Legislative Decree No. 31,280 of 22 May 1940, Article 3, provides for the imposition of a fine on undertakings which dismiss or suspend a worker for being a member or official of a trade union, or because of the acts which he performs in this capacity.

SWEDEN

2. Yes.

3. Since the protection of the right to organise should be based on full equality and reciprocity between employers and workers, it would seem preferable to include in the international regulations a provision of general applicability; cf. Section 3, paragraph 3, of the Swedish Act of 11 September 1936 respecting the right of association and the right of collective bargaining (amended 17 May 1940), which runs as follows:

The right of association shall be deemed to be infringed if measures are taken either by employers or by employees to constrain any employee or employer, as the case may be, to refrain from becoming a member of or to resign from an association, to refrain from exercising his rights as a member of an association, or to refrain from working for an association or for the formation of an association, and likewise if measures are taken either by employers or by employees calculated to cause prejudice to an employee or an employer, as the case may be, on the ground that such employee or employer is a member of an association, exercises his rights as a member of an association, or works for an association or for the formation of an association. The right of association shall be deemed to be infringed even if the measures in question have been taken under a clause of a collective contract or any other contract.

SWITZERLAND

2. Yes.

3. (a)-(c) The right to organise should be protected in general terms on condition that it is not abused.

UNION OF SOUTH AFRICA

2. Yes.

3. (a)-(c) Yes.

UNITED KINGDOM

2. Yes.

3. (a)-(c) Yes, but see answers to questions 8 and 13. ¹

UNITED STATES

2. Yes. Because of the inferior economic security of individual workers, their right to organise and to bargain collectively can be

¹ See below, pp. 27. and 41.
effectively denied or restricted unless they are protected, while seeking employment and throughout the duration of their employment, from discrimination because of their exercise of their right.

3. (a) Yes. This provision would prohibit the popularly described "yellow-dog contract". The history of the development of workers' organisations would seem to demonstrate that such a provision is essential if the regulations are to assure to the worker the free and uncontrolled exercise of his right to organise.

(b) Yes. The Government agrees that an employer should be prohibited from taking any discriminatory action with respect to the workers' employment status because of his membership in a union or his union activities, whether it be reducing his pay, transferring him to a less desirable job, or any other discriminatory act. It would seem desirable, however, to prohibit not only penalties, as it were, for free acts of union association or activity, but also actions of restraint or coercion restricting or preventing free acts of union association or activity. For example, an employer should be prohibited from threatening reduction of pay in order to prevent a worker from becoming a member of a union, as well as from reducing his pay in order to penalise him because he has become a member of a union; and an employer should be prohibited from threatening dismissal in order to prevent a worker from becoming a member of a union, as well as from dismissing him because he has become a member of a union.

It is suggested that the following language might more aptly phrase the nature of a proper prohibition:

(b) a worker is interfered with, restrained or coerced with respect to his membership in a union or his union activities.

(bb) a worker is discriminated against by reason of his membership in a union or his union activities.

(c) Yes. See answer to 3 (a) above. Dismissal, no less than refusal of employment, should be prohibited if the worker is to be assured freedom in the exercise of his right to organise.

In view of the nature of question 5 (a) post, the Government understands that the provisions described under question 3 would not conflict with a requirement in a Member State that the employer take whatever action was deemed necessary to withdraw approval of an employer-dominated or company-dominated union.

In view of the nature of question 8 post, the Government understands that the provisions described under question 3 would not conflict with a provision in a freely concluded collective agreement making membership of a certain union a condition precedent to employment or a condition of continued employment.

III. Guarantee of the Rights of Workers' Organisations

4. Do you consider that the international regulations should include provisions regarding the protection of the rights of workers' organisations?
5. If so, do you consider that the international regulations should prohibit all acts on the part of employers, employers' organisations or their agents, infringing the workers' right to organise by

(a) furthering the establishment of unions under the domination of employers?

(b) interfering in the establishment or conduct of a union or supporting it by financial or other means?

AUSTRALIA

4. Yes.

5. (a) Yes.

(b) Yes, but consideration might be given to the addition of the words "apart from membership" to cover the situation where employers who have previously been employees and members of a union retain their membership even after becoming employers of labour in the same industry. Such instances are by no means rare in Australia, particularly in the case of small-scale employers in the engineering industry.

AUSTRIA

4 and 5. Any economic or social order based on democratic principles presupposes the existence of independent occupational organisations of workers (trade unions). If there is to be any union activity enjoying the confidence of the workers, the independence of the unions in relation to the employers and the employers' associations must be guaranteed in every respect. The establishment and continued existence of unions, and the fulfilment of their duties in the application of social and economic legislation, must alike be protected against any interference on the part of employers, whether by supervision, financial support, or otherwise. These principles should be clearly expressed in the Convention.

Austrian legislation lays special importance on the independence of the trade unions; in Section 3 of the Collective Agreements Act of 26 February 1947 (Bundesgesetzblatt No. 76) it is expressly provided that unions shall have no capacity to conclude collective agreements unless they are independent of the employers' associations.

BELGIUM

4. Yes. The protection of the rights of workers' organisations is the corollary to the individual freedom of association of the wage-earners.

5. Yes. The application of such provisions may present certain difficulties; however, this can be avoided or overcome where the workers' organisations are strongly organised. In Belgium this problem no longer arises in practice since the liberation of the country.
Bulgaria

4. Yes.
5. (a) Yes.  
(b) Yes.

Canada

4. Yes.
5. (a) Yes.  
(b) Yes, but the prohibition should not prevent employers providing by agreement (i) free transportation, (ii) access to employers' premises for union purposes, and (iii) payment to employee or union representative for time spent during working hours in conferring with employer or in attending to the business of the organisation.

China

4. Yes.
5. Yes.

Costa Rica

4. Yes.
5. (a) Yes.  
(b) Yes.

Denmark

4 and 5 (a) The Government answers in the affirmative, in agreement with the central organisations of Danish employers and workers.

5. (b) The Government reserves its position.  
The Danish Employers' Confederation replies in the negative, considering the provision unnecessary.  
The Confederation of Danish Trade Unions replies in the affirmative, but considers the term "financial support" to be somewhat vague.

Finland

4. Yes.
5. (a) and (b) Yes.

France

4. Yes, in so far as these provisions are compatible with the protection of the freedom of association of the workers.

5. (a) and (b) Yes. It is desirable to prohibit all infringements under whatever form they may be manifested.

India

4. Yes.
5. Yes.

Luxembourg

4. Yes.
5. Yes.

Mexico

4. Yes.
5. (a) Yes.  
(b) Yes.
Netherlands

4. Yes.
5. (a) Yes.
   (b) Yes.

New Zealand

4. Yes.
5. (a) Yes.
   (b) Yes.

Norway

4. Yes.
5. (a) Yes.
   (b) Yes, but on the understanding that prohibition of financial aid of this nature should not preclude contributions of the employer to welfare work.

Poland

4. Yes.
5. (a) Yes.
   (b) Yes.

Portugal

4. For the reasons already given, it is proposed that in the future proposed Convention the expression "right of organisation of the workers" should be substituted for the expression "rights of workers' organisations".

5. It is proposed only to delete the word "syndicale" in the French text.
   (a) and (b) There are no objections.

Sweden

4 and 5. The Swedish Government has no objection to the inclusion of provisions of this kind in the international regulations.

Switzerland

4. Yes, the Swiss Government considers that the rights of workers' organisations should be protected against any infringement of such rights.

5. (a) and (b) The Swiss Government has nothing to say on this question, as trade unions placed under the control or domination of employers appear from the outset to be without authority and without any chance of development.

Union of South Africa

4. Yes.

5. No, it is illogical for a State to encourage and support the formation and organisation of workers' organisations and then to make it a criminal offence for employers to encourage and support such organisations. It is clearly impracticable even to establish whether or not employers dominate unions. The most that the authorities can do is to provide that no recognition shall be given by
the State to trade unions whose constitutions subject them to direct or indirect control by employers or employers' organisations or otherwise prevent the union from administering their affairs free of control from employers or their agents. The means of effecting such control by the State or withholding recognition from such "dominated" unions should not be included in the international regulations but should be left to the legislation of national authorities.

United Kingdom

4. Yes.

5. While it is considered desirable that acts of this type by employers, employers' organisations or their agents should, to the extent that such acts tend to infringe the independence of unions, be avoided, it is doubtful whether it is practicable or appropriate to prohibit them by international regulations.

United States

4. Yes. Workers' organisations as well as individual workers may, in fact, be subjected to influence or control by the interference of other individuals or groups. In furtherance of free, democratic expression of workers' interests through their organisations, these organisations should be protected from such interference.

5. (a) Yes. The establishment of employer-dominated or company-dominated unions simulating worker-controlled unions has been an impediment to the development of workers' organisations. It has been found necessary to prohibit this practice by legislation in various countries and it is advisable, in the opinion of the United States Government, to prohibit it under the international regulations.

(b) Yes. The development of free workers' organisations democratically controlled by the workers may be impeded by employer interference. Any interference with the free autonomy of workers' organisations operates, to the extent of its potential influence, in opposition to the free exercise of the workers' rights freely to establish and govern their own organisations. It is considered advisable to prohibit such interference under the international regulations.

IV. Guarantee of the Right to Organise of Employers and Third Parties

6. Do you consider that the international regulations should include provisions regarding the protection of the right to organise of employers and third parties?

7. If so, do you consider that the international regulations should prohibit recourse to assault, intimidation and violence with the object of forcing an employer or a worker to join or not to join an organisation of employers or workers?
6. Yes.
7. Yes.

AUSTRIA

6 and 7. The right of the employers to organise in free occupational associations should be protected in the same way as that of the employees. Inclusion of the protective provisions mentioned in question 7 should provide adequate safeguards.

Reference has already been made, in the reply to question 3, to the need to regulate the negative aspect of freedom of association; the individual worker should be protected against any compulsion in respect of his joining or not joining a union. Such protection should not, however, be directly linked up with provisions to protect the rights of employers to form associations, but should be established within the framework of Heading II of the questionnaire.

BELGIUM

6. Yes.
7. Yes. Unlawful coercive acts generally constitute delicts at common law and are dealt with accordingly.

The provisions contemplated are in accordance with the Belgian Freedom of Association Act, which imposes penalties on any person who, for the purpose of compelling an individual to join or refrain from joining an association, resorts to violence, molestation or threats.

BULGARIA

6. Yes.
7. Yes.

CANADA

6. Yes.
7. Yes.

CHINA

6. Yes.
7. Yes.

COSTA RICA

6. Yes.
7. Yes.

DENMARK

6 and 7. The Government reserves its position.

The Danish Employers' Confederation observes in the first place that the questions about the rights of workers and employers ought to be co-ordinated so that the questions replied to in the case of the employers do not go further than those replied to in the case of the workers. It is only apt to create confusion when the guarantees of the right of the employers (but not those of the workers) to organise are mixed up with the question of third parties. The reply to Heading IV of the questionnaire is therefore given as if the text had read "Guarantees of the Right to Organise of Employers". The reply to question 6 is yes, if the words "or third parties" are omitted.
The reply to question 7 is yes, treating the question as if it had read "If so, do you consider that the international regulations should prohibit recourse to assault, intimidation and violence with the object of forcing an employer not to join an organisation of employers?" A corresponding question might naturally also be asked under Heading II in the case of the workers, but it has nothing to do with the reply to the guarantees of the right of the employer.

The Confederation of Danish Trade Unions replies to question 6 in the affirmative, in so far as regulations designed to protect the right to organise of the employers is concerned. As regards question 7, it feels a certain hesitation, as it seems somewhat difficult to draw distinctions as to which forms of agitation, public or direct approach, concerning the question of joining organisations of employers or workers should be considered not permissible, even though there can be no doubt that the recourse to violence is out of the question.

**FINLAND**

6. Yes.
7. Yes.

**FRANCE**

6. Yes, although it is difficult to include under the same head provisions relating to employers and provisions relating to third parties.
7. Yes.

**INDIA**

6. This is desirable.
7. Yes.

**LUXEMBOURG**

6. Yes.
7. Yes.

**MEXICO**

6. Yes.
7. Yes.

**NETHERLANDS**

6. Yes.
7. Yes.

**NEW ZEALAND**

6. Yes.
7. Yes.

**NORWAY**

6. Yes.
7. Yes.

**POLAND**

6. No. According to the Constitution of the International Labour Organisation (Preamble) and to the Declaration of Philadelphia (Chapters I, II and III), the object of the Organisation is to protect the rights of the workers; the specific structure of the Organisation gives employers the right to express their opinions concerning questions in which they are concerned and to co-operate in the realisation of the aims of the International Labour Organisation;
however, the object of the Organisation is not to protect the rights of employers who, moreover, are not exposed to any danger.

7. The guarantee of the rights of third parties, that is to say, unorganised workers, is, as experience has shown, a convenient pretext for restricting freedom of association and discriminating against trade unions.

PORTUGAL

6. The "right to organise" referred to in Heading IV of the questionnaire and in this question is more precisely the right of association or affiliation. The principle is accepted subject to this reservation as to terminology.

7. No observations.

SWEDEN

6 and 7. Cf. reply to question 3. The protection of the right to organise should cover all organised employers as well as workers and salaried employees. The international regulations should be limited to the protection of the positive right to organise, i.e., the right to establish or join organisations. The protection against measures which aim at inducing an unorganised person to join a trade union or an employers' organisation should thus be considered a matter falling outside the framework of these international regulations; protection in this respect may be provided by stipulations concerning illegal coercion in the general national legislation.

SWITZERLAND

6. The Swiss Government considers that the right to organise of employers and third parties should be guaranteed in the same way as that of workers' organisations.

7. Provisions of this kind might be found useful in those countries where the civil or penal law does not offer sufficient guarantee.

UNION OF SOUTH AFRICA

6. No. In countries in which the concept of the rule of law prevails, citizens have an unwritten but inherent right to take whatever action they wish, which does not interfere with the exercise of similar rights of others. Thus, in the Union of South Africa employers and third parties enjoy automatically the right to organise for any lawful purpose and do not require any legislation, national or international, to enable them to do so. If international regulations included such provisions, the wording thereof may well imply that countries which have no specific legislation on the point may well be precluded from ratification, whereas the right to organise may well be a basic constitutional, though unwritten, right of the citizen. It is felt that the right to organise should be assumed, if it is for lawful purposes, and not be specifically dealt with in the Convention. Alternatively, the Convention might include provisions of application only to such States as require legislation before such right can arise.
7. No. Clearly, assault, intimidation and violence are criminal acts irrespective of the circumstances in which they are employed. To prohibit them specifically implies that they would, in the absence of such prohibition, be lawful. The Union Government considers it unwise that any provision should be inserted in any law, national or international, which would tend to differentiate between criminal acts done against an industrial background and the same acts done against any other background.

**United Kingdom**

6. Yes.
7. Yes.

**United States**

6. Yes. The Government is uncertain of the sense in which the question refers to "third parties". It would seem that all persons within the scope of this Convention would be either (1) employers, (2) employers' organisations, (3) workers, or (4) workers' organisations.

All the provisions thus far referred to relate to protection of the workers' right freely to organise, against employer control or interference. Heading II of this questionnaire, of course, applies to forms of pressure through control over the employment relation available under a free economy to the employer. Heading III applies to other forms of pressure through organisations of workers available under a free economy to employers and employers' organisations. None the less, the international regulations are designed for application to widely varying and changing conditions. It is considered that they should include provisions likewise protecting the employers' right to organise. Existing or developing practices prejudicing the free exercise of the employers' right may well be demonstrated in the course of discussion. Both employers and workers should be protected in the free exercise of their right. Because of the variations in their relative economic position, the protection of their respective rights may be accomplished, however, by provisions dissimilar in their form.

7. No. First, see answer to question 6 above.
   The reply to the provision suggested is negative for these reasons:
   (1) The Government doubts whether the term "intimidation" unaccompanied by a more specific delineation of respective rights has the definiteness of concept requisite to an international regulation.
   (2) Assault and violence are already prohibited under the civil and criminal law of the various Member States. The United States Government doubts the soundness of attempting to control criminal conduct, already subject to criminal law enforcement in the Member States, through international labour regulations.

V. Union Security Clauses

8. Do you consider that the international regulations should include a provision to the effect that legislation—or a collective agreement concluded in conformity with legislation—requiring
members in a given union as a previous condition to engagement, or as a condition to maintenance in employment, is not incompatible with the provisions of the present regulations?

AUSTRALIA

8. Yes, on the understanding that "preference to unionists" would be covered in addition to the "closed shop" and "union shop".

AUSTRIA

8. Union security clauses in laws and agreements stipulating membership of a given union as a previous condition to employment are not in themselves incompatible with the spirit of the principles contained in the international regulations concerning the relations between employers and employees. In countries, however, where legislation to regulate freedom of association lays special importance on the complete freedom of every worker to make his own choice concerning membership of a trade union, a clause of the kind contemplated in question 8 would have to be considered as an infringement of the worker's freedom of association. In drafting the relative provisions of the Convention, consideration should therefore be given to the principle that such clauses in collective agreements are only admissible and valid in so far as they are in conformity with national laws and regulations.

BELGIUM

8. No. Such a provision would be contrary to freedom of association, which includes not only the right to associate and to join a trade union of one's own choosing, but also the right not to associate.

BULGARIA

8. Yes.

CANADA

8. Yes, to the extent that proposed Dominion legislation in the section quoted below permits employers and trade unions by collective agreements to reach voluntary arrangements concerning union membership and its maintenance, it is regarded as compatible with principles protecting the right to organise and bargain collectively:

(1) Nothing in this Act prohibits the parties to a collective agreement from inserting in the collective agreement a provision requiring, as a condition of employment, membership in a specified trade union, or granting a preference of employment to members of a specified trade union.

(2) No provision in a collective agreement requiring an employer to discharge an employee because such employee is or continues to be a member of, or engages in activities on behalf of, a union other than a specified trade union, shall be valid.
CHINA

8. Yes.

COSTA RICA

8. No. Costa Rican legislation prohibits preferential hiring or union shop clauses which are considered to be inappropriate, especially in a country such as Costa Rica whose industrial development is still only just beginning.

DENMARK

8. The Government reserves its position.
   The Danish Employers' Confederation considers such a provision unfortunate and unnecessary.
   The Confederation of Danish Trade Unions observes that in the case of a series of Danish agreements provisions are contained about membership in a certain trade union as a previous condition to engagement or maintenance of employment, a provision which it does not consider that it can abandon, for which reason it is not able to accept the contents of question 8.

FINLAND

8. This should be left to national legislation, because it is dealt with in different ways in various countries.

FRANCE

8. In view of the affirmative replies given to questions 3 and 6 of this questionnaire, such a provision would be incompatible with the clauses considered. Any provision in a legislative enactment or a collective agreement intended to force a worker to belong or not to belong to a particular trade union, under the threat of not being engaged or of losing his employment, is, especially in those countries in which there exists a plurality of trade unions, incompatible not only with the principle of freedom of association but also with the principle of freedom to work.

INDIA

8. The inclusion of such a provision in the international regulations would infringe on the worker's individual freedom.

LUXEMBOURG

8. As is shown by the Office analysis as set forth on page 27 of its Report VIII (1), the question of union security clauses is still a very controversial one and has led to very different solutions in the various countries. In these circumstances, the Luxembourg Government considers that any international regulation of this question
would be premature. In any event, it could not approve any provision which might oblige States to institute a "closed shop", even by indirect means.

**Mexico**

8. When replying to this question, it is necessary to take account of different situations which arise, especially with regard to maintenance in employment. When a trade union is established for a given occupation, or where, after its establishment, it is accorded juridical recognition, that is to say, the right to conclude collective agreements, the worker may continue in his employment without joining the trade union. On the other hand, a worker who enters an occupation with regard to which there already exists a collective agreement, including a union membership clause, is obliged to join the trade union. Bearing in mind this distinction, it should be provided that a legal stipulation, or a clause in an agreement concluded and signed in conformity with legislation, requiring newly-engaged workers to be members of the existing trade union representing the majority of the workers is not incompatible with the provisions of the international regulations, but that a stipulation or clause requiring a worker to be a member of a trade union which is in course of being established in the trade in which he works, even where such trade union obtains the right to conclude collective agreements, would be incompatible with the international regulations.

**Netherlands**

8. No.

**New Zealand**

8. Yes.

**Norway**

8. In Norway it is an established system that trade union membership is not a previous condition to engagement, and the Government will not recommend that the Convention permit the practice of closed shop clauses. Nor are union shop clauses at present practised in Norway, but the Government will not oppose a formulation of the Convention which will render possible such a system in countries wanting it.

**Poland**

8. Yes.

**Portugal**

8. The Portuguese Government cannot accept this restriction of the right of free association or affiliation.

In Portugal, the law guarantees to the workers the right to join or not to join existing trade unions or to withdraw from the same (National Labour Code, Article 41; Legislative Decree No. 23050, Articles 22 and 23). At the same time, the law prohibits collective agreements from including provisions imposing compulsory trade union membership (Legislative Decree No. 36173, Article 7, No. 2).
To require membership of a trade union as a condition precedent to employment is exactly the same thing as making trade union membership compulsory. Compulsory membership is incompatible with the principle of freedom of association affirmed in the Preamble to the Constitution of the International Labour Organisation and in the Declaration of Philadelphia.

For these reasons the Portuguese Government cannot accept the principle underlying question 8.

**Sweden**

8. No.

**Switzerland**

8. Although a provision providing for the "closed shop" and "union shop" would not impose on States an obligation to establish these two systems, the Swiss Government, nevertheless, is opposed in principle to these so-called union security clauses.

**Union of South Africa**

8. Yes.

**United Kingdom**

8. It is difficult to see how legislation requiring membership of a given trade union as a previous condition to engagement or as a condition to maintenance in employment could be regarded as other than incompatible with provisions on the lines of those envisaged in question 3. While the same considerations may not apply with equal force to the inclusion of such a requirement in collective agreements, since these latter embody the workers' own decisions, it would seem preferable, in view of its acutely controversial and difficult nature, not to attempt to deal with this matter in the international regulations.

**United States**

8. It does not seem that there is the unanimity of opinion relative to the appropriateness of "closed shop" or "union shop" clauses to warrant inclusion of provisions relative to this question in international regulations. Indeed, the Resolution adopted at the 30th Session seems already, on the matter of policy, to have decided this question. We refer to its statement, Part II, paragraph 9 (2):

It should be understood, however, that a provision in a freely concluded collective agreement making membership of a certain trade union a condition precedent to employment or a condition of continued employment does not fall within the terms of this Resolution.

In so far as the words "a freely concluded collective agreement" raise considerations relative to the democratic establishment and operation of unions and employer organisations, the relative bargaining rights of unions when two or more exist, or government action establishing a union or conferring on one union monopoly rights, these matters may more appropriately be discussed in connection with other provisions, especially question 9.
VI. Guarantee of the Principle of Collective Bargaining

9. Do you consider that the international regulations should include a provision making it an obligation for employers or employers' organisations on the one hand, and for workers' organisations on the other, to give effect to the principles of union recognition and collective bargaining?

AUSTRALIA

9. Yes.

AUSTRIA

9. One of the most important functions of trade unions is the conclusion of collective agreements to ensure suitable conditions of employment to their members. In order that they may effectively fulfil this important function, there should be legal recognition of the trade unions and of their right to bargain collectively and to conclude collective agreements.

The international regulations should be confined to general principles, so as to leave room for differences in the provisions of national laws and regulations concerning the right to conclude collective agreements.

In Austria, under the provisions of the Collective Agreements Act, the capacity of occupational associations of employers and employees to conclude collective agreements is subject to certain conditions, e.g., the associations must include among their objects, as provided in their rules, the regulation of conditions of employment within the limits of their competence; their sphere of activities must cover a comparatively wide field, both from the occupational and territorial points of view; they must be economically of a certain importance by reason of their membership and range of activities; and, finally, they must be independent of each other. The fulfilment of these conditions is to be verified by the statutory authorities, which are required to deprive an occupational association of the capacity to conclude collective agreements which it was previously recognised to possess, if it is shown that the above-mentioned conditions are no longer fulfilled.

BELGIUM

9. Yes, in the form of a Recommendation.

The Belgian Government considers that the very framing of the question, which does not in any way specify how and to what extent it will be necessary "to give effect to the principles of union recognition and collective bargaining", indicates that it would be difficult, at the present time, to include a regulation in such broad terms in an international Convention.
Bulgaria

9. Yes.

Canada

9. Yes, but in regard to collective bargaining, effect should be limited to bargaining in good faith and should not extend to compulsion in reaching agreement.

China

9. Yes.

Costa Rica

9. Yes.

Denmark

9. The Government answers in the affirmative, in agreement with the central organisations of Danish employers and workers.

Finland

9. Yes.

France

9. Yes.

India

9. Yes. Existing legislation already provides for the compulsory recognition of trade unions.

Luxembourg

9. Yes.

Mexico

9. Yes.

Netherlands

9. No obligation should be placed upon employers or employers' organisations, and upon workers' organisations, to recognise each other and bargain collectively. Mutual recognition is rather a question of gradual development and growing confidence, and should be in the hands of the parties concerned. In countries, however, where there is no effective application of the principles of union recognition and collective bargaining by mutual agreement, the national authorities should guarantee that there is no unreasonable refusal to recognise unions and bargain collectively.

New Zealand

9. Yes.
Norway

9. Yes.

Poland

9. The mutual nature of the obligation covered by this paragraph might constitute an unnecessary restriction against trade unions which, under conditions in a non-socialised economy, can only be said as a matter of form to have a position equal to that of their economic opponents.

Portugal

9. There are no objections, provided that it is understood that the principle of recognition of organisations in no way implies the requirement of compulsory membership as a condition of employment.

Sweden

9. Yes.

Switzerland

9. The Swiss Government sees no objection to the international regulation of the principle of the obligation imposed on employers' and workers' organisations to give recognition to each other or to bargain collectively. However, it would prefer to leave it to those concerned to conclude on a voluntary basis such collective agreements as appear to them to be useful and necessary for the maintenance of social peace.

Union of South Africa

9. No, nor should any such "obligation" exist in national legislation. These organisations should rely on their numerical strength and organisation for the effectiveness of the recognition accorded to them by employers and employers' organisations, but there is no objection to the regulations giving unions the right to bargain on behalf of their members if the latter so desire, and, in such circumstances, requiring the employer in the last resort to negotiate with the unions so authorised, in respect of members in his employ.

United Kingdom

9. No. It is considered that the principles of union recognition and collective bargaining can only effectively be implemented by their progressive development on a voluntary basis. It is thought to be impracticable to attempt to regulate such matters by international regulations.

United States

9. Yes. The Government believes, however, that a determined effort must be made to arrive at common understanding and agreement relative to "the principles of union recognition and collective
bargaining to which employers' and workers' organisations are obliged to give effect. And it considers that an effort must also be made to express these principles with greater clarity and definiteness. This provision is central to the whole Convention. If these principles are not delineated with greater definiteness, the reality of mutual international commitment is diminished. Under this circumstance, the national enforcement machinery considered post must, of necessity, result only in the implementation of the existing policies of the various national Governments.

All of the proposed provisions of the Convention relate to protection from the employer or from the respective free associations. Although this is an important phase of the problem, equally important is government interference with freedom of association. It therefore seems highly important that consideration of existing practices and problems should be equally pertinent to this field and that the provisions of the Convention protecting the right to organise and to bargain collectively should establish the rights which the Governments of the Members are bound not to negate.

VII. Supervisory Measures

10. Do you consider that the international regulations should specify the obligation to establish appropriate machinery for the purpose of ensuring respect for the right to organise?

AUSTRALIA

10. Yes, subject to the addition of the words "if necessary" after the word "establish", as adopted at the 30th Session for a similar provision in the questionnaire on freedom of association.

AUSTRIA

10. The international regulations should be confined to laying a general obligation on all States Members ratifying the Convention to ensure in an appropriate manner the exercise of the right to organise, so that due account may be taken of existing differences in statutory or other measures in force in the various countries.

BELGIUM

10. No. It may be observed that, in Belgium, the affording of a remedy against infringement of the right to organise is, by virtue of the Freedom of Association Act, a matter for the ordinary courts. This is a logical system, freedom of association being guaranteed by the Constitution.

BULGARIA

10. Yes.
Canada

10. Yes, although under proposed Dominion legislation the courts are used to protect the right to organise, the court may order damages and reinstatement.

China

10. Yes.

Costa Rica

10. Yes.

Denmark

10. The Government answers in the affirmative, in agreement with the central organisations of Danish employers and workers.

Finland

10. This should be left to national legislation.

France

10. Yes, subject to a more thorough study of the *modus operandi* suggested. It would be important in any event to avoid a multiplicity of legal derogations.

India

10. Yes. But it should be left to the discretion of the national authority to decide what would be the appropriate machinery.

Luxembourg

10. Yes.

Mexico

10. Yes. It should be left to each country to establish this machinery in such a form as it considers appropriate; in Mexico, there are conciliation and arbitration boards.

Netherlands

10. The principle that appropriate machinery should exist in each country should be included in the Convention. It should be left to each country, however, to decide what machinery should be charged with the duties concerned.

New Zealand

10. Yes.
Norway

10. Such regulations would be without interest as far as Norway is concerned. It is realised, however, that in certain countries it would be of importance to establish appropriate machinery for the purpose of ensuring respect for the right to organise. The Convention should leave the establishment of such machinery to be decided by the respective countries.

Poland

10. Yes.

Portugal

10. Yes.

Sweden

10. Special administrative machinery for the purpose of ensuring respect for the right to organise should not be established. On the other hand, it seems proper that—as in the case of Sweden—disputes relating to interpretation and application of existing collective agreements should be dealt with by a special tribunal, the Labour Court.

Switzerland

10. No; or at most, such a provision should be included only in a Recommendation.

Union of South Africa

10. No—unless what is contemplated is the normal method of making infringement of such rights a criminal offence enforceable by normal police action and prosecution. Special extraordinary machinery is not desirable.

United Kingdom

10. Yes, where this is necessary in the light of national circumstances.

United States

10. Yes, if it is necessary to ensure the respect of the right.

VIII. Methods of Applying the International Regulations

11. Do you consider that the international regulations should state that effect may be given to the present Convention:

(a) By means of legislation?
INDUSTRIAL RELATIONS

(b) By means of agreements between the organisations of employers and workers?

(c) By means of a combination of (a) and (b)?

12. In case of an affirmative reply to question 11 (b) or (c), do you consider that the following conditions should be fulfilled:

(a) The employers' and workers' organisations should recognise one another and undertake to provide effective guarantees for the exercise of the right of employers and workers to organise and to bargain collectively?

(b) The employers' and workers' organisations parties to such agreements should include a substantial proportion of all employers and employed persons in the country concerned?

AUSTRALIA

11. Provision should be made for implementing by any of (a), (b) or (c).

12. (a) Yes.
   (b) Yes.

AUSTRIA

11 and 12. As appears from the survey of law and practice, and especially from the conclusions set out on pp. 29-31 of Report VIII (1), the methods employed in the various States to guarantee the right to organise and to bargain collectively differ very widely. This clearly indicates that it is not desirable to include any too rigid provisions in the Convention, but only a provision requiring each State ratifying the Convention to take measures to ensure in an appropriate manner the effective activity of occupational associations and the exercise of their right to bargain collectively, without prescribing specific details of the methods for obtaining this object.

In Austria, the occupational associations receive general recognition and play an important statutory role in the field of social legislation. Their right to conclude collective agreements is established by law.¹

BELGIUM

11. Effect might be given by means of a combination of legislation and agreements between the organisations of employers and workers.

Belgium has experience of national agreements concluded between the representative organisations of employers and workers.

At the National Labour Conference of 16-17 June 1947 these organisations signed a national agreement relating to the general

¹ See above, under question 9, p. 28.
principles of the rules concerning trade union delegates of the employees in undertakings.

12. (a) Yes.
   (b) Yes.

**Bulgaria**

11. (a) Yes.
12. (a) Yes.

**Canada**

11. (a) Yes, by means of legislation.
   (b) See answer to (a).
   (c) See answer to (a).
12. (a) No answer required.
   (b) No answer required.

**China**

11. The international regulations should state that effect may be given to the present Convention by means of (a) and (b).
12. Yes.

**Costa Rica**

11. (a) Yes. It is considered that legislation is the surest method for countries such as Costa Rica in which agricultural activities predominate and where the workers are not strongly conscious of class distinctions.
12. —.

**Denmark**

11. The Government reserves its position.
   The Danish Employers' Confederation considers it most expedient that effect should be given on the basis of agreements between organisations of employers and workers. The solution suggested under (b) should therefore be the primary one, and legislation as under (a) only an alternative one.

   The Confederation of Danish Trade Unions observes that in view of the development which has taken place in Denmark the questions which are dealt with in the proposed Convention are hardly of topical interest for the further development of the rights of the industrial organisations and extension of collective agreements, and, as far as Denmark is concerned, the requisite further development may possibly be made on the basis of agreements between the central organisations; as, however, the question concerns not only Denmark, but a number of other countries, in which obstacles have been placed in the way of the establishment of industrial organisations and the conclusion of collective agreements, not only by the employers but also by the Governments, it considers that it should favour the view that effect should be given to international provisions by means of legislation.
12. The Government reserves its position.
   The Danish Employers' Confederation replies—
   (a) Yes.
(b) It is considered to be a natural condition for the establishment of a collective agreement that the organisation of workers should include the majority of the workers employed by a concern. The text of the question might, however, convey the impression that membership of the organisation was to be obligatory, and the Federation therefore observes that, in its opinion, in a free, democratic community membership should rest on the principle of voluntariness.

FINLAND

11. (a) —.
   (b) —.
   (c) Either under (a) or (b).

12. (a) Yes.
   (b) Yes.

FRANCE

11. (a) and (b) It is for the State, the protector of public liberties, to ensure respect of freedom of association, which is one of the fundamental liberties of modern society. However, a law can do no more than lay down general principles, and it would be for collective agreements to determine in detail the conditions under which the right to organise might be exercised, for instance, at the place where work is carried on.

   (c) Yes, on the understanding that excessively rigid rules should not be laid down, so that each country might adopt the formula which appeared to it to be best suited to its tradition.

12. (a) Such a provision might be dangerous because of the conflicting interests of the various organisations concerned. It is for the public authorities to assess the representative character of the organisations called upon to negotiate collective agreements, especially where these agreements have to be formally approved and made applicable to all the employers and workers included within their scope.

   (b) Yes, subject to the remarks made in the reply to question 13 below.

INDIA

11. It would be preferable to give effect to the Convention by legislation. In countries in which industrial relations are not very highly developed, agreements between employers' and workers' organisations may not be effective. More so in those countries where trade unions are run by outsiders.

12. Yes—in cases where the Convention can be given effect to by agreement.

LUXEMBOURG

11 and 12. In the opinion of the Luxembourg Government, the international regulations should provide that effect might be given to the Convention by means of a combination (a) of legislation, (b) of agreements concluded between employers' and workers' organisations. To ensure that these agreements should be effective,
it would clearly be necessary to make them subject to the conditions indicated in questions 12 (a) and (b), to which the Luxembourg Government replies in the affirmative.

**MEXICO**

11. (a)-(c) The combination of the two methods is preferable, but of course the Convention lays down only the minimum protection which may be exceeded by national legislation or collective agreements.

12. (a) and (b) It is necessary to take account of employers who are not members of organisations. It is suggested, therefore, that, at the beginning of paragraphs (a) and (b), the words "Employers or " should be inserted. Moreover, this would make the provision more in accordance with question 4 of questionnaire II, concerning collective agreements.

**NETHERLANDS**

11. (a) No.  
   (b) No.  
   (c) Yes.  

12. (a) Yes.  
   (b) Yes.

**NEW ZEALAND**

11. Legislation acceptable, but collective agreements will be supported if by that means a greater measure of agreement is possible.  
12. —.

**NORWAY**

11. In countries like Norway, where the workers' and the employers' organisations are strong and well developed, voluntary agreements between the two parties have proved a sound basis for the application of the principles now to be incorporated in international regulations. It is realised, however, that the Convention should also take into consideration current practice in a series of other countries, where conditions may indicate other forms of protection of these principles. The International Labour Conference therefore should consider all the alternatives mentioned under (a), (b) and (c). At the same time, it is desirable that the Convention be given an adaptive form, in order to prevent its ratification and application by the Members from being repressed by special regulations, etc., of minor real importance.

12. In the light of the view expressed under 11, the questions 12 (a) and (b) are answered in the affirmative.

**POLAND**

11. (a) Yes.  
   (b) No, it is only legislation which gives a certain guarantee of the effective application of the regulations.  
   (c) No.  

12. (a) and (b) These are covered by the reply to question 11.
Portugal

11. In Portugal the application of the principles concerning the guarantee of the right to organise and to bargain collectively is ensured solely by means of legislation. This legislation declares that collective agreements may contain only clauses relating to the labour contract and to the obligations and rights flowing from it (Legislative Decree 36173, Article 5).

For this reason it is suggested that, as regards this point, the future proposed Convention should declare that agreements between organisations and the combination of the two methods will be used only in the event of an omission or insufficiency in the national legislation, and always under conditions laid down by that legislation if such conditions exist.

12. No observations are made, provided that those made with regard to question 11 are accepted.

Sweden

11. (a) Yes.
12. —.

Switzerland

11. (b) Agreements between organisations of employers and workers appear to the Swiss Government to be the most effective method of ensuring the application of the international regulations. (c) The effectiveness of the method proposed could be increased, where necessary, by certain legislative measures.

12. (a) and (b) Mutual recognition of each other by employers' and workers' organisations is essential for the conclusion of agreements. In the view of the Swiss Government, however, the provisions suggested under this question would be best included in a Recommendation.

Union of South Africa

11. (a) Yes.
(b) No.
(c) No.
12. Falls away.

United Kingdom

11 and 12. It seems clear that, if a Convention containing provisions of the kind envisaged in this questionnaire may only be given effect to by legislative action, there would be little likelihood of obtaining widespread ratification. Accordingly, it is suggested that the international regulations should state that effect may be given to any Convention adopted in regard to the matters covered in this questionnaire by any of the means set out in (a), (b) or (c) of question 11, but should not require the introduction of legislation or the conclusion of specific agreements where the objects of the Convention are effectively secured by other means.

Nevertheless, as is pointed out in the text of the Report VIII (1) (pages 29-31), very great difficulties arise in an attempt to provide that a Convention of general application (that is, a Convention not
confined to a single industry or to a very limited number of industries) may be implemented by means of collective agreements. Question 12 illustrates these difficulties—and indeed question 12 (a) is far from clear. Obviously the Convention cannot be claimed to be implemented in a country as a whole unless the organisations of employers and workers parties to collective agreements which carry out the provisions of the Convention include a substantial proportion of all employers and employed persons in the country concerned; and accordingly some such criterion as that set out in 12 (b) is essential. It is more doubtful whether such a criterion should be included in the international regulations. And the question whether any other criteria should be applied requires further examination.

UNITED STATES

11 and 12. The Government is inclined to the opinion that the regulations need not specify how a Member State should proceed in order to secure effective compliance with its terms. To the extent that the Convention sets forth the nature and extent of the respective rights, it is considered that it should, likewise, provide that Members are bound to establish appropriate machinery, if necessary, to ensure respect for the rights and to comply with their obligations. Agreement on a uniform procedural method of accomplishing this result does not seem important and might easily place impediments in the course of individual members confronted with widely varying conditions.

If, however, it is not agreed that no regulations on this subject are needed, the Government approves the type of provision indicated by an affirmative answer to question 11 (c).

* * *

13. Have you any proposal or suggestion to put forward on any point relating to the question of the application of the principles of the right to organise and to bargain collectively, which has not been mentioned in the present questionnaire?

FRANCE

13. In the event of an affirmative reply being given to question 12 (b), it might be profitable to consider the methods of application of the measure therein suggested.

INDIA

13. (1) The regulations should not apply to employment in the armed and police forces of the Government.

(2) Nothing in the regulations should be construed as preventing Government from imposing, in respect of employment in its adminis-
trative services, such restrictions as may be considered necessary in
the public interest.

(3) Nothing in the regulations should be construed as giving
protection to any organisation or worker from the consequences of
an illegal act.

LUXEMBOURG

13. The Luxembourg Government has no further proposals or
suggestions to put forward. Its only desire is that the question of the
application of the principles of the right to organise and to bargain
collectively may find an amicable solution which will satisfy all the
interests involved and take national conditions into account.

SWEDEN

13. The Swedish Government considers it important that the
scope of the proposed international Convention should be explicitly
limited to relations between employers and workers. The definition
of "employer" and "worker" should be left to the national
legislation of each country. This would facilitate ratification of a
possible international Convention by Sweden; in this country certain
questions are pending with regard to the right of organisation and
collective bargaining of certain categories who, from the point of
view of civil law, can hardly be considered as "workers" but yet
are in a dependent position in relation to a person who has entrusted
them with a commission. Furthermore, it may be pointed out that
such problems which have led to the inclusion of the "foreman's
clause" in the above-mentioned Swedish Act respecting the right of
association and the right of collective bargaining have not been
considered in the questionnaire. Cf. Section 3, last paragraph, of the
Act, which runs as follows:

The provisions of this section shall not be a hindrance to the inclusion
in a contract of a stipulation that a foreman shall not be a member of
an association the aim of which is to defend the interests of the employees
subordinate to him as against the employer. Further, the said provisions
shall not apply to any measures based on such a stipulation. The expres­
sion "foreman" (arbetsledare) shall mean a person who is appointed to
act as the representative of the employer in directing, distributing and
supervising work which is carried out by employees subordinate to him
and in which he himself does not take part otherwise than incidentally.

Finally, the Convention should include an explicit stipulation
to the effect that provisions of collective agreements or judicial
acts, by which the right to organise and to bargain collectively is
infringed, are null and void.

SWITZERLAND

13. In any event, the public authorities should remain in the
background and leave it to the appropriate economic organisations
to take the initiative in mutual negotiations, except in so far as
encouraging them or supporting them in their activities is concerned.
Union of South Africa

13. Yes. The Convention should apply only to those industrial workers who, together with their unions, are subject to a recognition under the laws of the national authority relating to collective bargaining, etc., and in respect of whom, consequently, labour inspection services operate. In many countries, for instance, agricultural and domestic service workers and other smaller categories of workers are excluded from the scope of wage regulating legislation for various reasons: to debar such countries from ratification because the scope of their industrial wage fixation laws is not all-embracing would, in the opinion of the Union Government, be unwise.

United Kingdom

13. The precise form of these proposed international regulations must depend to some extent on the form of Convention adopted on freedom of association, on which the views of His Majesty's Government have already been forwarded to the Office.

United States

13. Additional suggestions have been made above in connection with the questions to which they most closely relate.
QUESTIONNAIRE II

COLLECTIVE AGREEMENTS

General Observations

BELGIUM

In Belgium, collective agreements are concluded through the joint committees, the rules concerning which were issued by the Legislative Order of 9 June 1945 or, outside these committees, between an employer, a group of employers or one or several employers’ organisations on the one hand, and one or several workers’ organisations on the other hand. By virtue of the Order of the Regent of 27 July 1946, issued in execution of the Legislative Order mentioned above, only the trade union organisations representative of the workers may be represented in the joint committees. Those trade unions are considered as representative which are attached to a national organisation including at least 30,000 members.

By the terms of Article 12, § 1, of the Legislative Order of 9 June 1945, a Royal Order may be issued, at the request of the joint committee through which a collective agreement has been concluded, or at the request of a representative organisation concerned, to give binding force to a collective agreement, which thus acquires the character of a regulation, the contravention of which is punishable in accordance with Article 16 of the said Legislative Order.

Where there has been no Royal Order concerning the collective agreement, the competent courts nevertheless apply its provisions in cases of litigation concerning individual contracts of employment. In fact, they consider that the collective agreement amounts to a trade practice. By virtue of Article 3, § 3, of the Act of 10 March 1900 concerning the labour contract, in the absence of provisions to the contrary, the practice of the trade applies to individual contracts of employment with regard to points on which the parties have made no provision.

DENMARK

Apart from the Act concerning the Permanent Court of Arbitration, Danish legislation does not contain any regulations as to the form and interpretation of collective agreements. The Permanent Court of Arbitration deals with questions of breach of collective agreements, however, so that the Court has, to a certain extent, interpreted and amplified these agreements.

The question of the interpretation of collective agreements, however, is as a main rule decided by industrial arbitration in
conformity with the Standard Rules for the Settlement of Labour Disputes of 1908, or the corresponding rules contained in the collective agreements made between the parties.

Luxembourg

In order to afford a legal basis for the conclusion of collective agreements and for mutual recognition of workers' and employers' organisations, a Grand-ducal Order of 23 January 1936 set up a National Labour Council for conciliation in collective disputes. Under the auspices of this Council, the competence of which was extended subsequently to relations between employees and their employers, the system of collective agreements, a subject of considerable dispute until that time, was made general without any difficulty, to the great benefit of wage-earners as well as of the economy itself, stability and social peace thereby becoming assured. Thus, on the eve of the Second World War, 90 per cent. of the workers in the Grand Duchy, with the exception of agricultural workers, enjoyed the benefit of collective agreements concluded by all the industrial undertakings of any importance.

After the liberation, the National Labour Council was replaced by the National Conciliation Office, established under the National Labour Conference by the Grand-ducal Order of 8 October 1945. This Order improved the pre-war legislation in particular by the fact that, in order to make use of every possible means of guaranteeing industrial peace, it supplemented the conciliation procedure of the old Council by introducing a system of arbitration and compulsory extension of collective agreements. It also afforded a due place in the machinery to the occupational organisations or trade associations most representative both of wage-earners and of employers, the two parties being jointly represented under the chairmanship of the Minister of Labour or his deputy.

Like the pre-war Council, the Office which replaced it in October 1945 did not take long to prove its value. Thus, the system of collective agreements having been made general without any serious difficulties simply by the intervention of this conciliation and arbitration machinery, the Luxembourg legislature has so far been able to leave in abeyance the pre-war proposals for the preparation of general legislation concerning collective labour agreements. However, the Grand-ducal Government is aware of the value of international regulation of this matter, because such regulation, provided that it can be ratified by the Grand Duchy, would enable it to perfect its national legislation relating to the question.

I. Desirability and Form of International Regulations

1. Do you consider that the International Labour Conference should adopt international regulations regarding collective agreements in the form of a Convention and one or several Recommendations?
2. If the reply to question 1 is in the affirmative, do you consider that the Conference should adopt:

(a) a Convention relating to the points covered by questions 4, 5, 6 and 7?

(b) a Recommendation relating to the points covered by questions 3, 8, 9 and 10?

**Australia**

1. Yes.

2. (a) A Convention should relate to the points covered by questions 3, 4 and 5.

 (b) A Recommendation should relate to the points covered by questions 8 and 10.

**Austria**

1 and 2. The regulation of conditions of employment by means of collective agreements has developed to such an extent in nearly all States that the time may now be considered opportune for the adoption of international regulations concerning this question.

The special importance of collective agreements in the sound and peaceful settlement of social relations is a strong argument for a Convention giving sanction on a firm and strict basis to the more important principles involved. As indicated in the questionnaire, the fundamental principles concerning the definition and legal effect of collective agreements should be included in the Convention, while those provisions of a more procedural character, dealing with, e.g., machinery and methods of collective bargaining, should be reserved for adoption in the form of a Recommendation. This would make allowances for differences in method and procedure in the various States.

The Convention should therefore be confined to regulation of the matters covered by questions 4, 5, 6 and 7 (a).

**Belgium**

1. Yes. The International Labour Conference should adopt international regulations regarding collective agreements in the form of a Convention and several Recommendations. Several Recommendations are, in fact, desirable, in view of the present position and economic and social evolution of the various countries and of the different degrees of advancement of national legislations.

2. The Belgian Government considers that the Conference should adopt:

 (a) a Convention relating to the points covered by questions 4, 5, 6 and 7;

 (b) Recommendations relating to the points covered by questions 3, 8, 9 and 10.
Bulgaria

1. Yes.
2. (a) Yes.
   (b) Yes.

Canada

1. Yes.
2. (a) Yes, with respect to questions 4, 5 and 6 only.
   (b) Yes, including question 7 also.

China

1. The International Labour Conference should adopt international regulations regarding collective agreements in the form of a Convention and one Recommendation.
2. Yes.

Costa Rica

1. Yes.
2. (a) Yes.
   (b) Yes.

Denmark

1 and 2. The Government reserves its decision pending negotiations at the Conference.

The Danish Employers' Confederation considers that the international regulations regarding collective agreements should take the form of a Recommendation, or, if required, several Recommendations. Question 2, therefore, falls away.

The Confederation of Danish Trade Unions replies to question 1 in the affirmative, and likewise considers that a Convention should be adopted comprising questions 4, 5, 6 and 7. However, it reserves the right to decide finally upon its attitude to the problems contained in question 7 at the meeting at San Francisco, as the deliberations up till now have rather made it take the view that the subject matter of question 7 should take the form of a Recommendation, and, with a view to Danish conditions, it would have some hesitation respecting what has been stated under question 7 (b): that without being members of the contracting organisations employers and workers shall be given an opportunity to submit observations and objections against collective agreements which will lay down the general lines for the working conditions and terms of their engagements.

Finland

1. Yes.
2. (a) Yes; with the reservation that the matters covered by question 7 should be included in a Recommendation.
   (b) Yes, as regards questions 8 and 9, but No, as regards 3 and 10.

France

1. Yes.
2. The Conference should adopt:
(a) a Convention relating to the points covered by questions 4, 5, 6, 7, subject to the observations made when replying to questions 5 and 6;
(b) a Recommendation relating to the points covered by questions 3, 8, 9 and 10.

**India**

1. Yes.

2. (a) Yes, except in regard to 7. This provides that collective agreements “may be rendered applicable”, etc. By its very nature the point should be dealt with in a Recommendation rather than a Convention.
   (b) Yes.

**Luxembourg**

1. The Luxembourg Government considers that the International Labour Conference should adopt international regulations concerning collective agreements in the form of a Convention and one or several Recommendations.

2. The Luxembourg Government considers that the Conference should adopt:
   (a) a Convention relating to the points covered by questions 4, 5, 6 and 7;
   (b) a Recommendation relating to the points covered by questions 3, 8, 9 and 10.

**Mexico**

1 and 2. A Recommendation is considered preferable owing to its flexible nature, because the ratification of a Convention would raise too many difficulties for the various countries, in view of the existing differences in customs, traditions, legislation and even national temperament. The evolution of collective agreements is taking place in particular conditions according to the nature of the struggle between employers and workers, and, for these reasons, Mexico advises the adoption of regulations less rigid than a Convention.

These regulations might include the following points from the questionnaire: 3, 4, 6, 7 (a) and (b), and 8 (a) and (b). Point 5 would not be included, because it is clear that the workers will wish to take advantage of the most favourable conditions. Point 9 would not be included either, in view of the fact that the violation of collective agreements is dealt with under all legislative systems, nor Point 10, because this function of the inspectors is a little outside those duties attributed to them in paragraph 2 of Article 3 of the Convention adopted on this question by the 30th Session of the International Labour Conference, although in Mexico the inspectors supervise the application of all provisions of labour legislation.

**Netherlands**

1. Yes.

2. (a) No. A Recommendation.
   (b) Yes.
### New Zealand

1. Yes.
2. (a) Yes.
   (b) Yes.

### Norway

1. Yes.
2. (a) The Convention should relate to Points 4, 5 and 6.
   (b) The Recommendation should relate to Points 3, 8, 9 and 10.

### Poland

1. Yes.
2. (a) Yes.
   (b) Yes.

### Portugal

1. Yes, in the form of a Convention and a Recommendation.
2. (a) and (b) This solution is accepted, with the proviso that the principle contained in question 7 (b) should also be included in the Recommendation.

### Sweden

1. Yes.
2. (a) The points covered by questions 4 and 5 (and possibly also the points covered by the questions 8 (a) and 9—cf. replies to these questions) should be regulated in a Convention.
   (b) The points covered by questions 3 and 8 (b) (and possibly also the points covered by questions 8 (a) and 9—cf. replies to these questions) should be dealt with in a Recommendation.

### Switzerland

1 and 2. Collective agreements have operated in Switzerland for a long time and Swiss experience of such agreements has been very good. The Government would prefer the International Labour Conference to confine itself to the adoption of one or more Recommendations dealing with this question, in order that due regard may be paid to the great differences existing between national regulations and in order to preserve the flexibility of such regulations which, generally speaking, have proved efficacious.

### Union of South Africa

1. Yes.
2. (a) Yes.
   (b) Question 3, Yes; 8, No; 9, No; 10, Yes.

### United Kingdom

1 and 2. See reply to question 1 of questionnaire I. *

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1 See below, pp. 67 and 72.
2 See above, p. 10.
II. Collective Bargaining Machinery

3. Do you consider that it should be provided, in a Recommendation, that Governments should establish appropriate machinery which would be available to assist the parties in the conclusion, revision and renewal of collective agreements?

AUSTRALIA

3. The establishment of appropriate machinery with the addition of the words "where necessary" should be included in the Convention. This would be a stronger way of supporting the principle than by inclusion in a Recommendation.

AUSTRIA

3. The conclusion and revision of collective agreements should as a matter of principle be the exclusive prerogative of the parties concerned; collective bargaining, if carried out by the contracting parties free from all outside influences, will generally lead to a solution corresponding to the economic circumstances. Intervention by outside authorities will be desirable or necessary only if it is requested by the parties or is considered indispensable by the public authorities in the interests of industrial peace.

With these reservations as to principle, the Austrian Government suggests that a general provision should be adopted, in the form of a Recommendation, to the effect that the Governments should set up appropriate machinery which would be available to give assistance in the conclusion, revision or renewal of collective agreements whenever a request is made by one of the parties or a proposal to this effect is made by a public authority.

BELGIUM

3. Yes. In Belgium, most collective agreements are concluded through the joint committees established by Royal Order in each branch of industry, commerce, and agriculture, at the request of, or after consultation with, the employers' and workers' organisations concerned.

BULGARIA

3. Yes.

CANADA

3. Yes.

CHINA

3. Yes.
REPLIES OF THE GOVERNMENTS

3. Yes.

Costa Rica.

Denmark

3. The Government replies in the affirmative, in agreement with the central organisations of Danish employers and workers.

Finland

3. No. In Finland, there is no such machinery and it is not even being contemplated.

France

3. Yes, provided that the provisions of the Recommendation are sufficiently broad to enable each country to choose a formula appropriate to its needs. It will be remembered that the French Act of 23 December 1946 respecting collective labour agreements provides in Article 1 (Article 31 M et seq. of Book I of the Labour Code) for the convening of joint committees composed of representatives of the most representative occupational organisations of employers and employees for the purpose of concluding, renewing or varying collective labour agreements. These committees are convened by the Minister of Labour or his representative.

India

3. Yes.

Luxembourg

3. Yes.

Mexico

3. Yes.

Netherlands

3. For countries where the parties or one of the parties are as yet insufficiently developed to negotiate independently, such a provision appears to be desirable.

New Zealand

3. Yes.

Norway

3. The basic principle must be that conclusion, revision and renewal of collective agreements should be left to the parties to settle through free bargaining, and any public machinery to assist in the bargaining activities would, at any rate from a Norwegian point of view, seem unnecessary. But where bargaining fails to succeed, it should be the task of conciliation machinery to attempt a settlement. The Recommendation must leave it to the States
Members to decide whether such machinery shall be used by the parties on a voluntary or a compulsory basis, but it is emphasised that the compulsory conciliation system should carry the same weight as a system designed to assist the parties only when they find it necessary to apply for intervention.

**Poland**

3. No. In the social and economic conditions existing in the majority of countries, such machinery would not give any guarantee that it would not influence developments in the matters concerned in a manner unfavourable to the workers.

**Portugal**

3. Yes. Effect is given to this principle in Portuguese legislation (Legislative Decree No. 36173, Article 26), providing that the social action services and delegations of the National Labour Institute should guide the parties in collective bargaining and in the drawing up of provisions.

**Switzerland**

3. The Swiss Government sees no necessity for such a provision. The conclusion, revision and renewal of collective agreements should depend in principle on the free will of the parties. Nevertheless, the State may lend them its good offices in cases where they do not reach agreement and where they desire such intervention. But the establishment of special machinery is not required for this purpose.

**Union of South Africa**

3. Yes.

**United Kingdom**

3. There would be no objection to this being covered in a Convention if a Convention is found to be practicable.

III. Definition, Legal Effect and Extension of Collective Agreements

A. **Definition of Collective Agreements**

4. *Do you consider that collective agreements might be defined as agreements regarding conditions of work concluded between*
an employer, a group of employers or an employers' organisation on the one hand, and one or several organisations of workers on the other?

Australia

4. Yes.

Austria

4. The definition of "collective agreements" should be sufficiently general and comprehensive to include all possible types of collective agreement, as regards both the content of the agreement and the parties concluding it.

The contents of a collective agreement may comprise provisions of two kinds. First, there will be provisions relating to the extent of the rights and duties arising out of the contract of employment; this part, which forms the main substance of the agreement, constitutes the general rules governing contracts of employment covered by the collective agreement. Secondly, the collective agreement may contain provisions not directly concerned with individual contracts of employment, but which govern the mutual relationships between the parties to the collective agreement (contractual aspects of the collective agreement, etc.).

In defining the parties entitled to conclude collective agreements, account must be taken of the many types of collective agreement met with in the various States. The definition suggested in question 4 would appear, in relation to the legal position in Austria, to be both too wide and too narrow. Under Section 2 of the Collective Agreements Act, a collective agreement can only be concluded on the employers' side by a statutory body representing the interests of employers (industrial chamber or independent trades chamber), a corporation under public law, or a voluntary association of employers recognised as being entitled to conclude collective agreements. On the employees' side, the collective agreement can be concluded by a trade union or a statutory body representing the interests of employees (chamber of employees).

In view of the above considerations, the following comprehensive definition of the term "collective agreement" might be adopted:

A collective agreement should be taken to mean an agreement concluded between an employer, a group of employers, or a body representing the interests of employers, on the one hand, and a body representing the interests of employees, on the other hand, for the purpose of regulating the rights and obligations imposed on both parties by virtue of the contract of employment and the legal relationship between the parties to the agreement. National legislation may lay down stricter regulations defining the parties to collective agreements.

Belgium

4. Yes. The definition proposed by the International Labour Office appears to be the most appropriate. It resembles the definition contained in the draft Belgian law of 15 September 1938 concerning occupational organisation and economic regulation, which is as follows:
A collective labour agreement is an agreement concluded between the representatives of one or several occupational groups of workers, on the one hand, and either one or several heads of undertakings or the representatives of one or several occupational groups of heads of undertakings, on the other hand, for the purpose of determining, in a specific branch of activity throughout the Kingdom or a given area thereof, the general conditions which must be fulfilled by individual contracts of workers or salaried employees.

Other definitions might also be taken into consideration, for example: a collective agreement is the regulation of conditions of employment drawn up by mutual agreement by one or several employers' organisations and one or several workers' organisations. Its object is to determine the general rules with which future individual contracts of employment in a given occupation must comply. This definition reflects the juridical nature of a collective agreement which has the characteristics both of regulations and of contract. Indeed, by virtue of the present position of Belgian law and judicial practice, a collective agreement may be considered to be regulations drawn up by agreement.

4. Yes.

Bulgaria

4. Yes.

Canada

4. Yes.

China

4. Yes.

Costa Rica

4. Yes.

Denmark

4. The Government replies in the affirmative, in agreement with the central organisations of Danish employers and workers.

4. Yes.

Finland

4. Yes.

France

4. Yes. Moreover, except for purely formal details, this is more or less the definition given in the Act of 23 December 1946.

4. Yes.

India

4. Yes.

Luxembourg

4. Yes.

Mexico
4. Yes.

**Netherlands**

4. Yes.

**New Zealand**

4. Yes.

**Norway**

4. Yes.

**Poland**

4. Yes; under the form of a Convention.

**Portugal**

4. Yes. The definition is in accordance with that provided under Portuguese legislation as a result of Article 2 of the Legislative Decree No. 36173.

**Sweden**

4. The definition does not quite cover the usual content of collective agreements in Sweden; after the words “conditions of work” should be inserted the words “or regarding the relations between employers and workers in other respects”.

**Switzerland**

4. Yes, this definition appears appropriate. It is understood that it should include all organisations or groups of employers and workers, and not merely a certain number of them.

**Union of South Africa**

4. Yes.

**United Kingdom**

4. Yes, subject to the substitution for the words “conditions of work” of the words “terms and conditions of employment”.

**B. Legal Effect of Collective Agreements**

5. Do you consider that the international regulations should provide that the stipulations of individual or group contracts of employment concluded between employers and workers bound by a collective agreement should be valid only to the extent to which they are more favourable to the workers than the corresponding stipulations of the collective agreement?
6. Do you consider that the international regulations should provide that the stipulations of a collective agreement should apply to all the workers in the service of the employer or employers bound thereby, even if these workers are not members of the organisation which concluded the agreement?

**Australia**

5. Yes.

6. No. Inclusion of this provision in a Convention or Recommendation would cut across the principle adopted in many cases in the Commonwealth and the States of Australia providing special benefits to members of particular unions or associations which are not extended to all employees.

**Austria**

5. In order to ensure that collective agreements shall be properly effective, any derogation from their provisions should be prohibited. The answer to question 5 is therefore in the affirmative.

This principle is clearly enunciated in the Austrian Collective Agreements Act, the relative provision of which declares:

No works regulations or contract of employment shall nullify or limit the effect of any provision of a collective agreement governing the legal relations between employer and employee. Where separate agreements are not prohibited by the collective agreement, they shall be valid only if they are more favourable to the employee than the collective agreement itself, or relate to matters not governed by the collective agreement.

6. It would appear desirable to adopt a provision whereby the legal effects of any collective agreement should also apply to such employees of an employer bound by the agreement as are not members of the union concluding the agreement; this would prevent workers of the same category and employed in a single undertaking from having a different legal status under labour law.

**Belgium**

5. Yes. The provisions of collective agreements prescribe generally minimum conditions below which it is not desirable to fall because of the risk of failing to achieve the desired object. It is therefore necessary for individual contracts to be able to depart from their terms for the purpose of ensuring to the workers more favourable conditions.

In Belgium, under the provisions of Article 13 of the Legislative Order of 9 June 1945, every clause in an individual contract of employment which is contrary to the provisions of a collective agreement given binding force by virtue of Article 12 of the said Order is deemed to be null and void. Any clause in an individual contract which is less favourable to the workers than the provisions in a collective agreement is considered contrary to such provisions.
6. Yes. If it were otherwise, employers might engage unorganised workers or workers not belonging to the organisation which concluded the agreement at wages inferior to those fixed by the agreement; their competition would thus be most harmful to their trade competitors. The existence of different systems of employment conditions in the same undertaking would weaken or even destroy the economic and social advantages obtained by collective agreement.

Since the collective agreement governs all individual labour contracts, even those of workers who are not members of the organisation which concluded the said agreement, the juridical principles regarding the relative effects of the contract should not be applicable to the question whether a collective agreement is made generally binding or not by decision of the public authorities.

**Bulgaria**

5. Yes.

6. Yes.

**Canada**

5. Yes, in relation to conditions covered by both the contract and the agreement.

6. Yes, provided, of course, that the workers are of the same class.

**China**

5. Yes.

6. The international regulations should provide that the stipulations of a collective agreement should apply to all the workers in the service of the employer or employers bound thereby.

**Costa Rica**

5. Yes.

6. Yes.

**Denmark**

5. The Government reserves its position.

The Danish Employers' Confederation considers that, when a collective agreement has been concluded, it should not be possible to enter into a less favourable contract. The primary thing must, however, be that the terms laid down in the collective agreement apply, and therefore it is going too far when the text indicates that the stipulations shall only apply to the extent to which they are more favourable to the workers.

The Confederation of Danish Trade Unions replies in the affirmative.


The Danish Employers' Confederation replies in the affirmative, as it should not be permissible to pay lower wages to workers who are not members of an organisation.

The Confederation of Danish Trade Unions replies in the affirmative.
FINLAND

5. Yes, with the reservation that the words "to the extent to which they are more favourable" should be replaced by the words "to the extent to which they are at least as favourable".

6. Yes.

FRANCE

5. The question as presented appears to imply that, in all cases, individual or group contracts of employment concluded between employers and workers bound by a collective agreement should be valid only if they contain provisions more favourable to the workers than the corresponding stipulations in the collective agreement. If the adoption of provisions more favourable than those contained in the collective agreement, which constitute a compulsory minimum, is recommended to the parties, the latter may validly abide by the terms of the collective agreement and confine themselves to a statement of them.

It appears desirable, therefore, to present the question in a different form, which might be as follows: "... should be valid only in so far as they do not contain provisions less favourable to the workers than the corresponding stipulations of the collective agreement". In this new form, the reply to the question is in the affirmative.

6. Yes, to the extent that the application of these agreements should apply to all the workers in an undertaking in which the agreement is already applicable to a proportion of the workers. Otherwise, the point raised here should come under the heading of extension of collective agreements.

In this connection, it is clear that the extension to undertakings not included within the scope of the agreement implies the setting in motion of a special procedure such as is contemplated under the next question.

INDIA

5. Yes.

6. Yes, provided such organisation of employees is a representative organisation.

LUXEMBOURG

5. Yes.

6. The question proposes that the stipulations of collective agreements should apply to all the workers in the service of the employer or employers bound thereby, even if these workers are not members of the contracting organisation. In the Grand Duchy, on the occasion of the conclusion of the most important collective agreement entered into since the liberation, the following situation arose.

On the workers' side, the negotiations with a view to the conclusion of this collective agreement were conducted by the three most representative trade unions. But, after the termination of these negotiations, one of the trade unions entered upon a wide campaign of agitation against the other two organisations, while at the same
time claiming for its members the benefit of the application of the collective agreement concluded between the employers and the other two workers' organisations.

This existing situation, which might have all kinds of consequences from the point of view of the maintenance of social peace, has caused the Luxembourg Government to hesitate to give its formal approval to the derogation of the common law principles affecting contract. It can consent to such a derogation only because it is impossible in practice, in one and the same undertaking, to draw a distinction as regards remuneration or conditions of employment between organised and non-organised workers on the one hand, or between workers affiliated to different trade unions on the other. Hence, in replying to question 11, the Luxembourg Government makes the suggestion to the International Labour Office that it might make a thorough study of the question of the legal effects of collective agreements, particularly in the light of the situation outlined above.

**Mexico**

5. No, because it is clear that the workers will wish to take advantage of the most favourable conditions.
6. Yes.

**Netherlands**

5. Yes.
6. Yes.

**New Zealand**

5. Yes.
6. Yes.

**Norway**

5. Yes.
6. Yes.

**Poland**

5. Yes; under the form of a Convention.
6. Yes; under the form of a Convention.

**Portugal**

5. Yes. The principle is perfectly clear.
6. Yes. Moreover, the principle is affirmed in Portuguese social legislation (National Labour Code, Article 33; Legislative Decree No. 36173, Article 3).

**Sweden**

5. Since, in the opinion of the Swedish Government, individual contracts of employment beside a collective agreement should be null and void, not only when they contain less favourable conditions than the agreement, a wording on the lines of the Swedish Act of 22 June 1928 concerning collective agreements, Section 3, may be considered:
If a contract involving conditions varying from the collective agreement is concluded between employers and workers who are bound by the same collective agreement, such contract shall not be valid, except in so far as the variations may be deemed to be permissible under the collective agreement.

6. No.

SWITZERLAND

5. Yes. Under Swiss law, the priority of the collective agreement over the individual contract results from the provisions of Article 523 of the Federal Code of Obligations which provides that:

Any contract of employment entered into by employers and workers bound by the terms of a collective agreement shall be null and void in so far as its provisions conflict with those of the latter; and the provisions of the collective agreement shall be substituted for those which are null and void.

6. These provisions go too far; in the view of the Swiss Government they should not be included in the international regulations.

UNION OF SOUTH AFRICA

5. If the collective agreements merely rely upon the contractual obligations of the parties and are not given any legislative or enforceable effect by the Government, then any employer who entered into a less favourable contract with his employee than required by the standards set in the collective agreement negotiated on his behalf would be repudiating his contractual obligations and would lay himself open to civil action for breach of contract by any other party prejudiced thereby. The issue would, however, be one of private civil and contractual responsibility in which the State was not involved. If in these circumstances a Convention did purport to preclude employers from concluding a contract of service which was less favourable than a collective agreement, the State concerned would find itself unable to ratify such a Convention, because the breach of contract would be a private dispute between parties to a private contract and thus of no concern to the State and not enforceable by criminal legal sanctions. If on the other hand any particular collective agreement is given legislative effect by the law of the State, criminal sanctions would flow from any breach thereof. If the conditions proposed by an employer were more favourable than those thus fixed by law, obviously the law would not have been broken; if less favourable, then a criminal offence would have been committed.

In these circumstances, the reply is that the Convention should contain no such provision, as the invalidation of contracts inconsistent with the collective agreements flows automatically and obviously from the mere fact that the agreement has been given the force of binding law. The Union Government obviously has however no objection to the principle envisaged by the question—its own law provides specifically that such contracts of employment are void—but feels it preferable that international Conventions should confine their subject matter to important principles, omitting detailed provisions which seem more or less obvious.
6. No. In the opinion of the Union Government trade unions are only entitled of right to speak for and on behalf of their own members. A union may be weak numerically, but may well secure satisfactory conditions for its members; these should not be automatically binding upon the other employees. The other employees may well have diametrically opposed views, and if they constitute the majority they should, and in South African law do, have the right to negotiate collective agreements (even if unorganised into unions) by means of Conciliation Boards.

Only if the appropriate union has the majority of the employees as members should the conditions be capable of being made binding upon the others. Even then it should not be automatically binding but should depend upon State action; many unions seek and secure privileges for union members which they themselves do not wish to be applied to non-members.

The international regulations should not contain such provisions, but could perhaps contain a provision to the effect that where a collective agreement has been given the force of legal sanction by the legislative machinery of the State, the State shall have the power and the discretion to apply the terms of such agreement to persons who are not members of the parties thereto, if in its opinion the parties are sufficiently representative of the employees and employers respectively.

UNITED KINGDOM

5. This does not appear to be an appropriate subject for the international regulations.

6. Yes.

C. EXTENSION OF COLLECTIVE AGREEMENTS

7. (a) Do you consider that it should be provided, in the international regulations, that collective agreements binding the majority of the workers and the majority of the employers (who should also employ the majority of the workers) may be rendered applicable to all employers and workers engaged within the industrial and territorial scope of the agreement as defined by the contracting parties?

(b) Do you consider that any employers and workers to whom the stipulations of a collective agreement are to be rendered applicable should be authorised to submit their observations and objections in advance?

(c) Do you consider that the international regulations regarding the extension of collective agreements should take the form of a Convention or that of a Recommendation?
Australia

7. No, but if included, it should take the form of a Recommendation and not a Convention.

Austria

7. (a) The extension of collective agreements envisaged in this section C is desirable in order that workers in the service of employers who decline to conclude an agreement, or who do not belong to an association of employers which is party to an agreement, should participate in the advantages of collective agreements. The provision to be adopted, however, should be supplemented by a stipulation that a collective agreement should not affect contracts of employment drawn up under another collective agreement, and that the extension of a collective agreement should no longer have effect if the contracts of employment concerned should subsequently be covered by the conclusion of a separate collective agreement. This would recognise the due precedence of collective agreements.

Which authorities should have competence to extend the application of a collective agreement—a problem which is not mentioned in the questionnaire—is a question which may be left to national legislation. The question however might be considered, whether the Convention should not at least establish that whatever authority exercises the competence should include representatives of employers and workers in equal proportions.

(b) It should hardly be necessary to include in the international regulations the procedural matters dealt with in question 7 (b), since the procedure adopted will depend on the decision as to which authorities in each State are to exercise the competence mentioned in 7 (a). If included, however, any general provision of this kind should be adopted in the form of a Recommendation, so as not to interfere too greatly with established procedure in the various countries.

(c) See the last paragraph of the reply to question 2 and the reply to question 7 (b) above.

Belgium

7. (a) Yes. It may be noted that in Belgium, at the request of a representative organisation of employers or workers or of a joint committee through which a collective agreement has been concluded, a Royal Order may give binding force to such agreement as regards all the employers and all the workers carrying on their activities within the industrial and territorial scope of such agreement.

(b) Yes.

(c) The international regulations should take the form of a Convention.

Bulgaria

7. (a) Yes.

(b) Yes.

(c) Convention.

1 See above, p. 44.
REPLIES OF THE GOVERNMENTS

CANADA

7. (a) Yes.
(b) Yes.
(c) A Recommendation.

CHINA

7. (a) Yes.
(b) Yes.
(c) The international regulations regarding the extension of collective agreements should take the form of a Convention.

COSTA RICA

7. (a) Yes.
(b) Yes.
(c) Yes, under the form of a Convention.

DENMARK

7. (a)-(c) The Government reserves its position.

The Danish Employers' Confederation states:
(a) No, that would be too far-reaching. The obligations of the employers under the agreement should be a consequence of their having joined the organisation concerned, or of their having voluntarily agreed to comply with the agreements entered into by the organisation.
(b) No, the right to decide upon matters must here be left to the competent assemblies of the parties.
(c) The form of a Recommendation.

The Confederation of Danish Trade Unions refers to its observations on questions 1 and 2.¹

FINLAND

7. (a) Yes. See remarks under 2(a).¹
(b) Yes.
(c) Under the form of a Recommendation.

FRANCE

7. (a) Yes. A similar procedure was prescribed in France by the Act of 24 June 1936 amending Book I of the Labour Code (Article 31v, d) which was repealed by the Act of 23 December 1946. It is desirable to emphasise that this proposition would become pointless under a system providing for the conclusion of national collective agreements covering major branches of activity. It would be desirable, therefore, to adopt regulations sufficiently flexible to cover-

¹See above, p. 45.
both procedures of the kind considered under the question as stated, and which, to a certain extent, constitute a preliminary stage of legislation, and the more general system to which reference has just been made.

(b) Yes, in the event of a procedure of extension similar to that prescribed by Article 31v, c, of Book I of the Labour Code (Act of 24 June 1946), which was accompanied by an enquiry procedure. It is necessary to stress that the French law at present in force provides for the consultation of occupational organisations of employers and workers through the medium of a joint committee before approval is given to the national collective agreement.

(c) In view of the importance of ensuring that the greatest possible number of employers and workers should be included within the scope of collective agreements, the adoption of a Convention appears desirable.

India

7. (a) Yes.
(b) Yes.
(c) Recommendation.

Luxembourg

7. (a) Yes.
(b) Yes.
(c) A Convention.

Mexico

7. (a) Yes.
(b) Yes.
(c) A Recommendation.

Netherlands

7. (a) Yes.
(b) Yes.
(c) A Recommendation.

New Zealand

7. (a) Yes.
(b) Yes.
(c) A Convention.

Norway

7. No, neither in a Convention nor a Recommendation. Situations may arise where it may seem desirable from the point of view of the authorities to render agreements covering the majority of the sector concerned applicable to others as well, but the Government agrees with the view held by the employers' and workers' organisations that these considerations do not counterbalance the strong organisational and other arguments to the opposite effect.
Poland

7. (a) Yes, under the form of a Convention.
(b) This may be optional—if more advanced provisions do not exist.
(c) Under the form of a Convention.

Portugal

7. (a) Yes. This is a regulation already accepted by Portuguese law (Legislative Decree No. 32749 of 15 April 1943, Article 7).
(b) This principle is just, but is very difficult to apply in practice. It appears preferable to include it in the Recommendation.
(c) The principle of question 7 (a) may be dealt with in a Convention. It is proposed that the question referred to under paragraph (b) should be placed in the Recommendation.

Sweden

7. (a) No.
(b) —.
(c) —.

Switzerland

7. (a) This question was regulated in Switzerland by the Federal Resolution of 1 October 1941 respecting the declaration of collective contracts of employment as generally binding, replaced by the Resolution of 23 June 1943, which remains in effect until 31 December 1948. Switzerland, therefore, can agree to the clause (a) suggested under question 7, on condition, however, that provision for its application is made under a Recommendation rather than under a Convention.
(b) Yes.
(c) This question has been answered above.

Union of South Africa

7. (a) Yes—see reply to question 6.¹
(b) No. Administrative delays follow which should not be permitted if the agreement is supported by a majority of the parties as contemplated in (a).
(c) So far as the Union of South Africa is concerned the provisions could be in the form of a Convention, but to make ratification by more States possible a Recommendation seems preferable.

United Kingdom

7. (a) and (c) No. While a provision somewhat of this nature (although in different terms) is at present in force in the United Kingdom under temporary legislation, His Majesty's Government

¹ See above, p. 59.
do not feel able without further experience to commit themselves to the view that such a provision should be included in the international regulations.

(b) On the assumption that the object of the provision was to extend and support the authority of joint organisation in industry, it would be inappropriate to invite observations and objections from the minority of employers and workers not parties to the collective agreement.

IV. Application of Collective Agreements

A. Interpretation of Collective Agreements

8. (a) Do you consider that it should be provided in a Recommendation that disputes arising out of the interpretation and application of collective agreements should be submitted to a procedure for settlement agreed to by the parties and, if this breaks down, should be referred to an appropriate judicial procedure?

(b) If so, do you consider that it should be provided in a Recommendation that the parties should receive appropriate guarantees regarding the gratuitous character of the judicial procedure, its rapidity, the technical competence of the judges, etc.?

Australia

8. (a) Yes.
(b) Yes.

Austria

8. The answer to questions 8 (a) and (b) in principle is "yes". It would, however, hardly appear advisable to include as part of the international regulations any provisions concerning the gratuitous nature or otherwise of the judicial procedure, as this would be interfering too much with existing practice in the various countries. In any case, this question does not appear to be of particular significance in connection with the interpretation of collective agreements, and is no longer of decisive importance to workers who desire to initiate legal proceedings, as the trade unions generally provide legal assistance to a considerable extent.

Austrian legislation attaches special importance to the settlement of disputes arising out of the interpretation of collective agreements. Section 19 of the Collective Agreements Act provides that in the case of any such dispute it shall be the duty of the conciliation board, at the request of either of the parties or of a public authority, to institute conciliation proceedings. The conciliation board, which consists of an impartial Chairman and an equal number of workers' and employers' members, is to take rapid steps to mediate between
the parties and to endeavour to effect an agreement between them with a view to the settlement of the dispute. The conciliation board shall have power to issue an arbitration award only if both parties to the dispute have previously signified in writing their willingness to abide by such an award. Agreements made in the course of negotiations with the conciliation board, and any awards made by the board, shall have the force of collective agreements. Conciliation procedure is free of charge.

Individual grievances arising out of the contract of employment as a result of alleged unfair interpretation of a collective agreement are decided by a labour court composed of lay members (employers and workers). In interpreting collective agreements, the labour court is to have regard to the legal character of the agreement in accordance with the normal principles for the interpretation of legislation. During the procedure before the labour court, an expert opinion may be requested regarding the interpretation of a collective agreement; under Section 37 of the Collective Agreements Act, the Central Conciliation Board, the composition of which is similar to that of the conciliation boards, is competent to give such opinion. The giving of such an opinion is free of charge.

BELGIUM

8. (a) Yes. The draft Belgian law of 15 November 1938 concerning occupational organisation and economic regulation contains two articles dealing with this matter which are as follows:

Article 34, § 1: All disputes relating to the interpretation or application of collective labour agreements are within the jurisdiction of the probiviral courts or, if there is no such court, of the justices of the peace, for the district within which the document has been filed.

Article 35, § 1: Nevertheless, it is permissible for the parties to include in the collective agreement a mutual undertaking to refer to arbitration any disputes which may arise.

It remains to determine the extent to which the decision given by arbitral award is binding. The legal effect would be absolute or relative according to the character of the collective agreement—whether regulation or contract.

(b) Yes. However, as regards the gratuitous character of the judicial procedure, this should be limited to ordinary costs and expenses.

BULGARIA

8. (a) Yes.
(b) Yes.

CANADA

8. (a) The Government would prefer that such a dispute should be dealt with under the provisions of the agreement and, if either party fails to nominate a representative, that the administration should nominate on its behalf in order to ensure the settlement of the dispute.

(b) Under the procedure indicated in (a), parties should bear their own costs and determine other questions.
8. (a) Yes.
(b) Yes.

CHINA

8. (a) Yes.
(b) Yes.

COSTA RICA

8. (a) Yes.
(b) Yes.

DENMARK

8. (a) and (b) The Government reserves its position.
The Danish Employers’ Confederation replies to (a) Yes; and to
(b) No. In accordance with the practice in this country it is considered that the parties themselves should bear the cost of the judicial procedure, and themselves choose technically competent judges and arbitrators.

The Confederation of Danish Trade Unions observes that, together with the other Nordic representatives, it set forth views during the negotiations at Geneva in 1947 which, respecting the questions dealt with in Point 8, tend towards a system of interpretation corresponding to that in force in the Nordic countries. According to the arrangement in force in Denmark, the costs of the Industrial Court of Arbitration are exclusively borne by the parties, and the costs before the Permanent Court of Arbitration are partly borne by the parties, according to the award of the Court; the Confederation therefore refrains for the present from concerning itself further with the subject matter of 8 (b).

FINLAND

8. (a) Yes.
(b) Yes.

FRANCE

8. (a) Yes, but the complete application of such a system is possible only in normal times. In a period of planned economy, a number of questions which may exercise a direct influence on economic conditions must be determined within the general framework of Government economic policy. This may be the case, particularly with regard to wages, where prices are fixed by the public authorities. This is why the Act of 23 December 1946 in France has temporarily suspended conciliation and arbitration procedure. On the other hand, even in such circumstances, conciliation procedure prescribed by agreement may be allowed in respect of legal questions arising out of the interpretation and application of collective agreements. Collective agreements generally provide for the establishment of joint committees for the examination of these questions.

It is necessary to make reservations with regard to the phrase “judicial procedure” used in the questionnaire. It would appear preferable, except in those cases where labour courts exist, to use the term “arbitration procedure” instead of “judicial procedure”.

(b) Yes, subject to the observations made above.

INDIA

8. (a) Yes.
(b) Because of the vagueness of the terms “appropriate guarantees”, it is considered that such a provision would be of doubtful
value. It would be better to provide simply that the judicial procedure should be gratuitous, speedy and efficient.

Luxembourg

8. (a) Yes.
(b) Yes.

Mexico

8. (a) Yes.
(b) Yes.

Netherlands

8. (a) It should be left to the parties themselves to decide in what way they wish to settle the disputes concerned, under rules that guarantee a procedure in good faith and an impartial decision.
(b) All such matters should be left to national regulation.

New Zealand

8. (a) Yes.
(b) Yes.

Norway

8. (a) Yes.
(b) Yes, but the word “technical” should be omitted, as it might easily give rise to disputes.

Poland

8. (a) Yes, omitting the final words “and, if this breaks down, should be referred to an appropriate judicial procedure”.
(b) Yes.

Portugal

8. (a) There are no objections. Under Portuguese legislation, disputes arising out of the interpretation and application of collective agreements may be submitted, at the request of one of the parties concerned, to joint committees prescribed by each agreement, on which both parties are represented under the chairmanship of a representative of the National Labour Institute (Legislative Decree No. 36173, Article 11). In the event of a breakdown of this procedure, which is a conciliation procedure, disputes are submitted to the labour courts.
(b) Yes, except as regards the gratuitous character of the procedure. In Portugal only the procedure before the joint committees is gratuitous (Legislative Decree No. 36173, Article 17).

Sweden

8. (a) Yes. The Swedish Government might even envisage the inclusion of such a provision in a Convention.
(b) Yes.

Switzerland

8. (a) In Switzerland, many collective agreements provide for a procedure for settlement of this kind; the Swiss Government
therefore can support in principle the provisions mentioned under question 8 (a), without going so far, however, as to establish a special and permanent labour court.

(b) Yes.

Union of South Africa

8. (a) The Recommendation should provide that where collective agreements carry statutory legal sanction, their interpretation should fall to the judiciary, but where collective agreements rely upon their contractual basis for enforcement, their interpretation shall likewise be capable of being referred to the judiciary, provided the parties may in the agreement themselves agree to be bound by interpretations secured from mutually agreed upon arbitrators or other procedure.

(b) If the agreements fall to the State judiciary for interpretation, no such guarantees are necessary. If they fall to private interpretation, the mere agreement of the parties to abide by the decision of the arbitrator or similar machinery should be sufficient protection provided the law of the State permits of interference with arbitration decisions where the judge has failed to apply his mind to the problem for decision or has acted mala fide or in breach of the principles of natural justice.

United Kingdom

8. (a) It might be provided in a Recommendation (but not in a Convention) that disputes of this character should be referred for settlement to a procedure agreed upon by the parties, and that there should be means available for securing a final determination for all such issues. The method for securing a final determination to which recourse is to be had should, if possible, be specified in the procedure agreed by the parties. It should not be provided in the international regulations that the final method of determination should necessarily be judicial in character.

(b) It is considered that it would be desirable to provide that procedure provided by the State to secure the final settlement of industrial disputes should be available to the parties without financial charge. In the United Kingdom such procedures are not judicial in character. It seems doubtful how far it is practicable for judicial procedure, where it is operated, to be "of a gratuitous character". The rapidity and competence of a judicial or other tribunal are matters which must be proved to the two sides of industry by experience, and it is not considered that guarantees of this character are appropriate for international regulations.

B. Responsibility of the Parties to Collective Agreements

9. (a) Do you consider that there should be included in a Recommendation stipulations regarding the responsibility of the parties to collective agreements?
(b) If so, do you consider that it should be provided that the parties to collective agreements should undertake to determine their respective responsibility by agreement?

(c) Do you consider that, failing an appropriate determination by agreement, the responsibility of the parties to collective agreements should be determined by legislation?

(d) If so, do you consider that, in such legislation, limits to the liability of the parties should be prescribed?

Australia

9. No. Experience has shown that the attempt to impose financial sanctions is impracticable, and gives rise to far more trouble than it ever settles.

Austria

9. In the view of the Austrian Federal Government, determination of the respective responsibilities of the parties to a collective agreement should be left entirely to the agreement itself; the Government would refer to its observations under question 4 concerning those parts of the collective agreement which define its contractual nature.

As regards the responsibilities of the employer arising out of the regulative sections of the agreement, it is unnecessary to provide a special safeguard for the observance of these provisions when, as in Austria, the agreement directly confers on every worker rights and obligations; in those circumstances the worker can take direct action in the labour court to enforce his rights under the agreement.

Belgium

9. (a) Yes. However, this should relate only to provisions concerning civil responsibility of the parties to collective agreements.

(b) Yes.

(c) Yes.

(d) Yes.

With regard to all the points under question 9, however, in the present position of Belgian legislation and juridical practice, the question of civil responsibility is related to the problem of juridical personality of the parties to the collective agreement.

Bulgaria

9. (a) Yes.

(b) Yes.

(c) Yes.

(d) Yes.

1 See above, p. 51.
Canada

9. (a) Yes.
(b) Yes.
(c) Yes.
(d) Yes.

China

9. (a) Yes.
(b) Yes.
(c) Yes.
(d) Yes.

Costa Rica

9. (a) Yes.
(b) Yes.
(c) Yes. It is considered that the responsibility of the parties should be determined by legislation, without prejudice to the responsibility which the parties mutually acknowledge by agreement.
(d) Yes.

Denmark

9. (a)-(d) The Government reserves its position.
The Danish Employers’ Confederation replies to 9 (a), (b) and (c) in the affirmative, and to 9 (d) in the negative.
The Confederation of Danish Trade Unions states that it might be able to accept as far as (b) is concerned, but otherwise considers that the whole of this question has been given a somewhat vague form in the questionnaire, and reserves the right to discuss the relevant problems further at the meeting at San Francisco.

Finland

9. (a) Yes.
(b) Yes.
(c) Yes.
(d) Yes.

France

9. (a) Yes. In this connection, the French Act of 23 December 1946, Article 1 (new Articles 31, LJK, of Book I of the Labour Code) provides that groups or persons bound by a collective labour agreement may bring an action for damages against any other groups or persons bound by the agreement who may have violated the obligations contracted.
(b) Yes.
(c) Yes. Moreover, it would be preferable for the principle of responsibility to be determined by legislation. The methods of application would be determined by agreement.
(d) It appears indispensable to prescribe reasonable limits to the responsibilities of the contracting parties. It is important that the effect of this responsibility should not result in taking away all means of action from the organisations signatories to a collective agreement. In France, Article 13 of Book III of the Labour Code provides that the premises and furniture necessary for the meetings of industrial associations and their libraries and courses of technical instruction shall not be liable to distraint.
India

9. Yes, but the determination of the responsibility of the parties to collective agreements should be left entirely to the discretion of the Government.

Luxembourg

9. Yes.

Mexico

9. No, because the violation of collective agreements is dealt with under all legislative systems.

Netherlands

9. (a) Yes.
(b) Yes.
(c) Yes.
(d) Yes.

New Zealand

9. (a) Yes.
(b) Yes.
(c) Yes.
(d) Yes.

Norway

9. A Recommendation should give expression to the principle that the question of responsibility should be regulated between the parties through agreements, and that the State should intervene by means of legislation if the parties fail to conclude such agreements.

Poland

9. (a) Yes.
(b) Yes.
(c) No. At the present time, this question does not lend itself to legislative regulation on a uniform basis; it should be determined according to circumstances, as is permitted by the method under (b).
(d) —.

Portugal

9. (a) Responsibility for the execution of the stipulations in collective agreements should be limited to the undertakings and persons to whom those clauses apply. Responsibility cannot be imposed on the employers' or workers' organisations which have signed the agreement, that is to say, "the parties", for the violation in every specific case of the respective provisions. Those responsible obviously are the undertakings or workers committing the violations. This is the principle embodied in Portuguese legislation (Legislative Decree No. 36173, Article 19).

For these reasons, it is proposed that the expression "responsibility of the parties to collective agreements" should be replaced by a phrase in the following or similar terms: "responsibility of the persons to whom collective agreements are applicable". In this sense, the Portuguese Government has no objection to the principle.
(b) This paragraph, in the form in which it is drafted, is redundant. In fact, collective agreements are intended by definition to determine on a contractual basis the respective obligations of the contracting parties. It is assumed that it was intended to state that "the parties to collective agreements should undertake to lay down in those agreements the penalties for violation of the respective provisions". Thus drafted the Portuguese Government has no objection to the principle.

(c) Yes, provided that the words "parties to collective agreements" are replaced by some such wording as "persons to whom collective agreements are applicable".

(d) See the reply to question 9 (a) above.

SWEDEN

9. (a) Yes. The Swedish Government might even envisage the inclusion of such stipulations in a Convention.

(b) No.

(c) The responsibility of the parties to collective agreements should always be determined by legislation.

(d) If this question refers to the legal limitation of the responsibility of the parties, the reply is in the affirmative. On the other hand, no limits to damages for loss incurred should be laid down except in so far as the liability of individual workers is concerned.

SWITZERLAND

9. (a)-(d) The Swiss Government considers that the parties should respect the undertakings into which they have entered. Admittedly it might be desirable to make provision in a Recommendation for the application of contractual sanctions, in the event of the terms of a collective agreement not being observed, and where ordinary civil sanctions are inadequate.

UNION OF SOUTH AFRICA

9. (a) This is unnecessary where collective agreements are given legislative standing, as the State would be normally responsible for enforcement of its laws. If there are particular duties and responsibilities which the parties wish to assume under the agreement, these should be stated clearly, but it is not thought that the Recommendation should go further than to specify that "if the parties to a collective agreement are required by the subject matter of such agreement to assume duties and responsibilities, executive, administrative, financial or otherwise, such obligations and responsibilities shall be clearly set out within the terms of the agreement itself".

(b) Falls away—see reply to (a) above.

(c) Yes, if the subject matter of the agreement is such as to require any responsibility being assumed by the parties, and provided such agreement involves the State by reason of enjoying statutory legal sanctions—not otherwise.

(d) No, the responsibilities, if to be laid down, must be laid down in the collective agreement itself.
United Kingdom

9. (a) and (b) In the United Kingdom collective agreements are not, as such, enforceable at law. It is not therefore appropriate to refer to the responsibility of parties to collective agreements in a legal sense. Subject to the above qualification, however, it is considered desirable that international regulations should provide in the form of a Recommendation that the parties to a collective agreement should enter that agreement with a full sense of their responsibility for observing it.

(c) and (d) In the United Kingdom collective agreements frequently contain provisions relating to the responsibility of the parties. It would not be appropriate in the United Kingdom to attempt to determine these responsibilities by legislation.

C. Supervision of Application of Collective Agreements

10. Do you consider that it should be provided in a Recommendation that the labour inspectors should be empowered to supervise the application of collective agreements in all the establishments covered thereby?

Australia

10. Yes.

Austria

10. The labour inspectorate is clearly the most appropriate authority to undertake supervision of the application of collective agreements in respect of their regulative sections. In order to supplement such official supervision it might, however, also be desirable to entrust the statutory machinery representing the staffs of undertakings with similar functions.

The Austrian system provides for both methods. Under Section 3 of the Labour Inspection Act of 2 July 1947 (Staatsgesetzblatt No. 193) one of the functions of the labour inspectorate is to supervise the application of collective agreements. Under Section 14 (1) (i) of the Works Councils Act of 28 March 1947 (Bundesgesetzblatt No. 97), supervision of the application of collective agreements falls also within the duties of the staff representatives (Works Councils and staff delegates).

Belgium

10. Yes. In Belgium, by virtue of Article 14 of the Legislative Order of 9 June 1945 issuing rules for joint committees, the application of the decisions of the said committees, which are made binding in accordance with Article 12, is supervised by officials appointed by Royal Order—social inspectors and supervisors, mining engineers and explosives inspectors (Order of the Regent of 16 October 1945)—which determines their functions without prejudice to the duties of the officials of the judicial authority.
10. Yes.

**Bulgaria**

**Canada**

10. No; the parties themselves should police the agreement.

**China**

10. Yes.

**Costa Rica**

10. Yes.

**Denmark**

10. The Government reserves its position. The Danish Employers' Confederation replies decidedly in the negative. In Denmark labour inspectors would have no qualifications whatever for carrying out such supervisory activities, and the system would require a reorganisation, which in itself is unnecessary, of the whole system of supervision.

The Confederation of Danish Trade Unions states that, with the experience which has been gained within the Nordic countries, it does not deem it necessary to have the due application of the agreements supervised by labour inspectors. It is aware that this question has solely been set forth as a possible Recommendation, but for the present refrains from observations regarding the question, as at a forthcoming meeting of the International Labour Organisation it may possibly prove that there are countries in which conditions are of such a special nature as to necessitate the appointment of labour inspectors.

**Finland**

10. No; subject to any other provision prescribed by national legislation.

**France**

10. Yes, such a provision is contained in the Act of 23 December 1946 (Article 4).

**India**

10. Yes, labour inspector or welfare officers.

**Luxembourg**

10. Yes.

**Mexico**

10. No, because this function of the inspectors is a little outside those duties attributed to them in paragraph 2 of Article 3 of the Convention adopted on this question by the 30th Session of the
International Labour Conference, although in Mexico the inspectors supervise the application of all provisions of labour legislation.

**NETHERLANDS**

10. The supervision of the application of agreements should remain in the hands of the parties concerned. Where third parties are covered by the agreement, they themselves should watch over their rights and bring an action under civil law against an employer who does not apply the provisions of the agreement to them.

**NEW ZEALAND**

10. Yes.

**NORWAY**

10. No.

**POLAND**

10. Yes.

**PORTUGAL**

10. Yes. This is the system under Portuguese law. The labour inspectorate is competent to supervise the application of collective agreements (Regulation of the National Labour Institute approved by Decree No. 32593 of 29 December 1942, Article 90).

**SWEDEN**

10. No.

**SWITZERLAND**

10. The Swiss Government considers that this supervision should be ensured by the employers' and workers' organisations themselves, without the intervention of labour inspectors—in other words, of the State.

**UNION OF SOUTH AFRICA**

10. Yes, in cases where the agreements have statutory criminal sanction; in other cases enforcement arrangements should be made by the parties thereto. The existence and powers of State labour inspectors should, however, not preclude the parties from supplementing such inspection services by agents jointly appointed by them whose powers of entry and inspection would be derived *ex contractu*.

**UNITED KINGDOM**

10. This should be a necessary intermediate step in industrially backward countries, but not in well-organised nations, where the workers' and employers' organisations should control the operation of collective agreements.

* * *
11. Have you any proposal or suggestion to put forward on any point regarding the question of collective agreements which has not been mentioned in the present questionnaire?

Luxembourg

11. See reply to question 6.¹

Sweden

11. It seems desirable that some provisions should be included, at least in the Recommendation, concerning the right of an organisation to bring an action concerning the interpretation or application of collective agreements in the appropriate court on behalf of a person who is or has been a member of the organisation.

United Kingdom

11. Consideration might be given to the inclusion in any Recommendation that may be agreed of a provision to the effect that States Members of the International Labour Organisation should take steps to encourage employers' and workers' organisations to promote the development of collective bargaining.

¹ See above, pp. 56-57.
QUESTIONNAIRE III

CONCILIATION AND ARBITRATION

General Observations

Australia

It is noted that the proposed international regulations on this subject would be for the purpose of establishing a system of voluntary conciliation and arbitration. As Australia maintains fairly comprehensive systems of compulsory conciliation and arbitration, the proposed voluntary systems could have little application in this country, and detailed answers to this questionnaire from Australia would, therefore, be of no value. As the International Labour Office is aware, the Australian systems, whilst providing for conciliation, do so within the general framework of the formalised arbitration set-up involving degrees of compulsion incompatible with voluntary systems.

At the same time, the prerequisites to any system of conciliation and arbitration are the same, requiring a high degree of organisation of employers and workers, particularly the latter. With the exception, therefore, of the condition, implied in the questions, of voluntary acceptance by the parties of conciliation and arbitration (which admittedly is fundamental to the whole scheme of voluntary conciliation and arbitration) the conditions envisaged in the questions in this Part would not be incompatible with the Australian systems, and Australia would support a Recommendation on the subject for the assistance it might afford to other countries which do not adhere to the compulsory systems in operation in Australasia, although, of course, any such Recommendation could have little bearing on the Australian position at the present time.

Belgium

In Belgium, the legislature has set up: (1) by the Act of 16 June 1887, councils for industry and labour which have ceased to exist; (2) by Royal Order of 5 May 1926, official conciliation and arbitration boards; the Royal Order of 5 November 1929 replaced these by official conciliation boards; these boards are no longer of any practical interest; (3) by Legislative Order of 9 June 1945, joint committees, which have conciliation and arbitration functions.

Article 5 of the Order of the Regent of 5 October 1945 (Executory Order) provides (a) that the joint committee may delegate powers to certain of its members in the form of a smaller committee, for a
given occupation or region, for the purpose of conciliating disputes which threaten to arise or have arisen between heads of undertakings and employees; (b) that the joint committee may propose to the Minister the establishment of a permanent conciliation office. This office would exercise the powers delegated to it by the joint committee concerned. These powers are given sanction by the Royal Order establishing the permanent conciliation office; (c) that, in the event of a dispute, the conciliation agency referred to under (a) and (b) is made cognisant of the outbreak of the dispute, on the initiative of the most diligent party. The conciliation agency considers the question brought before it within the three days following the date on which the reference has been made to it in proper form. It reports to the joint committee concerning the results of the action which it has taken.

By virtue of the Order of the Regent of 3 July 1945, the Administration intervenes directly in labour disputes by making officials available to the parties (mining engineers, industrial safety engineers, inspectors, social supervisors and conciliators). If it is not made binding by Order, the agreement arrived at between the parties, on the intervention of a Government official, has effect similar to that of the collective agreement which constitutes the custom for the trade.

DENMARK

A very fundamental distinction is made in Denmark between "conflicts of law" and "conflicts of interest" in the labour market.

Conflicts of law. Disputes about the interpretation of a collective agreement are in the last resort decided by industrial arbitration boards consisting of four or more arbitrators, appointed in equal numbers by the employers' and workers' organisations, and of an umpire, who is often a lawyer and is appointed either by the organisations jointly or by the President of the Permanent Court of Arbitration. The further rules are contained in "Standard Rules".

Disputes arising out of an alleged breach of an agreement are dealt with by the Permanent Court of Arbitration, established in pursuance of Act No. 81 of 12 April 1910 (now Act No. 536 of 4 October 1919, with subsequent amendments of 2 May 1934 and 15 March 1939).

All conflicts of law which are not settled by negotiation between the parties are thus referred to arbitration. A conflict of law must not be permitted to cause a stoppage of work, whether in the form of a strike or a lockout.

Conflicts of interest. Conflicts of interest are dealt with in accordance with the Rules for Negotiation of Agreements of 5 October 1936 and the Act of 21 December 1945 concerning intervention in labour disputes. The rules are contained in a collective agreement concluded between the two Danish central organisations. This agreement lays down the procedure to be followed by the subordinate organisations and the central organisations in negotiating collective agreements. If the negotiations break down, with the consequent prospect of strike or lockout, the State conciliation officers may intervene in accordance with the above-cited Act, to the rules of which reference is made. If the State conciliation officer is unable to settle the dispute, the conflict may result in a strike or a
lockout, but the rules of the law are designed to ensure that this contingency does not arise until every possibility of a peaceful settlement of the conflict has been examined.

The Danish Government, in referring to the replies to the questionnaire received from the central organisations—to which it can subscribe upon the whole—would observe that the fundamental distinction between conflicts of law and conflicts of interest maintained over a very long period of time, with a corresponding difference in the settlement of these disputes, has proved, in the opinion of the Government, to be of vital importance in establishing well-regulated conditions in the labour market. The Danish Government is not concerned with the question whether it will be expedient to adopt similar rules in other countries, but would, for its own part, certainly have some hesitation in voting in favour of a Recommendation which does not correspond to the distinction between conflicts of law and conflicts of interest carried through in Denmark.

The Government would, in this connection, call to mind that the Finnish, the Icelandic, the Norwegian, the Swedish and the Danish delegations to the 30th Session of the International Labour Conference, at Geneva in 1947, with the approval of the individual groups within the delegations, had submitted proposals for amendments to the questionnaire submitted to the Conference, in so far as the said problem was concerned, but that time did not allow of a discussion of the merits of these amendments.

**Luxembourg**

On the question of national legislation concerning conciliation and arbitration, the Luxembourg Government refers to the Grand-ducal Order of 8 October 1945, previously mentioned, the purpose of which was to establish and define the functions and operation of the National Conciliation Office. Under the provisions of Article 6 of this Order, the National Conciliation Office has, as its object, the prevention or conciliation of collective labour disputes which have not reached a settlement by other means. Under the provisions of Article 18, the dispute, if not settled by conciliation, may be submitted to an arbitration board, composed of a Chairman appointed by the Government together with one employer and one wage-earner nominated by the occupational organisations concerned.

In practice, disputes which have not reached a settlement under the Office have always hitherto been submitted to the Government Chairman, i.e., the Minister of Labour, sitting as sole arbitrator. By thus consenting to a derogation from Article 18 referred to above, the Luxembourg employers and workers have so far shown an evident willingness to accept a system of voluntary arbitration more flexible than that prescribed by the relevant legislation.

I. Desirability and Form of International Regulations

1. Do you consider that the International Labour Conference should adopt international regulations concerning voluntary conciliation and arbitration in the form of a Recommendation?
AUSTRALIA

1. Yes; see general observations.  

AUSTRIA

1. The diversity of practice in the various countries as regards the settlement of industrial disputes makes it difficult to find an appropriate formula for any detailed international regulations suitable for inclusion in a Convention. If this question can be dealt with, it will be possible to adopt international regulations concerning conciliation and arbitration only in the form of a Recommendation, and, even in the form of a Recommendation, the regulations will have to be limited to a very restricted field and to comprise only a few basic principles, without specifying any details, especially as regards methods of procedure.

BELGIUM

1. Yes.

BULGARIA

1. Yes.

CANADA

1. Yes.

CHINA

1. Yes.

COSTA RICA

1. Yes.

DENMARK

1. The Government replies in the affirmative, in agreement with the central organisations of Danish employers and workers.

FINLAND

1. Yes.

FRANCE

1. Yes, the amicable settlement of collective labour disputes being a factor in the attainment of social peace. Actually, it is to be regretted that differences in legislation do not make it possible to invite States to prescribe by legislation a procedure to which the parties to a dispute would be obliged to have recourse.

INDIA

1. Yes.

1 See above, p. 77.
Luxembourg

1. In consideration of the happy results achieved by national legislation, the Government approves the principle of international regulations concerning voluntary conciliation and arbitration in the form of a Recommendation.

Mexico

1. Yes.

Netherlands

1. Yes.

New Zealand

1. Yes.

Norway

1. It is considered that the International Labour Conference should adopt a Recommendation concerning voluntary conciliation but not voluntary arbitration. The Recommendation should sanction the basic principles and not go into too great detail.

Poland

1. Yes, but only within the limits prescribed under Heading II of the questionnaire.

Portugal

1. Yes.

Sweden

1. Yes.

Switzerland

1. Yes.

Union of South Africa

1. Yes.

United Kingdom

1. Yes. It should be pointed out, however, that the questions under Heading II below appear to envisage a much more formal and rigid type of conciliation procedure than that which obtains in the United Kingdom. As will be seen from the answers to those questions, many of the matters raised are not regarded as suitable for inclusion in international regulations.

II. Voluntary Conciliation

2. Do you consider that it should be provided that regional and national conciliation authorities should be established to aid the parties in the prevention and settlement of collective industrial disputes?
Austria

2. It is undoubtedly in the public interest to establish national conciliation authorities for the prevention or settlement of industrial disputes. This principle should be included in the Recommendation, though it is important to emphasise that recourse to such authorities by the parties to the dispute should be on a voluntary basis.

Belgium

2. Yes. However, the regional and national conciliation authorities should not necessarily be established only for the purpose of conciliation; conciliation might be entrusted to agencies already existing or contemplated and having wider terms of reference (in Belgium, the joint committees).

Bulgaria

2. Yes.

Canada

2. Yes.

China

2. Yes.

Costa Rica

2. Yes.

Denmark

2. The Government replies in the affirmative, in agreement with the central organisations of Danish employers and workers. The Danish Employers' Confederation observes, however, that in Denmark it is preferred that conciliation be undertaken by a national conciliation authority, and not distributed to regional conciliation authorities.

Finland

2. Yes.

France

2. Yes. The French Act of 4 March 1938 respecting conciliation and arbitration proceedings, the operation of which has been suspended since the opening of hostilities, provided for procedures by agreement and procedures according to the regulations. In the first case, it was the collective labour agreement which determined the constitution of the joint board. In the second case, its constitution was determined by legislative enactments and regulations.

India

2. Yes.
LUXEMBOURG

2. Yes.

MEXICO

2. Yes. Mexico has this already.

NETHERLANDS

2. Yes.

NEW ZEALAND

2. Yes.

NORWAY

2. Yes.

POLAND

2. Yes, but the type of assistance should be specified.

PORTUGAL

2. Yes. So far as Portugal is concerned, see the reply to question 8 (a) of questionnaire II. 1

SWEDEN

2. Yes.

SWITZERLAND

2. It might be useful to establish regional and national conciliation authorities, including also within that definition the agencies established by occupational organisations. However, the Swiss Government gives preference to the conciliation procedure established by the parties themselves.

UNION OF SOUTH AFRICA

2. No. These bodies should not be set up on a national or regional basis but upon an industrial basis, and then only as ad hoc bodies to settle specific disputes. Where the function is to prevent as well as settle disputes, the machinery should be more permanent, but in this event, as the employers' and workers' organisations are the bodies which desire to prevent disputes, the responsibility for the setting up and administration of such joint conciliation authorities should rest upon them and not upon the State. The State should by legislation take powers to recognise and empower such joint bodies as the parties themselves may desire to establish, but should not itself force upon industry a system for which it may not yet be ready.

1 See above, p. 67.
This is particularly the case in industries and in countries where the workers are predominantly drawn from groups whose stage of social and economic development is substantially behind that of other groups of workers or that of the workers in highly industrialised countries. In such cases the Government must assume the rôle of guardian to a greater extent, and must in many cases fix wages and conditions after investigation and the hearing of evidence, rather than let the burden of bargaining fall upon the shoulders of workers who by virtue of their primitive stage of social and economic development would be at a disadvantage vis à vis the employers.

2. Yes.

3. Do you consider that it should be provided that the organisations of the employers and workers concerned in the disputes should be associated in all stages of the procedure?

4. Do you consider that it should be provided that the conciliation procedure should be free of charge and expeditious, and that the periods prescribed for appearance of the parties, hearing of witnesses and submission of other evidence should therefore be fixed in advance and kept to a minimum?

Austria

3 and 4. It has already been stressed in the answer to question 1 that no details should be specified in the Recommendation in respect of conciliation procedure. It will be sufficient to establish the principle that procedure before the national conciliation authorities should be free of charge, subject to the minimum of formalities, and expeditious. The principle that the occupational association of employers and workers involved in the dispute should be consulted at every stage of the procedure is implied in the nature of conciliation procedure and can be taken as self-evident.

Belgium

3. Yes. It is quite indispensable, if it is desired that the decisions taken under the auspices of conciliation agencies shall be respected by the parties concerned, to associate them in all stages of the procedure in order that the decisions taken may be freely accepted.

4. Yes. However, while a minimum of form must be prescribed for the conciliation procedure, it is preferable to leave each country full freedom to organise the procedure according to its own requirements. The Recommendation should provide merely for the establishment of a very simple procedure, without entering into the details of the forms which such procedure should assume.
Bulgaria

3. Yes.
4. Yes.

Canada

3. Yes.
4. Yes.

China

3. Yes.
4. Yes.

Costa Rica

3. Yes.
4. Yes.

Denmark

3 and 4. The Government answers in the affirmative, in agreement with the central organisations of Danish employers and workers.

Finland

3. Yes.
4. Yes.

France

3. Yes, but perhaps it would be preferable to amend the phraseology used, the employers' and workers' organisations concerned in the disputes being parties to the procedure and not merely associated in it.
4. Yes.

India

3. Yes. In the absence of any organisation the Government may nominate representatives of employers and employees to be associated in all stages of the conciliation procedure.
4. Yes, it will be enough if the period for completing the conciliation proceedings is fixed in advance.

Luxembourg

3. Yes.
4. Yes.

Mexico

3. Yes.
4. Yes.

Netherlands

3. Yes.
4. Yes.

New Zealand

3. Yes.
4. Yes.
3. Yes.

4. It should be laid down that conciliation should be expeditious and free of charge, but otherwise it is considered difficult to prescribe certain periods and forms for the conciliation procedure.

Poland

3. Yes.

4. Yes.

Portugal

3. Yes.

4. Yes.

Sweden

3. No.

4. The Recommendation should on this point only provide that the conciliation procedure should be free of charge and expeditious.

Switzerland

3. This appears to be necessary.

4. Yes, generally.

Union of South Africa

3. Subject to exceptions in the case of the backward groups referred to in the answer to question 2—yes.

4. Yes, as to the freedom from expense and expedition, etc.—so far as ad hoc conciliation bodies to settle disputes is concerned; No, as to permanent conciliation machinery for particular industries, set up to prevent disputes, negotiate agreements, etc. These standing authorities being of concern mainly to the industry in question should be financed by that industry, but its handling of matters should be as expeditious as possible. In neither case should rigid periods be fixed for the appearance of parties, hearing of witnesses and submission of evidence. Clearly these are matters in which the periods must depend upon the circumstances, distances to be travelled, number of witnesses, etc. It would be a serious error to endeavour to apply rigid rules when using conciliation and negotiation. Flexibility is what is required, in keeping with the requirements of the particular dispute.

United Kingdom

3. Subject to the procedure agreed between the parties for the settlement of disputes at the level of the undertaking, organisations of employers and workers concerned in a dispute should be associated in all stages. The exact procedure should be a matter for agreement between the parties.

4. It should be provided that conciliation should be free of charge and expeditious. The remainder of this question presupposes a more formal and stereotyped method of conciliation than is customary in the United Kingdom. It is not considered that such matters are suitable for international regulations.
5. Do you consider that it should be provided that, once a dispute has been submitted to a conciliation authority with the consent of all the parties concerned, the latter should be required to abstain from strikes and lockouts while the conciliation is in process?

AUSTRIA

5. Adoption of a provision in the sense of question 5 would appear desirable, because its operation is limited to cases where the conciliation authority has intervened with the consent of all parties to the dispute, i.e., when the parties have voluntarily submitted to conciliation procedure.

BELGIUM

5. The Belgian Government considers that any absolute prohibition of strike or lockout during the course of conciliation procedure might result in causing the parties concerned to refuse to engage in the procedure; for this reason, the Government suggests that it should be left to national legislation to take all useful and possible measures with the object of preventing strike or lockout during the conciliation procedure.

It may be recalled that Belgian legislation at the present time indirectly penalises recourse to strike and lockout while conciliation is in process, by not allowing strikers to draw unemployment pay (Order of the Regent of 12 March 1946).

BULGARIA

5. Yes.

CANADA

5. Yes.

CHINA

5. Yes.

COSTA RICA

5. Yes.

DENMARK

5. The Government replies in the affirmative, in agreement with the central organisations of Danish employers and workers. The Danish Employers' Confederation bases its reply on the observance of the expeditious form of procedure outlined in question 4.

FINLAND

5. Yes.
FRANCE

5. Yes. The adoption of such a provision is necessary if the conciliation procedure is to be in any way effective.

INDIA

5. Yes.

LUXEMBOURG

5. Yes.

MEXICO

5. Yes; this in accordance with Mexican procedure.

NETHERLANDS

5. Yes.

NEW ZEALAND

5. Yes.

NORWAY

5. In accordance with the standpoint taken by the Nordic countries during the discussion of freedom of association at the Conference in 1947, the following text is proposed for the Recommendation with respect to this question:

Once a dispute has been referred to conciliation the parties must be obliged to refrain from establishing a strike or lockout during the procedure of conciliation in accordance with existing provisions. The conciliation procedure cannot without the consent of the parties exceed a time limit, fixed in advance, with the effect to exclude the rights of the parties to declare a strike or lockout.

POLAND

5. No.

PORTUGAL

5. Yes. It is observed, however, that in Portugal it is sufficient for one of the parties concerned to ask for disputes to be submitted to the joint conciliation committees. On the other hand, strike and lockout are prohibited by law.

SWEDEN

5. Yes.

SWITZERLAND

5. Yes.

UNION OF SOUTH AFRICA

5. Yes.
5. It should be open to each of the parties to appeal to the conciliation authority, and it should not be implied that the prior consent of all parties is necessary in order to bring the conciliation machinery into operation. Conciliation should, however, be based on the principle that the parties should abstain from strikes and lockouts while conciliation is in progress, and it should be provided that recourse to conciliation should carry with it such intention on the part of the parties, but it is not practicable to impose this by international regulations.

6. Do you consider that it should be provided that if the recommendation of a conciliation authority has been voluntarily accepted by the parties, it should be binding upon them?

7. Do you consider that it should be provided that agreements which the parties may reach during the procedure, and recommendations of the conciliation authorities freely accepted by the parties, should have the same legal force as collective agreements concluded in conformity with national legislation?

Austria

6 and 7. The answer to both questions in principle is in the affirmative. Consideration should, however, be given to the question whether the binding force of such settlements should not be made subject to acceptance having been given in writing. It should in any case be required that agreements and settlements arrived at by the parties during the conciliation procedure should be drawn up in writing, if they are to have the legal force of collective agreements.

Belgium

6. Yes.
7. Yes.

Bulgaria

6. Yes.
7. Yes.

Canada

6. Yes, but only if the parties agree to be so bound.
7. Yes, if the parties concerned consent that such agreements and recommendations be given the same legal force.

China

6. Yes.
7. Yes.
6. Yes.
7. Yes.

**DENMARK**
6 and 7. The Government replies in the affirmative, in agreement with the central organisations of Danish employers and workers.

6. Yes.
7. Yes.

**FINLAND**

6. Yes.
7. Yes.

**FRANCE**
6 and 7. Yes, Article 15 of the Act of 4 March 1938 provides that agreements established by a conciliation record shall be binding.

6. Yes.
7. Yes.

**INDIA**
6. Yes.
7. Yes.

**LUXEMBOURG**

6. Yes.
7. Yes.

**MEXICO**
6. Yes.
7. Yes.

**NETHERLANDS**
6. Yes.
7. No. Agreements reached during the procedure and recommendations of the conciliation authorities should be regarded as ad hoc settlements. If it is felt to be desirable to give wider scope to the standards set by these settlements, these standards should formally be included in collective agreements.

6. Yes.
7. Yes.

6. Yes.
7. Yes.

**NEW ZEALAND**

6. Yes.
7. Yes.

**NORWAY**

6. Yes.
7. Yes.

**POLAND**
6. Yes.
7. Yes.

**PORTUGAL**
6. Yes, certainly.
7. Yes.

**SWITZERLAND**
6. It would appear that this should be the case in the interests of the parties themselves.

Article 34 of the Federal Factory Act of 18 June 1914 provides that the parties shall have the right in every case to empower the
Conciliation Board (Boards established by the cantons under Article 30) to settle their differences by means of a binding arbitral award.

7. The Swiss Government would prefer to leave it to the parties to determine the legal force of their agreements and of the recommendations of the conciliation authorities.

**Union of South Africa**

6. Morally "yes", but legally "no"; it should only carry legal criminal sanctions or apply to non-parties if so promulgated by the State as legislation, thus indicating the State's approval of the settlement.

7. The reply to question 6 is equally applicable here. If a conciliation board arrives at an agreement which has been accepted by the parties thereto, this is in effect a collective agreement, and the legislative machinery of the State should be capable of making such collective agreements binding by promulgation by the national authority as law. Private conciliation agreements outside the aegis of enabling legislation should be void of any criminal law enforcement procedure and should depend solely upon the civil rights, if any, of the parties to the settlement, arising *ex contractu*.

**United Kingdom**

6. It should not be implied that the only outcome of conciliation is a "recommendation" on the part of the conciliator. The main object of conciliation should be to promote joint agreement between the parties to the dispute. It is not considered that any such joint agreement or any recommendation made by a conciliator, which is voluntarily accepted by the parties, should be made legally binding upon them.

7. Agreements which the parties may reach in the course of, or as the result of, conciliation are, in fact, collective agreements, and, therefore, in the United Kingdom have the same validity as collective agreements normally concluded. It should not be implied that such agreements or any recommendations made by the conciliator should be enforceable at law. The form of this question suggests some confusion as to the effect of collective agreements, which in the United Kingdom are not, as such, enforceable at law.

**III. Voluntary Arbitration**

8. *Do you consider that it should be provided that a system of voluntary arbitration should be established, to which the parties might have recourse either at the outset or after breakdown of the conciliation procedure?*
9. Do you consider that it should be provided that, once a dispute has been submitted to arbitration with the consent of all the parties concerned, the latter should be required to accept the arbitration award?

Austria

8 and 9. It would appear desirable to make the conciliation authorities referred to in question 2 also responsible for arbitration, because, during the course of conciliation for the settlement of an industrial dispute, the parties frequently desire that an arbitral award shall be given. The international regulations should not however, exclude the possibility of the parties agreeing to such arbitration by an agreed tribunal or a private arbitrator.

The award of the official arbitration authority should be made binding on the parties to the dispute only if all the parties have previously agreed to abide by the arbitration award. An award made under these conditions might be given the same force as a collective agreement, in the same way as written agreements and settlements arrived at by the parties during the course of conciliation procedure.

In Austria, as already mentioned in connection with question 8 of questionnaire II, Section 19 of the Collective Agreements Act empowers the conciliation boards to make awards where necessary for the settlement of industrial disputes, though a conciliation board is empowered to issue an award only if both the parties have previously signified in writing their willingness to be bound by such an award. Such awards issued by the conciliation boards are assimilated to collective agreements.

Belgium

8. The Belgian Government considers that the parties will generally desire not to have recourse to voluntary arbitration until after the breakdown of conciliation procedure. Any system of voluntary arbitration should be of a subsidiary character, and should only come into operation where the parties themselves do not establish in full freedom an arbitration procedure.

9. Yes.

Bulgaria

8. Yes.

9. Yes.

Canada

8. Yes, at either stage, provided the parties may fully accept or reject such service.

9. Yes, but only if the parties have agreed beforehand to be bound by the award.

China

8. Yes.

9. Yes.
REPLIES OF THE GOVERNMENTS

Costa Rica

8. Yes.
9. Yes.

Denmark

8 and 9. The Government reserves its final attitude.

The Danish Employers' Confederation replies in the affirmative.

In the view of the Confederation of Danish Trade Unions, questions 8 and 9 do not seem to have been given an absolutely clear form. Under the rules of negotiation agreed upon in 1936 between the Danish central organisations, certain disagreements arising out of the negotiations for the renewal of agreements may be referred to decision by arbitration, provided that both parties have agreed to such reference. What has been stated in questions 8 and 9 may be taken to indicate that a somewhat similar thing has been had in view by the International Labour Organisation, and to this the Confederation has no objections to make, but as the problem may have a far-reaching importance, it must reserve its final attitude and await the further discussion at the meeting of the International Labour Conference.

Finland

8. This should be left to national legislation.
9. This should be left to national legislation.

France

8. Yes, it being understood that initial recourse to arbitration without any stage of conciliation could not be contemplated unless the parties were in agreement on this matter.
9. Yes; Article 15 of the Act of 4 March 1938 went further, because it provided that an award should be enforceable on being filed with the clerk of the civil court within the jurisdiction of which the award was made.

India

8. Yes.
9. Yes.

Luxembourg

8. Yes.
9. Yes.

Mexico

8. Yes.
9. In the case of private arbitration, Yes; in the case of official arbitration, No, as Mexico possesses a protective jurisdiction deeply enrooted in its legislation, which enables recourse to be had to official arbitration awards, that is to say, awards given by the competent authority.

Netherlands

8. Yes.
9. Yes.
NEW ZEALAND

8. Yes, so long as existing compulsory systems are protected.
9. Yes.

NORWAY

8 and 9. See reply to question 1. ¹

POLAND

8. No.
9. No. At the present time the relation of the social forces in the majority of countries does not lead one to expect that arbitration, even voluntary arbitration, will result in any improvement in the opportunities of the working class; on the other hand, it may be used in order to lessen its opportunities and its ability to defend its interests, as is shown, for instance, by the changes which have been brought about in a number of countries, under external influence, in the trade union movement, which have diminished the guarantee of any effective utilisation of joint machinery. Changes of circumstances during voluntary conciliation procedure may enforce a resort to the strike weapon, and there is no reason why the workers, always being the weaker party under social and economic conditions in a capitalist society, should suffer any diminution in their freedom to defend themselves, particularly where there is a deliberate prolongation by the employers of the conciliation procedure, and especially as the negotiations for settlement may be continued even during a strike.

PORTUGAL

8. Yes. Portuguese law permits recourse to voluntary arbitration in the case of collective disputes, except as regards accidents in the course of employment or occupational diseases.
9. Yes. This is the principle embodied in Portuguese law (Code of Civil Procedure, Article 49).

SWEDEN

8. Yes.
9. Yes.

SWITZERLAND

8. Yes, subject to the reservations made in replying to question 2 with regard to procedures established by the parties themselves.
9. Yes, that appears to be in keeping both with legal rules and with good faith.

UNION OF SOUTH AFRICA

8. Yes, but after breakdown, not before. In the Union Government's opinion, conciliation, negotiation and agreement should always be tried first before recourse is had to arbitration. State

¹ See above, p. 81.
arbitration machinery should only be available where statutory conciliation machinery has been used. There is no objection to private arbitrators being voluntarily agreed to by parties to private conciliation proceedings, but statutory enforcement machinery should not be applied to awards, agreements, etc., in which the State has not participated.

9. This seems unnecessary, as it is obvious that a party who has agreed to accept arbitration must accept the award; he is bound there to *ex contractu*. In the case of arbitration awards under statutory aegis there is of course no objection to such a provision, though as stated it would appear to be a principle which is of obvious application not requiring specific mention in international regulations.

**UNITED KINGDOM**

8. It should be provided that a system of voluntary arbitration should be established to which the parties may have recourse to secure the settlement of an industrial dispute. The concluding words of this question (from "either" to "procedure") are not comprehensive, as they do not cover the type of case where the disputes procedure in an industry provides for a voluntary reference to arbitration in the event of a breakdown of direct negotiations between the two sides. Where disputes procedure in an industry exists, this should be fully utilised before recourse to any system of arbitration that may be established.

9. It should not be provided that the arbitration awards should be legally binding on the parties. It should, however, be recommended that recourse to arbitration should imply an intention of the parties to abide by the award.

* * *

10. *Have you any proposal or suggestion to put forward on any point regarding the question of voluntary conciliation and arbitration which has not been mentioned in the present questionnaire?*

**FRANCE**

10. It is necessary to emphasise once more that it would be desirable to recommend not only systems of voluntary conciliation and arbitration but also compulsory procedures.

In this connection, this has been demonstrated by the failure of the experiment tried in France under the system laid down by the Act of 28 December 1892. This was due to the purely optional nature of the procedure, the lack of permanence in the conciliation and arbitration machinery, and, above all, to the fact that any agreement reached between the parties as a result of conciliation and the decision of the arbitrator were not compulsorily binding.

The failure of voluntary procedure was confirmed under the system instituted by the Act of 4 March 1938, which was intended
to give to conciliation and arbitration procedures prescribed by agreement priority over the procedures prescribed by law in the event of their breaking down. But the procedures prescribed by law quickly superseded procedures prescribed by agreement and were invoked in the case of most of the collective disputes which arose immediately after the end of the war.

It is, therefore, to be desired that, after the first stage contemplated in the Recommendation suggested in the present questionnaire, it might be possible to recommend to the States Members a system of compulsory procedure supplementing the contractual procedure and coming into operation if the latter broke down, to be adopted when the economy of those States may be deemed to have returned to normal after the difficult period following the conclusion of hostilities.

It is also necessary to observe that wartime and post-war circumstances have made it necessary, in certain cases, to suspend existing conciliation and arbitration procedures. In a period of planned economy, questions which can exercise influence over economic conditions must be settled within the general framework of the policy followed by the Government. However, when it is possible to do so without endangering its economy, France will not fail to return, if not to the legislation of 1938 which events have rendered obsolete, at least to procedures better adapted to new conditions.

**India**

10. (i) Where parties to a dispute do not go in for voluntary conciliation or arbitration there should be provision for Government conciliation machinery to undertake conciliation and, if necessary, for reference of disputes to adjudication, at least in the case of public utility undertakings.

(ii) The Recommendation should specify the period of operation of settlements and awards.

**Switzerland**

10. It is agreed that the conciliation and arbitration procedure should be gratuitous except where a party has recourse to it for rash or malicious motives, in which case the defaulting party should be made liable to judgment for the payment of legal costs.
QUESTIONNAIRE IV

CO-OPERATION BETWEEN PUBLIC AUTHORITIES AND EMPLOYERS' AND WORKERS' ORGANISATIONS

A. CO-OPERATION AT THE LEVEL OF THE UNDERTAKING

DENMARK

Respecting the co-operation between employers and workers within the individual undertaking, it should be observed that, as the International Labour Office is no doubt aware, provision has been made under collective agreements between the two Danish central organisations for the establishment of joint committees between employers and workers in the individual undertakings.

The Government does not object to the adoption of a Recommendation concerning the co-operation between the employers and workers of an undertaking. The Government, however, holds the view that the relevant questions—where it is at all possible—are best settled by agreement between the central organisations, such as has been the case in Denmark. The agreement only took effect in the autumn of 1947, and the Government so far has no such experience respecting the activities of the joint committees as to consider itself justified to decide on its attitude to questions 2-18.

LUXEMBOURG

By the Grand-ducal Order of 8 May 1945, amended several times since that date, but the fundamental provisions of which still remain, workers' committees have been established in industrial undertakings regularly employing at least twenty workers. These committees, which are elected according to the system of proportional representation by the whole of the employees of the undertaking concerned, have the function of promoting good relations between employers and workers by regulating affairs of common interest on a legal basis.

Moreover, Article 24 of the Act of 7 June 1937 provided for the setting up of salaried employees' committees in all undertakings regularly employing not less than fifteen salaried employees. Finally,
the staff regulations for the Luxembourg railways, promulgated in 1920, provided for representation of the staff consisting of (a) delegates to the heads of departments (operating, tracks and buildings, rolling-stock and locomotives) and (b) delegates to the management, forming a central committee. The functions of these staff committees are limited to such social questions as may arise in the undertaking concerned.

A proposed law, laid before the Chamber of Deputies in 1945, provides, however, for the establishment of joint works committees which, following the model under French legislation, would also have important functions in the economic field and would, in fact, share in the management of the undertaking.

**Union of South Africa**

In view of the replies to questions 1 and 2, the remaining questions do not call for comment except to point out, in so far as question 10 is concerned, that it is considered that "works committees" should not concern themselves with matters such as the application of collective agreements, etc. These functions should be exercised by the appropriate agencies for the administration of collective agreements on an industrial basis. It is unnecessary and undesirable to set up within an undertaking an organisation which would duplicate the existing functions of the agency administering collective agreements.

I. Desirability and Form of International Regulations

1. *Do you consider that the International Labour Conference should adopt international regulations concerning co-operation between employers and workers in the undertaking, in the form of a Convention or of a Recommendation?*

**Australia**

1. International regulations on this subject should take the form of a Recommendation. It is considered that co-operation through works committees, production committees, staff delegations, etc., will only be effective where the parties concerned voluntarily undertake to co-operate and are prepared to give effect to the true purpose of the co-operation. It is, therefore, considered that no useful purpose can be achieved by attempting to impose co-operation in advance of the wishes of the parties to industry. Much can, however, be done by way of encouragement and education, and it is for this reason that a Recommendation is supported.

The greatest value of a Recommendation will probably lie in the debating of the matter at the International Labour Conference, where representatives of employers and workers participate and
where those representatives can gain ideas which can be taken back to their own countries and brought before the notice of their organisations. It is against the background of these general comments that the answers below should be read.

**Austria**

1. Co-operation between employers and workers in the individual undertaking appears to have developed to such an extent in the various countries, either under statutory regulations or on the basis of agreement concluded between the parties, that international regulations on the matter would appear to be desirable in the form of a Convention.

**Belgium**

1. It is considered that International Labour Conference should adopt international regulations concerning co-operation between employers and workers in undertakings in the form of one or several Recommendations.

**Bulgaria**

1. Yes.

**Canada**

1. A Recommendation.

**China**

1. The International Labour Conference should adopt international regulations concerning co-operation between employers and workers in the undertaking in the form of a Convention.

**Costa Rica**

1. Yes. It is considered desirable that the Conference should adopt regulations concerning co-operation between employers and workers in the form of a Convention.

**Denmark**

1. The Government does not object to the adoption of a Recommendation.

   The Danish Employers' Confederation agrees to a Recommendation.

   The Confederation of Danish Trade Unions considers it most appropriate for the adoption of the international regulations to be in the form of a Convention.

**Finland**

1. Yes. Under the form of a Recommendation.
FRANCE
1. Under the form of a Convention, provided that the provisions are not too inflexible.

INDIA

IRAQ
1. Yes; in the form of a Convention.

LUXEMBOURG
1. In view of its national legislation and of its satisfactory results, the Luxembourg Government is in favour of the international regulation of the question of co-operation between employers and workers at the level of the undertaking in the form of a Convention, to be supplemented, if necessary, by one or several Recommendations.

MEXICO
1. Yes; a Recommendation is preferred.

NETHERLANDS
1. In the form of a Recommendation.

NEW ZEALAND
1. A Recommendation.

NORWAY
1. Yes, international regulations concerning these questions should be adopted. As regards the desirability of giving the regulations the form of a Convention or not, the choice will depend on the ratification possibilities. At present a Recommendation would perhaps be the more suitable form.

PANAMA
1. Yes.

POLAND
1. Yes, under the form of a Convention.

SWEDEN
1. In the form of a Recommendation.
Switzerland

1. The international regulation of this question could serve to promote increasingly close and harmonious co-operation between employers and workers. But the establishment of such machinery raises such complex questions, in relation to the very structure of the economy, that the Swiss Government is not convinced that this matter is already ripe for international regulation. In any event, the Swiss Government could visualise such regulation only in the form of a Recommendation.

Union of South Africa

1. No. At the most a Recommendation should suggest that Members encourage such co-operation on a voluntary basis. It is considered that the desire and willingness of employers and workers to co-operate on this basis is an essential.

United Kingdom

1. It appears desirable to embody the main principles (but not the details) contained in the questionnaire in international regulations in the form of a Recommendation (but not a Convention). A final view cannot, however, be expressed in advance of the discussions at San Francisco and, pending the outcome of those discussions, His Majesty's Government must not be regarded as being committed, by the following answers, to the view that it is practicable to draw up an acceptable Recommendation on this subject.

II. Establishment of Machinery for Co-operation

2. Do you consider that it should be provided in the international regulations that machinery for co-operation such as, for instance, works committees, production committees, staff delegations, etc., should be established, either by agreement between the parties or by legislation, in order to promote a gradual raising of the conditions of work and life of the personnel and a continuous improvement in the organisation of production?

Australia

2. It is considered that provision should be made for a national agency to be responsible for encouraging and assisting employers and workers in the establishment of machinery of co-operation. Experience in Australia is that there has, so far, been little desire on
the part of employers and workers to establish local joint machinery. This is probably attributable to two factors: (i) the strength of trade union organisation; and (ii) the existence of a comprehensive system of arbitration.

There are, however, many instances of shop committees which negotiate with management regarding matters of domestic concern to the staff, but do not deal with questions relating to wages, hours or other conditions of employment, which are handled by the trade unions direct.

Austria

2. The Convention should provide for the establishment in every undertaking of machinery to represent the workers, responsible first for representing the social and economic interests of the workers in their relations with the employer, and, secondly, for a certain degree of collaboration in the management and administration of the undertaking. Such machinery undoubtedly helps to promote a raising of the working conditions of the personnel, and exercises a favourable influence towards improving the organisation of production, thus ensuring social peace within the undertaking, to the benefit of both the personnel and the undertaking.

Belgium

2. The international regulations should provide that machinery for co-operation should be established at the level of the undertaking, either by agreements between the parties, or by legislation, or by a combination of these two methods.

Bulgaria

2. Yes.

Canada

2. Yes.

China

2. Yes.

Costa Rica

2. In Costa Rica, it has been demonstrated in practice that legislation is the most effective means of establishing machinery for co-operation. This system tends to persuade employers and workers to settle jointly their economic and social problems.

Denmark

2. The Government reserves its decision.

The Danish Employers' Confederation considers that the machinery for co-operation should be established by agreement between the parties, in order to promote a gradual raising of the conditions of
work and life of the personnel and a continuous improvement in the organisation of production, with due regard to the state of the markets.

The Confederation of Danish Trade Unions considers that it should be possible to establish a form of co-operation either by agreement between the parties, or—failing such agreement—by legislation.

**FINLAND**

2. Yes.

**FRANCE**

2. Yes, either by legislation or by means of agreement between the parties, in order to respect the traditions of each country.

**INDIA**

2. Yes; preferably by agreement, but legislation may be necessary.

**IRAQ**

2. Yes; by legislation.

**LUXEMBOURG**

2. Yes.

**MEXICO**

2. Yes; by agreement between the parties.

**NETHERLANDS**

2. Yes.

**NEW ZEALAND**

2. Yes.

**NORWAY**

2. Yes. In Norway a system of production committees in undertakings has been introduced, based on a voluntary agreement of 7 December 1945 between the Norwegian Employers’ Association and the General Confederation of Trade Unions in Norway. This system, which has now been practised with good results for a period of two years, will form the background of the replies of the Norwegian Government to the questions in this part of the questionnaire.

**PANAMA**

2. This would be very desirable.
Poland

2. The Polish Government desires to emphasise, in the definition of the objects for which such machinery is established, the continuous raising of the real earnings of the workers.

Sweden

2. Yes. In the first place by agreement between the parties. Legislation should be considered only if agreements cannot be reached. See also reply under question 18. ¹

Switzerland

2. Bearing in mind the reply already made to the preceding question, the Swiss Government would favour the establishment of machinery for co-operation in the first place by means of agreements freely entered into between employers and workers, which is the manner in which the workers' committees have been voluntarily established in Switzerland.

Union of South Africa

2. In Chapter I of Part IV of Report VIII (1) on industrial relations, the advisability of leaving the question of the establishment of bodies of the nature of works committees to voluntary agreement as against a proposal to regulate such matters by legislation is discussed. The Union Government is in full accord with the following views expressed in that report in favour of leaving these matters to voluntary agreement:

The establishment of the agencies by agreement offers the parties concerned greater freedom in choosing the type of organisation which is most appropriate to the particular conditions in industry. . . . Furthermore, where the establishment of staff representation is decided by voluntary agreement between the employers and workers, it may be supposed that each of the parties has recognised the need for such machinery, and that both intend to do all in their power to enable it to operate and make it a success . . . it is clear that a great deal more depends on the spirit which animates the members of the committees than upon the mere fact of their existence. ²

The Union Government considers that no good purpose would be served by requiring such committees to be established by law, and does not concur in the view that the uniformity which would possibly result would carry with it any advantage. Furthermore, it is not considered that employers who agree to establish such committees would be at any disadvantage as compared with those who do not.

¹ See below, p. 144.
As distinct from questions relating to conditions of employment, where it considers that the law should require the appropriate workers’ and employers’ organisations operating at the industrial level to recognise each other and at least to meet and attempt to negotiate, the Union Government considers that in matters such as those which would fall within the purview of the proposed “works committees” the essential requirement, if such committees are to succeed, is the desire and willingness of both employers and workers to co-operate on that basis. This cannot be brought into being by legislation. The proposal should be left entirely to voluntary effort.

**United Kingdom**

2. It should be provided that machinery for co-operation should be established in accordance with collective agreements between the two sides of the individual industry, the functions of such machinery being to provide a means for joint consultation on such matters of common interest as may be provided for under the agreement.

**III. Scope of the Regulations**

3. Do you consider that it should be provided in the international regulations that machinery for co-operation should be established in all industrial and commercial establishments, public or private, ordinarily employing at least fifty persons?

**Australia**

3. The authority responsible for keeping under review the establishment of machinery of co-operation should aim at obtaining agreement to the establishment of machinery for co-operation in all industrial and commercial establishments employing at least fifty persons.

**Austria**

3. The international regulations should extend at least to all industrial, mining, or commercial undertakings, whether administered by private persons or a public authority. It might be desirable to contemplate a number lower than fifty as the recommended minimum.

**Belgium**

3. This machinery should be established in industrial and commercial establishments, public or private, ordinarily employing a fixed number of persons. Although the figure of fifty persons suggested in the questionnaire appears reasonable, the Belgian
Government considers that the international regulations themselves should not fix this figure.

Moreover, the Government feels that consideration should be given to the establishment of such machinery in agricultural undertakings as well as in industrial and commercial establishments.

3. Yes.

BULGARIA

3. Yes.

CANADA

3. Yes.

CHINA

3. Yes.

COSTA RICA

3. It is not considered appropriate that the international regulations should fix the minimum number of persons employed in an undertaking as a requirement for the establishment of machinery for co-operation. It is considered preferable that each country should determine the undertakings in which the establishment of such machinery is deemed to be necessary, taking into account the extent of the activities and the size of the staff, its total numbers and its conditions of employment.

DENMARK

3. The Government reserves its decision.

The Danish Employers' Confederation replies Yes, in industrial, but No, in commercial establishments.

The Confederation of Danish Trade Unions states that the figure given—at least fifty persons—seems to be too high. Twenty or twenty-five would, in its opinion, be more suitable.

3. Yes.

FINLAND

3. Yes.

FRANCE

3. Yes; moreover, the number of fifty employees is the minimum prescribed by French legislation with regard to works committees (Act of 16 May 1946 amending the Ordinance of 22 February 1945, Article 1). With regard to employees' delegates, Article 1 of the Act of 16 April 1946 applies to establishments in which more than ten persons are ordinarily employed.

However, special regulations should be prescribed in respect of public services, in order to adapt the general regulations to the nature and conditions of operation of such services.

INDIA

3. On practical considerations, the international regulations should extend to industrial undertakings ordinarily employing one hundred or more persons.
IRAQ
3. Yes.

LUXEMBOURG
3. Yes.

MEXICO
3. Yes.

NETHERLANDS
3. The number of workers ordinarily employed should not be regulated in the Recommendation, but should be a matter for decision by the national authorities. It should be understood that all efforts should be made to establish employee representation on as large a scale as possible, taking account, however, of the particular conditions and development of each undertaking and groups of undertakings and of the workers employed therein.

NEW ZEALAND
3. Yes.

NORWAY
3. Yes, in all undertakings above a certain size. In all Norwegian industrial undertakings with a number of hours of work equivalent to at least twenty employees, production committees are operating.

PANAMA
3. No. It is not considered desirable. This machinery might be established according to circumstances within the limits of one region or country.

POLAND
3. The Government of Poland, in view of the excellent results demonstrated by experience in that country, proposes that the limit should be lowered to twenty workers.

SWEDEN
3. The collaboration agreement entered into by the Swedish Employers' Confederation and the Swedish Confederation of Trade Unions concerning the establishment of "enterprise councils" provides that such a council shall be established in every enterprise which as a rule employs at least twenty-five workers. In enterprises which are smaller than those just mentioned, but where more than four workers over 21 years of age are regularly employed, the workers' local organisation concerned may decide to select two enterprise representatives of the workers. In the supplementary agreement concluded with the Swedish central organisations of salaried
employees, it is prescribed that it shall apply to enterprises in which an "enterprise council" has been established in accordance with the above-mentioned collaboration agreement.

It should be laid down in the Recommendation that such machinery for co-operation shall be established only at the request of one of the parties.

**Switzerland**

3. The Swiss Government's reply is in the same terms as that made to question 2. It is considered, however, that it would be more desirable to refrain from fixing the number of wage-earners which should determine whether a given undertaking should set up machinery for co-operation. The need for such machinery, indeed, depends on the nature of the work carried on and of the staff employed.

**United Kingdom**

3. No. The question of the establishment of such machinery in particular establishments should be for settlement between the employer and representatives of his workpeople, in accordance with the relevant collective agreement.

**IV. Appointment of Representatives of Personnel**

4. (a) Do you consider that it should be provided in the international regulations that the representatives of the personnel for the purpose of co-operation in the undertaking should be elected by the whole of the personnel by direct secret ballot, or

(b) Do you consider that the representatives of the personnel should be appointed by the representative organisations of the workers?

**Australia**

4. The specific form of works or shop committees, etc., will depend on the circumstances in each particular establishment, and it is undesirable to lay down hard and fast rules. The national authority responsible for encouraging and assisting the establishment of machinery for co-operation should bear in mind the two principal forms set out in clauses (a) and (b), and, in recommending to the parties which form should be adopted in any case, should be guided by the circumstances which will condition the successful operation of the machinery. Above all, however, that authority should, wherever possible, avoid the suggestion of sponsoring machinery of a form which would enable either side to dominate the activities. This would defeat the purpose of co-operation by giving rise to the
feeling that the works or shop committee was an employers' instrument, or dominated by the representative of one union to the exclusion of other sections of the shop personnel.

**Austria**

4. The representatives of the personnel should be appointed by the whole of the personnel in the undertaking by direct secret ballot, as the activities of such representatives can be assured of success only if the members of the representative body enjoy the direct confidence of the personnel. Moreover, appointment of the representative body by direct ballot of the personnel is in accordance with democratic principles.

**Belgium**

4. (a) It is considered that the procedure outlined in the question should be excluded, unless it is expressly provided that the candidates representing the personnel are proposed by the organisations which are representative of those concerned.

(b) Yes. It is considered, however, that the representatives of the personnel should be elected by the whole of the workers in the undertaking by direct secret ballot from the list of candidates put forward by the representative organisations of the organised workers. It appears indeed to be desirable to ensure that both the representative organisations and the whole of the workers in the undertaking should take part in making these nominations.

**Bulgaria**

4. (a) Yes.

(b) No.

**Canada**

4. (a) Yes, but on a constituency (branch or sectional) basis.

(b) No, except in undertakings where labour is well organised and the parties prefer this method.

**China**

4. It should be provided in the international regulations that the representatives of the personnel for the purpose of co-operation in the undertaking should be elected by the whole of the personnel by direct and secret ballot.

**Costa Rica**

4. (a) It is considered appropriate to provide that the representatives of the personnel should be elected by the whole of the workers in the undertaking by direct secret ballot.

**Denmark**

4. The Government reserves its decision.

The Danish Employers' Confederation replies Yes to (a) and No to (b).
The Confederation of Danish Trade Unions considers that the representatives of the personnel should be elected by the personnel.

**FINLAND**

4. (a) Yes. The right of the salaried employees to elect representatives should be clearly laid down.

(b) No.

**FRANCE**

4. It would be desirable, in this connection, to take account of the practice and procedure traditionally followed in each country.

It is important to emphasise that there exists a third method, not covered by the questionnaire, which constitutes an intermediate solution. That is the method in application in France, which involves the election by the whole of the wage-earners in the undertaking, by secret and direct ballot, from lists of candidates drawn up by the most representative industrial associations of the employees in the undertaking (Ordinance of 22 February 1945, Article 6, paragraph 1).

**INDIA**

4. (a) Yes.

(b) No.

**IRAQ**

4. (a) Yes.

(b) No.

**LUXEMBOURG**

4. (a) Yes.

(b) The sharing of trade union representatives in the functions of the elected committees does not appear to present any advantage.

**MEXICO**

4. (a) In such form as is desired by the workers in the undertaking.

(b) No.

**NETHERLANDS**

4. (a) and (b) In principle it appears to be desirable that the members of the works councils should be elected from one or more lists of candidates, drawn up each time for the undertaking in question by the most representative organisations of workers. When, however, the composition of the body of employees justifies representation by non-union workers, such workers should also be entitled to submit lists of candidates. If occasion arises, other methods of electing, or—as suggested under (b)—of appointing members of works councils could be appropriate. The various possibilities should be left to national regulation.

If an election takes place there should of course be secrecy, but not the whole of the personnel should participate in the election. There should be certain restrictions, such as a minimum age and a minimum period of service, but these requirements should not be regulated internationally.
NEW ZEALAND

4. (a) Yes.
    (b) —.

NORWAY

4. (a) It should be provided in the international regulations that the wage-earners' representatives on the joint committees should be elected by written secret ballot.
    (b) No.

PANAMA

4. (b) By the representative organisations of the workers.

POLAND

4. (a) Yes.
    (b) It would be desirable to establish the representation of the workers in the undertaking in the form of a subordinate trade union agency; long experience has shown that it is only such an organisation which enables the representation of the workers to become a body which can genuinely improve the material and social position of the workers.

SWEDEN

4. Either of the two methods of appointment may be applied.

SWITZERLAND

4. (a) and (b) The Swiss Government is inclined to the first solution, while visualising that the workers' organisations might, in certain cases, be concerned in the elections.

UNITED KINGDOM

4. (a) and (b) No. It is considered that questions regarding the method of constituting joint consultative machinery in the individual undertakings are matters for determination under collective agreements between the two sides of the industry concerned, or between the employer and representatives of his workpeople in accordance with the relevant collective agreement, and are not suitable for international regulations.

V. Composition of Representative Bodies

5. Do you consider that it should be provided in the international regulations that the number of representatives of the
personnel on the committees or other bodies for co-operation in the undertaking should be proportionate to the number of persons employed therein?

AUSTRALIA

5. Yes, subject to the need for the advising authority to bear in mind the desirability of avoiding an unwieldy committee.

AUSTRIA

5. The number of representatives of the personnel must be determined in proportion to the total number of workers employed in the undertaking, as the range of their duties increases in proportion to the number of employees. In large-scale undertakings the representative body can only perform its duties effectively if it includes an adequate number of members. It would not, however, be desirable to include any provision in the Convention laying down a definite numerical proportion.

BELGIUM

5. Yes. However, maximum and minimum limits should be possible, in such proportion that the machinery for co-operation in the undertaking shall be neither too small nor too unwieldy.

BULGARIA

5. Yes.

CANADA

5. Yes, so long as the committees do not become unwieldy.

CHINA

5. Yes.

COSTA RICA

5. Yes.

DENMARK

5. The Government reserves its decision. The Danish Employers’ Confederation and the Confederation of Danish Trade Unions reply in the affirmative.

FINLAND

5. Yes, subject to the reservation that undertakings might be grouped in a small number of categories having an equal number of representatives.
FRANCE

5. Yes. A certain ratio should be observed without making the system too inflexible. This is moreover the solution adopted by the French legislation concerning this matter (Act of 16 May 1936 amending the Ordinance of 22 February 1945, Article 5).

INDIA

5. Yes, but subject to a maximum number so that the committee, etc., may not become unwieldy.

IRAQ

5. Yes.

LUXEMBOURG

5. Yes.

MEXICO

5. It is for the States to determine their composition.

NETHERLANDS

5. Yes. Provided that the proportion, which is to be fixed nationally, may be variable, taking account of the number of workers employed in an undertaking.

NEW ZEALAND

5. Yes, with limitations to avoid large, unwieldy committees.

NORWAY

5. Yes. Reference is made to Section 4 of the Norwegian agreement, which contains, inter alia, detailed regulations concerning the number of representatives on the committees in relation to the size of the undertaking.

PANAMA

5. Yes.

POLAND

5. Yes.

SWEDEN

5. Yes, but within fixed limits. The Swedish agreement provides that in enterprises which ordinarily employ not more than one hundred workers, not more than three representatives of the latter
may be chosen as members of the "enterprise council". In enterprises which ordinarily employ more than one hundred but not more than two hundred workers, not more than five such representatives may be chosen, and in larger enterprises, not more than seven. In cases where a supplementary agreement has been concluded with the Swedish central organisations of salaried employees, the maximum permissible number of foremen and salaried employees should be: two representatives if the workers have not chosen more than four, and three representatives if the workers have chosen five, six or seven.

**Switzerland**

5. This proposal appears to be acceptable; it would be necessary, however, to take care that these bodies should not consist of too many members.

**United Kingdom**

5. No. It is considered that questions regarding the constitution of joint consultative machinery in the individual undertakings are matters for determination under collective agreements between the two sides of the industry concerned, or between the employer and representatives of his workpeople in accordance with the relevant collective agreement, and are not suitable for international regulations.

6. *Do you consider that it should be provided in the international regulations that the different categories of persons employed in the undertaking—manual workers, salaried employees, technicians—should be represented on the said committees, etc.?*

**Australia**

6. This should be left for determination in the light of local circumstances.

**Austria**

6. All groups of workers employed in the undertaking should as a matter of principle be represented on the co-operation bodies. Higher-grade employees (heads of undertakings and agents empowered to bind the firm by their signatures, etc.), who in fact exercise managerial functions, should not be included among workers entitled to vote for, or be elected to, the co-operation bodies.

In view of the fact that in certain cases the interests of workers and salaried employees do not coincide, it is desirable that separate representation should be provided for workers on the one hand and salaried employees on the other, provided that each of these two groups represents a certain minimum number of the personnel.
Where separate representation is provided for workers and salaried employees, it should be arranged that, in respect of certain matters affecting the common interests of both groups, the two categories of representatives should act jointly.

**Belgium**

6. Yes, in so far as is possible, and, in any event, in large undertakings.

**Bulgaria**

6. Yes.

**Canada**

6. Yes. See reply to 4 (a). ¹

**China**

6. Yes.

**Costa Rica**

6. Yes.

**Denmark**

6. The Government reserves its decision. The Danish Employers’ Confederation and the Confederation of Danish Trade Unions reply in the affirmative.

**Finland**

6. Yes.

**France**

6. Yes, it is necessary for the different categories to be represented.

**India**

6. Yes, by broad categories. Some discretion should be given to the Government in determining the different categories.

**Iraq**

6. Yes.

**Luxembourg**

6. Yes.

**Mexico**

6. See reply to question 5. ²

¹ See above, p. 109.
² See above, p. 113.
NETHERLANDS

6. The possibility of representation of the different categories of employees on the works council should be included in the Recommendation.

NEW ZEALAND

6. Yes.

NORWAY

6. Yes. It is proposed, in accordance with Section 4 of the Norwegian agreement, that the following categories should be represented on the committees:

1. The responsible management of the undertaking.
2. The technical and mercantile salaried employees.
3. The workers.

PANAMA

6. This is desirable, but not indispensable.

POLAND

6. A single representative body should include all the wage-earners in the undertaking, regardless of the type of work which they perform. So far as possible, its composition should be such as to take account of the different categories of workers.

SWEDEN

6. Yes.

SWITZERLAND

6. The reply is the same as under question 5. 1

UNITED KINGDOM

6. While it is desirable that representation on the said committee should be on as wide a basis as possible, this is a matter for agreement between the two sides of the industry concerned, or between the employer and representatives of his workpeople in accordance with the relevant collective agreement, and is not suitable for international regulations.

VI. Working of the Co-operation Machinery

7. Do you consider that it should be provided in the international regulations that the committees or other bodies for co-operation in the undertaking should meet whenever they have

1See above, p. 114.
urgent questions to consider and in any case not less than once a month?

8. Do you consider that it should be provided in the international regulations that the said committees, etc., should be able to have the assistance of trade union representatives whenever their deliberations relate to matters for which such persons are competent?

9. Do you consider that it should be provided in the international regulations that appropriate action should be taken to secure close collaboration between the machinery for co-operation in the undertaking and the occupational organisations of the employers and workers concerned?

AUSTRALIA

7. Yes. The postponement of the regular meetings should be avoided.

8. In general, yes, where trade unions, as such, are not actually parties to the organisation. The national advising authority should, however, be prepared for demarcation problems.

9. Yes.

AUSTRIA

7. Yes.

8 and 9. The answer to both questions is in the affirmative, although the co-operation of occupational organisations with the representative bodies should be limited to questions of major importance, so as not to diminish the sense of responsibility essential to such bodies if they are to carry out their duties. In Austria, the Works Councils Act provides for co-operation on numerous questions between workers' representatives in the undertaking and the occupational associations. For example, the trade unions are entitled to send delegates to the works meeting, which is an organ of workers' representation in the undertaking; in undertakings employing more than fifty workers, a certain number of trade union committee men and officials may be appointed to the works council; whenever agreements affecting a single undertaking are concluded between the representative body and the head of the undertaking, the trade unions must co-operate in the matter, and the employer may, if he wishes, demand the participation of his own employers' association; complaints addressed to the National Economic Council against the economic management of the undertaking (which can only be made by the workers' representatives in large-scale undertakings) are to be made by the intermediary of the trade union concerned.

BELGIUM

7. The frequency of the meetings should be such that the committees, etc., may act effectively regarding all those questions for which they are competent. Subject to this, the frequency should be determined by national legislation.
8. Yes, on condition that the trade union representatives who might be called in should belong to organisations represented in the undertaking by a sufficient percentage of members among the workers.

9. When replying to question 4, the Government advocated the view that candidates for representation of the personnel should be nominated by the representative organisations of the workers. It is considered that this formula would ensure constant collaboration between the machinery for co-operation in undertakings and such organisations. Moreover, all appropriate measures could then be examined and taken to ensure co-operation with the trade associations of the employers concerned.

**Bulgaria**

7. Yes.
8. Yes.
9. Yes.

**Canada**

7. Yes.
8. Yes, but care should be taken to keep fields of activity separate.
9. Yes, provided co-operation is confined to production problems.

**China**

7. Yes.
8. Yes.
9. Yes.

**Costa Rica**

7. Yes.
8. Yes.
9. Yes.

**Denmark**

7. The Government reserves its decision.
The Danish Employers' Confederation replies Yes, but not less than once every three months. The Confederation of Danish Trade Unions replies in the affirmative.
8. The Government reserves its decision.
The Danish Employers' Confederation replies No, the committees for co-operation should act independently of the trade unions.
9. The Government reserves its decision.
The Danish Employers' Confederation replies No — See reply to question 8 above.

**Finland**

7. This should be left to national legislation. The minimum prescribed by the legislation in force in Finland, i.e., once a year, would be sufficient.
8 and 9. The independent action of the committees, etc., should be ensured by the regulations. When necessary, the committees, etc.,
may make proposals to the management of an industrial undertaking with regard to the questions indicated below and, if the steps taken by the management of the industrial undertaking are not satisfactory, representations may be made to the competent trade unions of workers, salaried employees, or employers:

(1) Information given by the management of the undertaking and questions submitted by the members of the committees, etc., concerning the conduct and production of the undertaking.

(2) Measures for improving production, increasing output, improving the methods and organisation of work and also of maintaining labour discipline and preventing the taking of any action detrimental to work or production.

(3) Supervision of the efficient employment of fuel and raw materials and the despatch of finished products to the market.

(4) Proposals regarding equipment for the workers and salaried employees, facilities for acquiring provisions, and promotion of vocational and technical training and the organisation of leisure.

(5) Safety of workers and salaried employees at their work, hygienic working conditions and comfort in workplaces, and supervision of the application of safety measures.

(6) Facilities for the maintenance of industrial peace.

**France**

7. Yes. French legislation dealing with this question provides for a meeting at least once a month when convened by the head of the undertaking or his representative and, in addition, a second meeting at the request of a majority of the members (Ordinance of 22 February 1945, Article 16); the Act of 16 May 1946, amending the Ordinance of 22 February 1945, Article 12, provides that meetings shall be convened by the labour inspector, on the request of not less than one-half of the members of the committee, in the event of default by the head of the establishment.

8. Yes, subject to the circumstances of such intervention being clearly defined in order to avoid duplication of activities. French legislation provides that each representative trade union recognised in the undertaking may appoint a representative to attend the meetings in an advisory capacity.

9. This question should first be studied, in order that the conditions for such co-operation may be clearly defined.

**India**

7. Yes, but it would suffice in some cases if the committee were to meet once a quarter.

8. Yes. It is desirable that the committee should be allowed to co-opt any person with expert knowledge on any matter before it.

9. Yes.

**Iraq**

7. Yes.

8. Yes.

9. Yes.
LUXEMBOURG
7. Yes.
8. The sharing of trade union representatives in the functions of the elected committees does not appear to present any advantage.
9. Yes.

MEXICO
7. Yes.
8. Yes.
9. Yes.

NETHERLANDS
7. The works council should adopt its own rules of procedure.
8. The works council should not deal with trade union matters, but if matters come up for which trade union representatives are competent, there appears to be no objection to their giving advice.
9. Such collaboration should be aimed at, but can hardly be made obligatory.

NEW ZEALAND
7. Yes.
8. Yes, but without voting capacity if not a regular member.
9. Yes.

NORWAY
7. Yes.
8. No.
9. Yes. Section 12 of the Norwegian agreement contains regulations concerning a council of the production committees which shall secure close collaboration between undertakings and between these and the organisations which are signatories to the agreement. It is considered desirable that a similar system be included in a Recommendation.

PANAMA
7. Yes.
8. Yes.
9. Yes.

POLAND
7. Yes.
8. Yes.
9. Yes.

SWEDEN
7. The committees, etc., should meet whenever they have urgent questions to consider, and in any case not less than once every calendar quarter.
8. The committees, etc., should be able to have the assistance of experts, including of course trade union representatives.
9. No.
Switzerland

7. It is considered that it would be sufficient for the bodies for co-operation to meet when necessary.

8. The bodies for co-operation should, in principle, be able to deal with the questions submitted to them without reference to trade union representatives. Cases might arise, however, in which the assistance of such representatives would be necessary. Moreover, such representatives would no doubt very often be members of the said bodies.

9. It is not considered that such close co-operation as is envisaged in question 9 would be necessary. The Swiss Government is more concerned that there should be good neighbourly relations between the machinery for co-operation in the undertaking and the occupational organisations of the employers and workers concerned.

United Kingdom

7-9. No. The procedure to be adopted and followed is a matter for determination under collective agreements between the two sides of the industry concerned, or between the employer and representatives of his workpeople in accordance with the relevant collective agreement, and is not suitable for international regulations.

VII. Functions of the Co-operation Machinery

10. Do you consider that it should be provided in the international regulations that the machinery for co-operation in the undertaking should have more particularly the following functions of a social character:

(a) to secure application of collective agreements, social legislation and regulations regarding health and safety;

(b) to give an opinion regarding the engagement and dismissal of employees and their allocation to different jobs;

(c) to promote the vocational training of the different categories of employees;

(d) to set up and administer social schemes for the welfare of the employees and their families; and

(e) in general, to promote a good understanding between the management and the personnel?
AUSTRALIA

10. Yes, excepting the application of awards or industrial agreements which, in Australia, is the function of the industrial trade unions and not of works or shop committees.

AUSTRIA

10. Yes. To ensure an effective fulfilment of its rôle, the co-operation machinery should furthermore have the following additional privileges:

(1) The right to inspect the wage sheets and salary statements of the undertaking and the bases on which wages and salaries are calculated.

(2) Presence of members of the co-operation bodies during inspections of the undertaking arranged by the labour inspectorate.

BELGIUM

10. (a) and (b) Yes.

(c) Yes. Nevertheless, as vocational training will probably not be a function of the machinery for co-operation in the undertaking, it is suggested that the committees, etc., should be referred to as co-operating in the promotion of the vocational training of the different categories of employees.

(d) Yes, unless the staff of the undertaking themselves administer the social schemes for the welfare of the employees and their families.

(e) Yes.

BULGARIA

10. (a)-(e) Yes.

CANADA

10. (a) No.

(b) No.

(c) No.

(d) Yes, within the proper local area.

(e) Yes, to the extent that it can be promoted by co-operation for production.

CHINA

10. Yes.

COSTA RICA

10. (a) Yes, on the understanding, however, that the co-operative functions attributed to the machinery do not tend in any way towards interference in the functions belonging to State agencies, such as the labour inspectorate, etc.

(b) Yes, subject to the limitations mentioned.

(c) Yes.

(d) Yes.

(e) Yes.
DENMARK

10. The Government reserves its decision.

The Danish Employers' Confederation replies:

(a) The committees for co-operation should have nothing to do
with securing the application of collective agreements, but be
concerned with social questions and provisions regarding health
and security.

(b) No.

(c) No.

(d) No.

(e) No.

The Confederation of Danish Trade Unions considers that the
said committees should also be able to concern themselves with
certain functions of a social character, such as those mentioned in
(c), (d) and (e); in respect of (a), presumably also with the application
of collective agreements and social legislation and provisions concern­
ing health and security; and in respect of (b), that they should
be entitled not only to give an opinion regarding the engagement and
dismissal of workers, but in a positive way contribute to security in
employment, inter alia, by counteracting preposterousness in dis­
missals.

FINLAND

10. (a) and (b) The definition of the functions of the machinery for
co-operation should be left to national legislation. In Finland, the
Act respecting production committees provides for the supervision
of the application of provisions concerning hygiene and safety, but
makes no provision regarding supervision of the application of
provisions concerning collective agreements or social legislation or the
matters indicated under paragraph (b).

(c) The reply is in the affirmative.

(d) These functions are not included in the legislation in force
in Finland. This question should be left to national legislation.

(e) The reply is in the affirmative.

FRANCE

10. (a) Yes, subject to the functions of the various agencies for
co-operation in these questions being clearly defined, in order that
such agencies shall not duplicate the activities of other institutions or
services already possessing the same functions by virtue of legal
regulations (labour inspectorate, labour medical inspectors, etc.)
and subject, in those countries where there exist both works com­
mittees and staff delegates, to the respective functions of these two
agencies being specified.

It would be preferable to adopt a general formula taking account
of the differences between matters arising out of individual complaints
and out of the general mission of the committees, and between the
function of supervision properly so called, which belongs to the
competent authorities, and the function of co-operation which
devolves on the works committees. The following formula might be
adopted: the works committee should co-operate with the management to improve the collective working and living conditions of the staff and the regulations relating thereto.

(b) Here again, if it is desired that the committees shall retain their general mission of co-operation in the ordinary running of the undertaking, they should not be made agencies for complaints, and a distinction should be made between individual cases and problems of a general kind.

The question as put has several aspects:

(i) In the first place, with regard to the dismissal of members of works committees or of staff delegates, French legislation provides that such dismissals must in every case be submitted for the approval of the works committee and, in the event of disagreement between the employer and the committee, the dismissal can take effect only on the decision of the labour inspector. However, in the event of a serious offence, the head of the undertaking is entitled to dismiss the person concerned at once, pending the final decision. It certainly appears necessary to ensure special protection to wage-earners carrying on such duties in the undertaking.

(ii) With regard to collective dismissals, the committees have to be informed of these in accordance with the compulsory consultation with them regarding the general operation and organisation of the undertaking. Collective dismissals, in fact, arise in the majority of cases from a change in the economic situation or in the actual structure of the undertaking. French legislation relating to supervision of employment provides that internal regulations must be drawn up, after consultation with the works committee, in order to determine the order of priority in the case of any dismissals which may occur.

(iii) With regard to individual engagements and transfer of wage-earners to other duties, these are decisions coming within the normal functions of the head of the undertaking, who is responsible for the operation of his undertaking. The competence of the committees in this connection falls within the scope of the question referred to below under 11 (d).

(c) Yes, but within the limits of the laws in force, for vocational training, being a question of very great importance, is at present dealt with by general measures, defined by legal regulations, as regards both its technical and financial implementation. Consequently, any initiative taken at the level of the undertaking must be in conformity with general plans and regulations.

(d) Yes. The conditions of such administration are defined in France by a Decree of 2 November 1945.

(e) Yes, this is certainly the object of machinery for co-operation, although, under its present indefinite form, this proposal may not be very effective.

India
10. Yes.

Iraq
10. Yes.

Luxembourg
10. Yes.
9. Yes.

**NETHERLANDS**

10. The works council shall, while observing the limits set by the competent authorities and while recognising the independent functions of the employer, assist, as far as lies within its power, in obtaining the best possible functioning of the undertaking. It shall perform this duty by consultation on and supervision and application or regulation of all matters relating to the undertaking, which by their nature, and having regard to the prevailing conditions, lend themselves thereto, and by promoting good understanding and cooperation in the undertaking.

**NEW ZEALAND**

10. Yes.

**NORWAY**

10. (a) International regulations of this nature should make a careful distinction between the functions of the trade unions and those of the machinery for cooperation in the undertaking. Application of collective agreements is a function of the trade unions, whereas safeguarding of health and safety is a matter for the production committees.
   
   (b) This should also be one of the functions of the trade unions.
   
   (c) Yes.
   
   (d) Yes.
   
   (e) Yes.

**PANAMA**

10. (a) Yes (but the necessary methods for this purpose should be prescribed).
   
   (b)-(e) Yes.

**POLAND**

10. (a)-(e) Yes.

**SWEDEN**

10. (a) Supervision of the application of collective agreements should not be included in the functions of the collaboration committees, etc., but in those of the trade unions. On the other hand, the supervision of the application of social legislation and regulations regarding health and safety might be among the functions of these committees, etc.
   
   (b) The committees, etc., should have the right to give an opinion regarding the dismissal of employees. As to the engagement of workers, the committees, etc., should be requested to give an opinion only in cases concerning the re-engagement of temporarily dismissed employees.
   
   (c) Yes.
   
   (d) —.
   
   (e) Yes.
10. (a)-(e) The Swiss Government does not wish to express any view as to the enumeration in a list of the principal elements in the functions of the co-operation machinery. It is considered that the latter would be primarily consultative and, in all cases, it would be desirable to safeguard the competence and independence of the head of the undertaking.

**Union of South Africa**

10. See general observations on this part of the questionnaire. ¹

**United Kingdom**

10. (a)-(e) While one of the main functions of the co-operation machinery should be the promotion of a good understanding between the management and the personnel, all questions relating to the functions of the machinery are matters for determination under collective agreements between the two sides of the industry concerned, or between the employer and representatives of his workpeople in accordance with the relevant collective agreement, and are not suitable for international regulations.

11. Do you consider that it should be provided in the international regulations that the machinery for co-operation in the undertaking should have more particularly the following functions of an economic character:

(a) to inform the personnel regarding the economic and technical situation of the undertaking;

(b) to study any suggestion put forward by the management of the undertaking or by the personnel with the object of raising the level of production or improving the efficiency of the undertaking;

(c) to propose to the management the rewards to be granted to employees whose suggestions have been effectively applied;

(d) to study the methods of production used in the undertaking and to make proposals to the management regarding the best utilisation of its material and human resources?

**Australia**

11. Yes. Whilst the full list of functions should be set out as a guide to the activities which works or shop committees could undertake, the national advising authority should bear in mind that such

¹ See above, p. 98.
committees should commence with functions that are not too wide but which leave the way open for extension as experience is gained.

11. Yes.

AUSTRIA

BELGIUM

11. (a) Yes. This information should be given in regular form and at specified intervals.
(b)-(d) Yes.

BULGARIA

CANADA

11. (a)-(d) Yes.

CHINA

11. Yes.

COSTA RICA

11. (a) Yes, with the exception, however, of technical, commercial and manufacturing secrets and any private administrative information the divulging of which might prejudice the undertaking.
(b) Yes.
(c) Yes.
(d) Yes.

DENMARK

11. The Government reserves its decision.
The Danish Employers' Confederation replies:
(a) Yes.
(b) Yes.
(c) No, this should be left to the management.
(d) Yes.
The Confederation of Danish Trade Unions replies to (a), (b), (c), (d) in the affirmative.

FINLAND

11. (a) Yes, with the reservation that the scope of such information should be agreed upon with the management of the undertaking.
(b) Yes.
(c) Yes.
(d) Yes, in so far as any such proposals do not concern the matters indicated when replying to question 10 (b). ¹

FRANCE

11. (a) Yes, subject to the obligation referred to in reply to question 13. ²

¹ See above, p. 123.
² See below, p. 133.
(b) Yes. French legislation dealing with this matter endows works committees with economic functions of this kind (Act of 16 May 1946 amending the Ordinance of 22 February 1945, Article 3).

(c) Yes.

(d) Yes.

11. Yes.

INDIA

11. Yes.

IRAQ

11. No.

LUXEMBOURG

11. Yes.

MEXICO

11. (a)-(d) Yes.

NETHERLANDS

11. See reply to question 10. ¹

NEW ZEALAND

11. Yes.

NORWAY

11. (a)-(d) Such regulations conform with the Norwegian system.

PANAMA

11. (a)-(d) Yes.

POLAND

11. (a)-(d) Yes.

SWEDEN

11. (a)-(d) Yes.

SWITZERLAND

11. (a)-(d) It is not the wish of the Swiss Government to reject the proposal that the bodies for co-operation should concern themselves with economic problems relating to the undertaking. Here, too, the functions of these bodies should be no more than consultative. A mutual exchange of views on certain questions might take place without this resulting in itself in any infringement of the prerogatives of the head of the undertaking.

UNITED KINGDOM

11. (a)-(d) While functions of an economic character of the kind suggested can be of much value, the question of the inclusion of functions of this nature is a matter for determination between the two sides of the industry concerned, or between the employer and representatives of his workpeople in accordance with the relevant collective agreement, and is not suitable for international regulations.

¹See above, p. 125.
VIII. Obligations of the Management

12. Do you consider that it should be provided in the international regulations that the management of an undertaking should be required:

(a) to place at the disposal of the committees or other bodies for co-operation in the undertaking the premises, material, and in appropriate cases the staff essential to its meetings or indispensable for its secretariat;

(b) to allow to the representatives of the personnel the time required for performance of their functions as such and to remunerate them for this time as hours of work;

(c) to consult the said committees, etc., on questions concerning the organisation and general conduct of the undertaking;

(d) to inform the said committees, etc., at regular intervals, but at least once a year, regarding the activity of the undertaking and the plans for the coming twelve months;

(e) where the undertaking is a limited company, to submit to the said committees, etc., the same documents as are submitted to the general meeting and more particularly the annual balance sheet and the profit and loss account?

AUSTRALIA

12. Yes. Where employers are prepared to co-operate, these facilities are likely to be forthcoming. Where the employers are not prepared to co-operate, international or national regulation is, as stated above, likely to produce little worthwhile result.

AUSTRIA

12. The obligations set out in question 12 are acceptable in principle, but the obligation specified under (a) should be required only so far as is feasible in the undertaking.

BELGIUM

12. (a) Yes.

(b) Yes, with the reservation that the necessary time may be limited by national legislation.

(c) Yes, within the limits of the competence accorded to the committees, etc., for co-operation.

(d) Yes.

(e) Yes.
Bulgaria

12. (a)-(d) Yes.
   (e) —.

Canada

12. (a) No, only by agreement between the parties.
   (b)-(e) Yes, in accordance with the agreement between the parties.

China

12. Yes.

Costa Rica

12. (a) Yes.
   (b) Yes, within certain limits.
   (c) No. The consultation of the committees, etc., for co-operation should be at the option of the employer and should not be obligatory.
   (d) Yes.
   (e) No.

Denmark

12. The Government reserves its decision.
The Danish Employers' Confederation replies:
   (a) Yes.
   (b) Yes, or some other expedient arrangement.
   (c) Yes.
   (d) We do not consider that provisions can be laid down requiring the management of an undertaking to inform the committee about the plans for the coming twelve months.
   (e) Yes.

The Confederation of Danish Trade Unions reply to (a), (b), (c), (d) and (e) in the affirmative.

Finland

12. (a) Yes, with regard to the premises, material and other reasonable expenses of the committees, etc.
   (b) Yes, but efforts should be made to hold the meetings of the committees, etc., outside working hours.
   (c) Yes.
   (d) Yes, except that it should be left to the judgment of the management of the undertaking whether any information concerning plans for the coming year should be given or not.
   (e) Yes.

France

12. (a) Yes, within reasonable limits. French legislation dealing with this question provides accordingly (Ordinance of 22 February 1945, Article 20).
   (b) Yes, within reasonable limits. French legislation on this question provides for twenty hours per month without counting the
hours during which the committee meets, this time being paid for as working time (Act of 16 May 1946 amending the Ordinance of 22 February 1945, Article 10) and fifteen hours per month in the case of staff delegates.

(c) Yes.
(d) Yes.
(e) Yes. French legislation also provides that two members of the committee shall attend in an advisory capacity the meetings of the Board of Directors of the undertakings mentioned in this paragraph.

INDIA
12. Yes.

IRAQ
12. No.

LUXEMBOURG
12. Yes.

MEXICO
12. (a)-(e) Yes.

NETHERLANDS
12. (a) Yes.
(b) Yes.
(c)-(e) Such obligations of the management depend upon the functions which have been given to the works councils.

NEW ZEALAND
12. Yes.

NORWAY
12. (a) Yes, but it is considered that a staff will be required in exceptional cases only.
(b) Yes. Also when the meetings are held outside the regular working hours, the members should be paid their hourly wages, and reference is made to Section 10 of the Norwegian agreement.
(c) and (d) On this point the regulations should stipulate that the management of the undertaking shall deliver informatory and confidential reports on the economical conditions of the undertaking and its position within the branch of the industry, and on matters of importance to the conditions of production and the industrial possibilities.
(e) No.

PANAMA
12. (a) Yes.
(b) Yes.
(c) Yes.
(d) Yes.
(e) No.
Poland

12. (a) Yes.
(b) Yes.
(c) Yes.
(d) Yes, but at least once every three months.
(e) Yes.

Sweden

12. (a) Yes.
(b) Yes, to the extent that the meetings are held during working hours.
(c) Yes.
(d) Information of this kind is given in Sweden at least once every calendar quarter. It is understood that such information is only to be given when it is not likely to cause damage to the employer. In this connection, Article 31 of the above-mentioned Swedish Collaboration Agreement may be quoted:

A member or deputy member of an Enterprise Council or an Enterprise Representative may not reveal or make use of any knowledge of a technical or economic nature which he has acquired in connection with this post and which he knows to be a professional or business secret, or which the employer has particularly stipulated not to be revealed.

(e) Yes.

Switzerland

12. (a)-(e) It is not considered necessary to enter into too many details. Although it might be possible to agree with the proposals suggested under (a) and (b), the subsequent suggestions, on the other hand, appear to go rather too far. It might be considered reasonable, however, that the management of the undertaking should advise the body for co-operation, from time to time, as to the activities of the said undertaking. Moreover, in the view of the Swiss Government, mutual confidence between employers and workers, which could not be regulated by any legal text, is a necessary condition for ensuring harmonious co-operation.

United Kingdom

12. No. The obligations of management are questions for determination between the two sides of the industry concerned, or between the employer and representatives of his workpeople in accordance with the relevant collective agreement, and are not suitable for international regulations.

IX. Obligations of Representatives of the Personnel

13. Do you consider that it should be provided in the international regulations that the representatives of the personnel chosen for co-operation should be required, within the limits laid down by national legislation, not to disclose confidential information which may be communicated to them by the management?
13. Yes.

Austria

13. Yes. In Austria, members of works councils are required to observe the strictest secrecy in respect of all trade and business secrets of which they may obtain knowledge in the execution of their functions, especially with regard to those technical installations, processes and formulae which are specified as being of a secret character. Breaches of this obligation are liable to penalties.

Belgium

13. Yes.

Bulgaria

13. Yes.

Canada

13. Secrecy should be enjoined, but not by legislation.

China

13. Yes.

Costa Rica

13. Yes. This condition is considered to be essential.

Denmark

13. The Government reserves its decision.
The Danish Employers' Confederation replies Yes.
The Confederation of Danish Trade Unions replies Yes, but that, with due regard to the undertaking and its interests, they must be able to give satisfactory accounts and reports to the other members of the personnel of the undertaking.

Finland

13. Yes.

France

13. Yes.

India

13. Yes.

Iraq

13. Yes.

Luxembourg

13. Yes.
13. Yes.

**Mexico**

13. Yes.

**Netherlands**

13. Yes.

**New Zealand**

13. Yes.

**Norway**

13. Yes.

**Panama**


**Poland**

13. Yes.

**Sweden**

13. Yes. See also reference under 12 (d) to the Swedish collaboration agreement.  

**Switzerland**

13. Yes, the obligation not to disclose confidential information should be imposed.

**United Kingdom**

13. These are matters for determination between the two sides of the industries concerned, or between the employer and representatives of his workpeople in accordance with the relevant collective agreement, and are not suitable for international regulation.

14. Do you consider that it should be provided in the international regulations that the representatives of the personnel should be required to give an account of their activity to the whole personnel at regular intervals but at least once a year?

**Australia**

14. Yes.

**Austria**

14. Yes. Under the Austrian Works Councils Act, the works council must call a general meeting of the personnel at least once every six months.

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1 See above, p. 132.
14. It is suggested that representatives of the personnel should be required to give an account of their activity to the whole of the personnel at regular intervals, but at least twice a year, in order to maintain adequate contact between the personnel and its representatives.

Bulgaria

14. Yes.

Canada

14. No, but there should be a recommendation for voluntary action of this kind.

China

14. Yes.

Costa Rica

14. Yes.

Denmark

14. The Government reserves its decision.

The Danish Employers’ Confederation and the Confederation of Danish Trade Unions reply “Yes”.

Finland

14. No, because such a procedure might lead to undue influence being exercised against the representative, who has been placed in a position of trust as a result of an election.

France

14. Yes, subject to the obligation prescribed under question 13 above. 1

India

14. Yes. Such a provision is desirable, but there may be difficulties in countries where the workers are illiterate.

Iraq

14. Yes.

Luxembourg

14. Yes.

Mexico

14. Yes.
Netherlands

14. Account should be given at regular intervals, but in what way, to whom and at what intervals, should be a matter for national regulation.

New Zealand

14. Yes.

Norway

14. Yes.

Panama

14. Yes, certainly.

Poland

14. The Polish Government considers that the representatives of the personnel should be required to give an account of their activity to the whole personnel, at regular intervals, and at least once every three months.

Sweden

14. Yes.

Switzerland

14. It is considered that it should be left to be decided by practical experience in what manner and at what intervals the whole personnel should be given an account of the activities of the representatives of the personnel in the bodies for co-operation.

United Kingdom

14. See reply to question 13. ¹

X. Protection of Representatives of the Personnel

15. Do you consider that it should be provided in the international regulations that appropriate action should be taken to ensure that the representatives of the personnel are adequately protected in the performance of their functions?

Australia

15. Yes.

¹See above, p. 134.
Austria

15. Yes. Protection must be provided in two ways. First, the head of the undertaking must be prevented from hindering the workers' representatives in the exercise of their functions, or from prejudicing them on this account. Secondly, representatives of the personnel must be protected against dismissal, except for grave reasons, during their period of office. In Austria a member of a works council cannot legally be dismissed except with the approval of the conciliation board and for certain specified reasons, of which an exhaustive list is given in the Works Councils Act.

Belgium

15. Yes. The representatives of the personnel, in view of their functions and of the responsibilities they assume in relation to both their fellow workers and their employer, should be legally assured of greater stability in their employment than is assured to workers who do not assume such duties.

Bulgaria

15. Yes.

Canada

15. This is not necessary while operation of committees is on a voluntary or permissive basis.

China

15. Yes.

Costa Rica

15. Yes.

Denmark

15. The Government reserves its decision. The Danish Employers' Confederation and the Confederation of Danish Trade Unions answer Yes.

Finland

15. Yes.

France

15. Yes; the reply to this question is included under 10 (b). ¹

India

15. Yes.

¹ See above, p. 124.
IRAQ
15. Yes.

LUXEMBOURG
15. Yes.

MEXICO
15. Yes.

NETHERLANDS
15. Yes, where necessary.

NEW ZEALAND
15. Yes.

NORWAY
15. Yes.

PANAMA
15. Yes.

POLAND
15. Yes.

SWEDEN
15. Yes.

SWITZERLAND
15. It is considered that such protection is necessary in so far as it relates to the activities of the staff representatives whose function it is to defend the legitimate interests of their constituents. It is stressed once more that mutual confidence is the surest way of promoting good relations between employers and workers.

UNITED KINGDOM
15. This is a matter for determination between the two sides of the industries concerned, or between the employer and representatives of his workpeople in accordance with the relevant collective agreement, and is not suitable for international regulations.

XI. Application of the International Regulations

16. Do you consider that the international regulations should provide that effect may be given to their provisions:
(a) by means of legislation?
(b) by means of collective agreements?
16. As already stated, the purpose of the Recommendation should be to set out all the considerations of which the national advising authority should be aware in encouraging and assisting with the establishment of works machinery, including the essential features which should be incorporated into the constitution of works machinery.

AUSTRIA

16. The special importance of general regulations concerning the question of workers' representation makes it appear preferable that it should be dealt with by legislation.

BELGIUM

16. (a) and (b) Yes; and, if necessary, by a combination of these two methods.

BULGARIA

16. (a) Yes.

CANADA

16. (a) No.
   (b) Yes.

CHINA

16. The international regulations should provide that effect may be given to their provisions by means of legislation.

COSTA RICA


DENMARK

16. The Government reserves its decision.
   The Danish Employers' Confederation replies:
   (a) No.
   (b) Yes.
   The Confederation of Danish Trade Unions considers that the provisions in question should be given effect to either by collective agreements or—failing such—by legislation.

FINLAND

16. (a) and (b) By either alternative.
FRANCE

16. By legislation or by means of collective agreements in order to respect the traditional methods of each country.

INDIA

16. (a) Yes.  
    (b) No.

IRAQ

16. (a) Yes.  
    (b) No.

LUXEMBOURG

16. Yes.

MEXICO

16. Collective agreements are preferred.

NETHERLANDS

16. (a) and (b) Both possibilities should be included to facilitate adaptation to different national conditions.

NEW ZEALAND

16. (b) Yes.

NORWAY

16. The international regulations should render it optional for the members to choose between legislation or voluntary agreement as the more suitable basis for co-operation committees within the undertaking.

PANAMA

16. (a) Yes.

POLAND

16. (a) Yes, by means of legislation.  
    (b) —.

SWEDEN

16. The provisions should preferably be applied by means of a collective agreement; recourse to legislation should be had in cases when such agreements cannot be reached.

SWITZERLAND

16. (a) and (b) The solution suggested under (b) appears the more desirable.
16 and 17. These questions do not arise until it has been decided whether international regulations are practicable and, if so, in what form they should be adopted. But it may be said at once that the answers to questions 16 (a) and 17 would in any case be in the negative. With regard to question 17, it is hoped that States Members would agree to provide to the Office all available information showing the progress of the development of joint consultative machinery at the level of the undertaking.

17. If the reply to question 16 (b) is in the affirmative, do you consider that the international regulations should provide that States should be required to communicate to the Director-General of the International Labour Office information regarding the measures on the strength of which the regulations are applied, and particularly data regarding all collective agreements through which effect is given to the regulations and regarding the number of undertakings having such machinery for co-operation, the number of persons employed in these undertakings, and the distribution of the co-operation machinery by industry or occupation?

Australia

17. The national advising authority should report through the Member State to the International Labour Office in the usual way.

Austria

17. See reply to question 16. If, however, the Convention should provide that effect may appropriately be given to its provisions by means of collective agreements, the information referred to in question 17 would appear desirable, so that a picture may be obtained of the scope of the regulations contained in them.

Belgium

17. Yes, if the international regulations take the form of a Convention. If, as the Government proposes, it takes the form of one or several Recommendations, the information communicated by the States Members should be such as to enable the International Labour Organisation to assess the scope and importance of the collective agreements in force in each country, but should not be so detailed as is suggested in the question.

1 See, above, p. 139.
17. Yes.

**Bulgaria**

17. Yes.

**Canada**

17. No.

**China**

17. The Government reserves its decision. The Danish Employers' Confederation replies that, as it must be assumed that collective agreements are duly observed, it is not considered necessary to communicate the said information to the International Labour Office. The Confederation of Danish Trade Unions replies Yes.

17. Yes.

**Denmark**

17. Yes, so far as possible.

**Finland**

17. No.

**France**

17. Yes.

**Iraq**

17. Yes.

**Luxembourg**

17. Yes.

**Mexico**

17. Yes.

**Netherlands**

17. Yes.

**New Zealand**

17. Yes.

**Norway**

17. Yes.

**Panama**

17. The report should refer to the legislation adopted.

17. In cases of regulation by means of collective agreements it will probably be difficult to supply complete information.

**Sweden**
Switzerland

17. The information prescribed should not embrace too many details, but should be concentrated on the major aspects of the question.

United Kingdom

17. See reply to question 16. ¹

* * *

18. Have you any proposal or suggestion to put forward on any point regarding the question of co-operation in the undertaking which has not been mentioned in the present questionnaire?

Australia

18. Three further matters might be included in the Recommendation as germane to the successful work of local machinery:

(i) The desirability of incorporating in the constitution of local machinery provision to co-opt in a consultative capacity persons having a particular knowledge of a matter under discussion.

(ii) Consideration should be given to the qualifications of candidates for local committees based on length of service in the industry or in the establishment. This period should be long enough to ensure that the representatives have acquired some knowledge of workshop personalities and needs, but should not be so long as to exclude young members. In general, three months' service could be regarded as a minimum qualification.

(iii) An essential to the satisfactory working of established machinery is representation of management at the highest level. Local machinery will be most effective where the workers' representatives know that the decisions of the committee can be implemented by the management representatives who are actually on the committee. In general, therefore, the works manager or personnel manager should be a member of the committee.

Austria

18. In so far as they are considered to be desirable, additional proposals for inclusion in the international regulations have been put forward in connection with the replies to the various questions.

Denmark

18. The Government reserves its decision.

¹ See above, p. 141.
18. It should be made clear that the machinery in question is consultative.

FRANCE

18. Among the questions raised by the problem of application of the legislation contemplated, it might perhaps be advisable to consider whether the scope of professional secrecy referred to in question 13 above should not be defined more explicitly.

SWEDEN

18. The international regulations should provide that the collaboration committees, etc., should not have the right to deal with disputes which have reference to the drawing-up, extension, cancellation, interpretation, or application of collective wage agreements, or any other disputes concerning the regulation of working conditions which are normally dealt with by union organisations in the manner prescribed by agreement or practice.

B. CO-OPERATION AT THE LEVEL OF THE INDUSTRY

General Observations

BELGIUM

The report drawn up by the International Labour Office appears to contemplate, at the level of the industry, a single agency for the purposes of studying and solving social, economic and technical problems.

It is advisable to observe that this conception is not always generally admitted, and some of those who declare themselves to be in favour of the co-operation of all those concerned at the level of the industry call for the establishment of agencies dealing with social problems in addition to agencies concerned with economic problems. This solution, which involves the risk of severing the relationship between economic and social matters, does not dispose of the problem of technical questions. Such questions must normally be related to social questions, but, on the hypothesis of a separation of the economic and social fields, it may be asked whether a third agency should not deal with technical questions.

The separation of the economic and social fields at the level of the industry is fundamental in the proposed basic legislation drawn up by the Belgian Government and laid before Parliament on 3 December 1947. It is evident that it is desirable, therefore, to avoid placing the social and economic boards in separate watertight compartments.
REPLIES OF THE GOVERNMENTS

DENMARK

With regard to the question of co-operation between the parties within the individual trade or the individual branch of industry, the Government subscribes to the views of the central organisations—to whose replies reference should be made—that the adoption of a Recommendation is desirable.

With regard to this question, also, decisive importance should in the opinion of the Government be attached to the wishes of the central organisations as to the form and extent of such co-operation; the Government therefore considers that it ought to reserve its position to the replies given to the different questions.

LUXEMBOURG

In the Grand Duchy, as in all other democratic countries, the question of co-operation at the level of the industry is still only being studied. In the proposed law of 1945, previously mentioned, provision is made for joint advisory committees in the various branches of the national economy. The Luxembourg Government sees no disadvantage in the International Labour Conference adopting international regulations concerning the question of co-operation at the level of industry, provided that such regulations are adopted in the form only of a Recommendation. It considers, on the other hand, that such regulations might make a worthwhile contribution towards the realisation of an agreed solution regarding the possible setting-up of new advisory agencies in the economy.

POLAND

As regards Headings I, II and III of this Part, under the social and political conditions existing at the present time in a large number of countries, co-operation at the level of the industry does not ensure to the workers any effective material or social advantages; on the other hand, it tends to make them become absorbed in problems which are in no way connected with efforts to raise their material and social conditions.

SWITZERLAND

In view of the doubts already expressed above (when replying to question I of Part A, relating to co-operation at the level of the undertaking)¹, as regards the desirability of international regulations concerning machinery for co-operation, the Swiss Government must make even greater reservations in its replies to the questions concerning co-operation at the level of the industry. This problem arises in very different ways according to the country under consideration. The Swiss Government refrains from expressing any positive views on this question. Admittedly, co-operation at the level of the industry is desirable, as is any kind of co-operation between employers and workers, but it is considered that the question which arises here is not yet sufficiently ripe to be regulated internationally at the present time.

¹See above, p. 101.
I. Desirability and Form of International Regulations

1. Do you consider that the International Labour Conference should adopt international regulations concerning co-operation at the level of the industry, in the form of a Recommendation?

**Australia**

1. The remarks which were made at the beginning of the answers to Part A ¹ apply, to only less extent, to this Part.

**Austria**

1. Machinery for co-operation existing at the level of the industry is of so diverse a character, and reveals such great differences in respect both of structure and composition and of powers and functions, that international regulations should at present be considered only in the form of a Recommendation, which should be limited to general principles.

**Belgium**

1. Notwithstanding the very variable extent of co-operation at the level of the industry in different countries or in different sectors of industry, it appears desirable that the International Labour Conference should adopt international regulations concerning this matter in the form of a Recommendation.

1. Yes.

**Bulgaria**

1. Yes.

**Canada**

1. Yes.

**China**

1. Yes.

**Costa Rica**

1. Yes.

**Denmark**

1. The Government replies in the affirmative, in agreement with the central organisations of Danish employers and workers.

**Finland**

1. This should be left to national legislation.

**France**

1. Yes, provided that it is stipulated that such machinery shall be only advisory, in order to prevent any return, in one form or another, to the system of corporations.

¹ See above, p. 98.
REPLIES OF THE GOVERNMENTS

India
1. Yes.

Iraq
1. Yes.

Luxembourg
1. Yes. See general observations. ¹

Mexico
1. Yes.

Netherlands
1. Yes.

New Zealand
1. Yes.

Norway
1. Yes.

Panama
1. Yes.

Poland
1. No.

Sweden
1. Yes.

Union of South Africa
1. No. The views expressed on the question of the establishment of "works committees" in the undertaking apply at the level of the industry. Any action taken by the International Labour Conference should be limited to a recommendation to Members to encourage such co-operation.

United Kingdom
1. See reply to Part A, question 1. *

II. Establishment of National Industrial Boards

2. (a) Do you consider that it should be recommended in the international regulations that joint national boards should be established on a permanent basis in the different branches of

¹ See above, p. 145.
* See above, p. 101.
industry and commerce, either by agreement between the employers' and workers' organisations concerned or by legislation?

(b) Do you consider that where there are several representative organisations of employers and of workers in the branch concerned, the representation of the workers on the board should be proportionate to the membership of such organisations?

Australia

2. To avoid confusion with wages and "industrial" boards and committees on conditions of work, which deal with wages, it would be better to call the boards under consideration by some other name than "Industrial Boards". Emphasis should be placed here on the representation of the organisations of employers and workers on the boards. The form of representation should be left flexible to enable account to be taken of the organisational set-up, particularly on the union side, in the different countries. Whilst in some cases there may be regional federations of several unions covering a branch of industry, in other cases it might be considered more appropriate for representation to come through such bodies as the regional trades and labour councils on the workers' side, and regional chambers of manufactures on the employers' side. Any Recommendation should be so worded, therefore, as to allow of sufficient variation within a Member State for the adoption of whatever organisational set-up will best suit local needs.

Austria

2. In recommending the establishment of co-operation machinery at the industrial level, care should be taken that the national administrative system does not become overburdened, and that economic and social administration does not become excessively complicated by reason of the activity of such machinery. It should not be a matter of setting up boards under the public authorities, but of creating machinery based on the principle of economic and social self-government and established by the two sides of industry, although at the suggestion and with the support of the national authorities. When drawing up the provisions of the international regulations, such boards should not be considered as capable of being formed only by occupational associations based on voluntary membership; it should be provided that such joint boards may also be set up by statutory bodies representing the interests of employers and workers, such as the Chambers in Austria.

In Austria, the setting up of such joint boards by statutory bodies representing the interests of industry and workers is provided for by § 26 of the Chambers of Employees Act of 20 July 1945 (Staatsgesetzblatt No. 95) and § 64 of the Chambers of Commerce Act of 24 July 1946 (Bundesgesetzblatt No. 182).

Belgium

2. (a) It is desirable to recommend in the international regulations that joint national boards should be established on a perma-
nent basis in the different branches of industry, commerce and agriculture, either by agreements between the employers’ and workers’ organisations concerned, or by legislation. It should be understood that certain branches of industry, commerce or agriculture are not distributed over the whole national territory and that their geographical field of application is necessarily regional. In such cases it is evident that these joint regional boards should be assimilated to the joint national boards. The Government also considers that the establishment of machinery for co-operation in the different branches of industry should not exclude the establishment of machinery for co-operation on a wider occupational basis (for example, the National Joint Committee for Salaried Employees).

(b) Where there is a plurality of organisations, it is usual to provide for employers and workers to be represented in proportion to the membership figures of the representative organisations. It is desirable, however, to specify that the representative organisations should include at least 10 per cent. of the personnel in the branch of activity concerned.

Bulgaria

2. (a) Yes.
(b) Yes.

Canada

2. (a) Yes, by agreement.
(b) Yes, generally speaking, but not where such representation will prejudice co-operation.

China

2. (a) Yes.
(b) Yes.

Costa Rica

2. (a) Yes, it is considered preferable that these joint boards should be established by agreement between the employers’ and workers’ organisations concerned.
(b) Yes.

Denmark

2. The Government reserves its decision.
The Danish Employers’ Confederation replies:
(a) No.
(b) Falls away.
The Confederation of Danish Trade Unions replies:
(a) Yes.
(b) Yes, but questions as to representation may be further agreed upon between the organisations of workers and employers concerned or, if required, between the existing central organisations.

Finland

2. This should be left to national legislation.
FRANCE

2. (a) The formula covering the different branches of industry and commerce is too wide. A more flexible provision should be laid down and it would be preferable to adopt a more general formula: "appropriate measures should be taken to ensure, in all branches of industry in which it was shown to be necessary, permanent cooperation between the employers' and workers' organisations concerned ".

(b) Yes, in so far as the membership of these organisations could be accurately ascertained, which is not always the case. A more flexible formula would be desirable.

INDIA

2. (a) Yes, but Governments should be given a certain measure of discretion in determining the branches of industry and commerce in which joint national boards should be established. The joint national boards may be set up either by agreement or by legislation.

(b) Broadly speaking, yes.

IRAQ

2. (a) Yes, by legislation.

(b) No.

MEXICO

2. (a) Yes, by agreement between employers and workers.

(b) Yes.

NETHERLANDS

2. (a) Yes.

(b) Yes.

NEW ZEALAND

2. (a) Yes.

(b) Yes, with limitations to avoid large unwieldy committees.

NORWAY

2. (a) The Recommendation should advocate the establishment of national industrial boards composed of representatives of the undertakings of the industry concerned, and also of the workers and the Government. The States Members should be allowed to establish such councils either by voluntary systems or by legislation.

(b) Yes.

PANAMA

2. (a) Yes, by means of legislation.

(b) Yes.
POLAND

2. (a) No.
(b) No.

SWEDEN

2. (a) Yes. The wording of the Recommendation should leave it open, however, to the individual countries to include representatives not only of employers and workers but also of the consumers and the Government.

(b) While it is desirable to include all major interested groups of employers, workers, consumers, etc., in the boards, it seems nevertheless inadvisable to make the Recommendation too detailed in this respect.

UNION OF SOUTH AFRICA

2. (a) No. Unless the activities of such bodies are to be confined to dealing with conditions of work and unless the setting up of such bodies is made conditional upon the joint desire for and agreement thereto of representative employers' and workers' organisations. The regulations, if any, should at most take power to recognise such bodies if the organisations desire to set them up.

(b) No, the basis of partitioning the representation should be the basis agreed upon by the parties who set up such an organisation. A rigid insistence on numerically proportionate representation is unwise.

UNITED KINGDOM

2. (a) It is considered that machinery of this type should be established by agreement between the employers' and workers' organisations.

(b) The constitution of the employers' and workers' sides is a matter for determination by the parties.

Any proposals under 2 should be without prejudice to the establishment in particular industries, in accordance with legislation, of other types of body, e.g., of a tripartite character.

III. Functions of National Industrial Boards

3. Do you consider that it should be recommended that the national industrial boards should have the function of taking all appropriate action:

(a) to raise the standard of life of the workers;
(b) to increase the level of production and the efficiency of the industry, and
(c) in general, to examine the social, technical and economic problems of the industry or trade concerned?
3. Yes.

Austria

3. The comprehensive general functions of industrial boards as here set out appear to be those which would normally be within the competence of such bodies, though a limiting provision should be added under 3 to the effect that measures adopted by the boards should not affect the application of collective agreements.

Belgium

3. These functions are very broad and do not take account of the possible co-existence of industrial committees competent in the social and economic fields.

Bulgaria

3. Yes.

Canada

3. (a) No, this is a trade union function.
   (b) Yes.
   (c) Yes.

China

3. Yes.

Costa Rica

3. Yes.

Denmark

3. The Government reserves its decision.
The Danish Employers' Confederation refers to its reply to 2 (a). 1
The Confederation of Danish Trade Unions replies Yes.

Finland

3. (a)-(c) This should be left to national legislation.

France

3. The national industrial boards should, for the reasons given in connection with question 1, have the function of proposing appropriate action (and not of taking it). It should be observed that such agencies also involve a risk of duplicating the activities of certain other agencies already operating. The formula proposed in connection with question 2 (a) would enable these joint agencies

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1 See above, p. 149.
2 See above, p. 146.
3 See above, p. 150.
to assume any form which was compatible with the economic or social policy of the country concerned.

3. Yes.

IRAQ

3. Yes.

MEXICO

3. (a)-(c) Yes.

NETHERLANDS

3. The national industrial boards should examine problems relating to (a), (b) and (c).

3. Yes.

NEW ZEALAND

3. Yes.

NORWAY

3. (a)-(c) Yes, but only provided that these functions are not carried out in the normal organisational way by the parties in the branch of industry concerned. Thus, matters concerning wages and conditions of work should not be dealt with by these boards.

3. (a) Yes.
   (b) Yes.
   (c) Yes.

POLAND

3. (a) No.
   (b) No.
   (c) No.

SWEDEN

3. Yes, as far as the scope of the national industrial boards is concerned. It should, however, not be recommended that the boards should have the power to take administrative action. They should on the whole have the same position at the level of the industry as the co-operation committees, etc., at the level of the undertaking. Thus they should have the possibility of studying the problems referred to in question 3 (a)-(c) and of publishing the results of the research work, whenever feasible.

3. (a)-(c) No, though the subjects mentioned may well be incidental to the deliberations of joint bodies charged with the responsibility for fixing conditions of labour.
The responsibility for raising the standard of life of the workers qua standard and apart from the value of their labour is clearly a matter for the Government of the State whose citizens are so affected. It is not a function of the employer and worker in that capacity to deal with questions of what a proper standard of life is for the worker as a citizen.

In so far as these functions are facets in the economy of the State in its relationship to its citizens and their activities, they constitute the responsibility of the State. The extent to which an industry may raise the standard of living of its particular workers and set up a form of imperium in imperio must always be subordinate to the State's right to subordinate the particular industry to the interests of the whole community. Questions of social problems and standards of life are peculiarly of concern to the governmental authority and are its direct responsibility.

**United Kingdom**

3. These matters should lie within the scope of discussion by national industrial boards, but the extent to which appropriate action can be taken must depend on agreement.

4. **Do you consider that it should be recommended in the international regulations that the national industrial boards should have the power to submit to the competent authorities opinions or recommendations on all questions of an economic or social character falling within their terms of reference?**

**Australia**

4. Yes, but it must be remembered that the national bodies of employers and workers' organisations have established their own machinery for this purpose, and may not be willing to have submissions and opinions made direct to the competent authorities without prior reference to the national organisations, in order to ensure uniformity of policy.

**Austria**

4. See reply to question 3.¹

**Belgium**

4. Yes.

**Bulgaria**

4. Yes.

¹ See above, p. 152.
REPLIES OF THE GOVERNMENTS

4. Yes.  

**Canada**

4. Yes.  

**China**

4. Yes.  

**Costa Rica**

4. Yes.  

**Denmark**

4. The Government reserves its decision. The Danish Employers' Confederation refers to its reply to 2 (a). ¹ The Confederation of Danish Trade Unions replies Yes.

**Finland**

4. This should be left to national legislation.

**France**

4. This question should come within question 3; the powers of these boards could not, in any event, be more than advisory.

4. Yes.  

**India**

4. Yes.  

**Iraq**

4. Yes.  

**Mexico**

4. Yes.  

**Netherlands**

4. Yes.  

**New Zealand**

4. Yes.  

**Norway**

4. Yes.  

**Panama**

4. Yes.  

**Poland**

4. No.  

**Sweden**

4. See reply to question 3. ²

¹ See above, p. 149.  
² See above, p. 153.
Union of South Africa

4. Subject to the reply to question 3, national boards should have recommendatory powers on such questions as properly fall within their ambit.

United Kingdom

4. Yes.

IV. Co-operation in Nationalised Industries and those Established in the Public Services

5. Do you consider that it should be recommended in the international regulations that, where certain branches of economy have been nationalised, or established in the public services, all appropriate action should be taken to ensure close and permanent co-operation between the authorities responsible for the administration of the nationalised industries and the workers' organisations concerned?

Australia

5. Yes.

Austria

5. Yes. In drawing up the provisions of the relevant Recommendation, the more comprehensive term "bodies representing the workers" should be employed in place of the term "workers' organisations", so that statutory bodies representing the interests of workers may be included in such co-operation, as for example, in Austria.

In Austria, the principle set out in question 5 has been given effect to in the Act to nationalise the electricity industry (Nationalisation Act No. 2, Bundesgesetzblatt No. 81/1947). Under Sec. 5 of this Act, the supervisory board of the national company, the shares of which are owned by the Federal Government, is to include representatives of the Austrian Assembly of Chambers of Employees and representatives of the workers and salaried employees of the nationalised electricity undertakings.

Belgium

5. Although the establishment of certain economic branches in the public services, or, a fortiori, their nationalisation, attributes to the State the mission which, on the basis of industrial co-operation, devolves on employers' organisations, the Belgian Government does not see any difference in principle between the co-operation which should be established in nationalised industries and that which is established in those industries belonging to the private sector of the economy.

1 See above, pp. 153-154.
Bulgaria

5. Yes.

Canada

5. Yes.

China

5. Yes.

Costa Rica

5. Yes.

Denmark

5. The Government reserves its decision. The Danish Employers' Confederation finds no occasion to reply. The Confederation of Danish Trade Unions replies Yes.

Finland

5. This should be left to national legislation.

France

5. Yes, this is at present the case in France with regard to all the undertakings which have been nationalised.

India

5. Yes.

Iraq

5. Yes.

Mexico

5. Yes, this is evident.

Netherlands

5. Yes.

New Zealand

5. Yes.

Norway

5. Yes.

Panama

5. Yes.

Poland

5. Yes.
5. Yes.

**INDUSTRIAL RELATIONS**

**Sweden**

5. Yes.

**Union of South Africa**

5. There is no objection to the international regulations including a recommendation, if qualified by the requirement that such co-operation shall only take place in the activities in which, in the opinion of the competent authority, it is desirable that it should take place, having regard to considerations of good administration and governmental policy.

**United Kingdom**

5. Yes.

6. Have you any proposal or suggestion to put forward on any point regarding the question of co-operation at the level of the industry which has not been mentioned in the present questionnaire?

**Norway**

6. See reply to question 3. ¹

**United Kingdom**

6. In some circumstances and industries (e.g., mining, transport, electricity supply, etc.) joint consultation at a regional or area level would be appropriate.

**C. CO-OPERATION AT THE NATIONAL LEVEL**

**General Observations**

**Denmark**

Regarding the question of co-operation between employers and workers which relates to the preparation and carrying through of economic and social measures comprising the whole country, here also reference may be made to the replies of the parties. The Government, however, finds occasion to emphasise that the terms and the extent of such co-operation between employers and workers covering the country in its entirety will naturally have to vary in the different countries, depending on the political and social development, and that the laying down of standard rules within this field, even if in the

¹See above, p. 153.
form of a Recommendation only, will presumably be attended with
great difficulties.

In Denmark it has been a matter of course for a great many
years that, in carrying through more important measures of an
economic and social nature, the Government has borne in mind the
viewpoints held by the central organisations, and these organisations
are given an opportunity to set forth their views to the Government,
if they so desire.

Regarding Headings III and IV of this Part, the Government
considers that in view of what has been stated above the main
importance should also, in the matter of co-operation comprising the
whole country, be attached to the attitude of the organisations, and
that, consequently, it must reserve its position and await the discus­
sion at the Conference.

Concerning Heading V, it should finally be observed that the em­
ployers and workers to a wide extent are represented in the adminis­
tration.

The Danish Employers' Confederation replies No to question 1
and does not, therefore, require to reply to the further questions.

Luxembourg

By the Act of 4 April 1924, five trade chambers were established,
as follows: a Chamber of Agriculture, a Chamber of Handicrafts, a
Chamber of Commerce, a Chamber of Salaried Employees, and a
Chamber of Labour. Article 44 provided for the possibility of co­
operation between two or more trade chambers and therefore between
representatives of wage-earners and employers. However, the trade
chambers have hardly ever taken advantage of this provision. Hence,
the Government decided in 1935 to set up a Higher Economic Council,
which later became the National Economic Council. But the form of
this body also, like the economic advisory bodies, to which reference
was made in Part B of this questionnaire, has not yet been finally
decided.

By the Grand-ducal Order of 10 November 1944, the National
Labour Conference was set up for the purpose of assisting the Govern­
ment in the social administration of the Grand Duchy. Established
on a joint and tripartite basis according to the well-tried principle of
the International Labour Organisation, the Conference at present
consists of twenty-one members and an equal number of substitutes,
including seven representatives of the State, seven representatives
of employers, and seven representatives of employees. The Govern­
ment group consists of higher officials who, like the Secretary-General
himself, are particularly competent with regard to labour and social
security legislation.

The employers' and employees' delegates are chosen in such a way
as to give as fair a representation as possible to all branches of the
economic and occupational activities of the country.

Poland

As regards Headings I, II, III, IV, the answer is No, for the reasons
given in the general observations to Part B of the questionnaire. ¹

¹ See above, p. 145.
Sweden

In view of the system of representation of the parties on the employment market, applied in Sweden in respect of special tribunals or national boards entrusted with the task of examining disputes arising out of the application of the contract and protective legislation concerning the employment market, and the provisions of the agreements regarding "Enterprise Councils", as well as the corresponding representation provided for the parties on the States Employment Board and several other official institutions, and also the systematic consultation of all central organisations concerned during the preparation and implementation of economic and social measures of national scope (remiss/orfarandet), the question of establishing such national economic councils, etc., as envisaged does not appear to be of immediate interest to Sweden.

Switzerland

The reasons to which reference has been made which caused the Swiss Government to make reservations on the question of regulations concerning co-operation at the level of the industry are equally cogent in the case of co-operation at the national level. The Swiss Government could in no way subscribe to the adoption of a system which restricted the political organisation of the State. At the same time, it appears to be clear that employers' and workers' organisations may be consulted during the preparation and implementation of economic and social measures of national scope. It is also considered equally justifiable, in certain cases, that these organisations should be associated in the administration of certain national institutions.

I. Desirability and Form of International Regulations

1. Do you consider that the International Labour Conference should adopt international regulations concerning co-operation at the national level, in the form of a Recommendation?

Australia

1. No objection is taken to international regulations in the form of a Recommendation. Informal co-operation already exists, and it is doubted whether attempts to formalise this will produce better results.

Austria

1. The problem raised in this Part goes so deeply into questions of constitutional and administrative law in the various States, that
international regulations, if it is possible to adopt them, would only be feasible in the form of a Recommendation, which would have to be limited to a few very general principles.

1. Yes.

**Belgium**

1. Yes.

**Bulgaria**

1. Yes.

**Canada**

1. Yes.

**China**

1. Yes.

**Costa Rica**

1. Yes.

**Denmark**

1. The Government reserves its decision.
   The Danish Employers' Confederation replies No.
   The Confederation of Danish Trade Unions replies Yes.

1. Yes.

**Finland**

1. Yes.

**France**

1. Yes.

**India**

1. Yes.

**Iraq**

1. Yes.

**Luxembourg**

1. In view of its own action in this field, the Luxembourg Government declares itself to be in favour of international regulations concerning co-operation at the national level, provided that such regulations are made in the form only of a Recommendation.

1. Yes.

**Mexico**

1. Yes.

**Netherlands**

1. Yes.

**New Zealand**

1. Yes.
Norway
1. Yes.

Panama
1. Yes.

Poland
1. No.

Union of South Africa
1. Any Recommendation adopted should at the most require a Member State to consider whether, having regard to the subject matter of any projected measures of national scope, they are such as fall within the terms of paragraph (e) of Section III of the Declaration of Philadelphia.

United Kingdom
1. See reply to question 1 of Part A of this questionnaire. ¹

II. Consultation of Employers' and Workers' Organisations

2. Do you consider that it should be provided in the international regulations that the employers' and workers' organisations should be consulted during the preparation and implementation of economic and social measures of national scope?

Australia
2. Yes.

Austria
2. Yes. Consultation should be stipulated only in the case of "important economic and social measures", so as to avoid too great a burdening of the national administrative system, and so as not to make administration too cumbersome.

Belgium
2. The agencies for co-operation which the State establishes at the national level will necessarily include among their members representatives or delegates of the representative organisations of employers and workers. It is usual for these organisations to be consulted in regard to all national economic and social measures

¹ See above, p. 101.
which the Government may refer for advice to the agencies for co-operation, or which those agencies may examine on their own initiative in order to make information available to the competent authorities.

2. Yes.

**Bulgaria**

2. Yes.

**Canada**

2. Yes.

**China**

2. Yes.

**Costa Rica**

2. Yes.

**Denmark**

2. The Government reserves its decision. The Confederation of Danish Trade Unions replies Yes.

2. Yes.

**Finland**

2. Yes.

**France**

2. This question should fall within the scope of question 3 below.

2. Yes.

**India**

2. Yes.

**Iraq**

2. Yes.

**Luxembourg**

2. Yes.

**Mexico**

2. Yes.

**Netherlands**

2. Yes, when there are no councils as suggested by 3.

2. Yes.

**New Zealand**

2. Yes.

**Norway**

2. Considering the present importance of the said organisations, it would undoubtedly be right to consult them during the preparation and implementation of economic and social measures of national scope.
PANAMA
2. This would be very desirable.

POLAND
2. No.

UNION OF SOUTH AFRICA
2. See reply to question 1.¹

UNITED KINGDOM
2. While the fullest co-operation between the Government and organisations of employers and workers is to be welcomed, it is not considered appropriate to bind the sovereign legislative or executive authority to consult these organisations in the preparation and implementation of economic and social measures of national scope.

III. Establishment of Machinery for Co-operation at the National Level

3. Do you consider that the international regulations should recommend the establishment, by legislative or other means, of national advisory councils of a social and economic character such as, for instance, national economic councils, national labour councils, etc.?

AUSTRALIA
3. Yes, to the extent desired by the national federations of employers' and workers' associations.

AUSTRIA
3. The establishment of special machinery for co-operation at the national level (advisory councils) should not be laid down as a general obligation. In order that account may be taken of existing regulations and practice in the various States, the countries should be left free to decide whether they prefer to obtain authoritative opinions on economic and social measures by consultation with the various representative bodies concerned, or by taking the opinion of an advisory council.

The principles contained in questions 2 and 3 should be combined together in a general provision to be included in the Recommendation, ¹See above, p. 162.
to the effect that, in the preparation and implementation of important economic and social measures, the bodies representing the interests of employers and workers should be consulted, in so far as no advisory councils exist on which these organisations are represented.

3. Yes.  

Belgium

3. Yes.

Bulgaria

3. Yes.

Canada

3. Yes, by voluntary means.

China

3. Yes.

Costa Rica

3. Yes.

Denmark

3. The Government reserves its decision. The Confederation of Danish Trade Unions replies Yes.

3. Yes.

Finland

3. Yes.

France

3. Yes. It should be remembered that in France the Economic Council is a constitutional body.

3. Yes.

India

3. Yes.

Iraq

3. Yes; by legislative means.

3. Yes.

Luxembourg

3. Yes.

Mexico

3. Yes.

Netherlands

3. Yes.

New Zealand
Norway

3. It is considered that this can be agreed to in principle. In Norway a Council for Economic Co-ordination has been established, but further steps are not at present under consideration. In discussions of social questions of major importance the organisations of the parties have been represented.

Panama

3. Yes, by legislative means.

Poland

3. No.

Union of South Africa

3. No. The wide variation in practice is such that it is not considered practicable in any international instrument to attempt to detail the type of councils which should be established. The acceptance of paragraph (e) of Section III of the Declaration of Philadelphia appears to be adequate, and it is not necessary to add to that paragraph by way of a Recommendation. Any Member State which has ratified the amended Constitution has accepted the principle of that paragraph, and no further Recommendation appears to be necessary. It is considered that this is clearly not a matter on which an international instrument can require legislative action.

United Kingdom

3. Yes.

4. Do you consider that it should be provided in a Recommendation that the national advisory councils should include among their members an equal number of employers' and workers' representatives, either nominated directly by the representative organisations of employers and workers, or appointed by the competent authorities on the basis of proposals from these organisations?

Austria

4. See reply to question 3. ¹

¹See above, p. 164.
BELGIUM

4. The Belgian Government considers that the national advisory councils referred to in the questionnaire should include among their members an equal number of employers' and workers' representatives. They should be appointed by the competent authorities on the basis of the proposals of the representative organisations of employers and workers.

While it is in fact desirable that such organisations should decide which candidates should be nominated, it appears advisable that the competent authorities should be enabled to choose the members of the councils in order that co-operation may exist from the time of their actual formation.

BULGARIA

4. Yes.

CANADA

4. No. See answer to 3 above.¹

CHINA

4. It should be provided in a Recommendation that the national advisory councils should include among their members an equal number of employers' and workers' representatives nominated directly by the representative organisations of employers and workers.

COSTA RICA

4. Yes.

DENMARK

4. The Government reserves its decision.

The Confederation of Danish Trade Unions replies Yes.

FINLAND

4. Yes.

FRANCE

4. Yes. Appointment by the competent authorities on the proposal of representative organisations is the formula most often adopted in France.

INDIA

4. Yes, where such organisations exist.

¹See above, p. 165.
IRAQ
4. Yes, equal number of employers’ and workers’ representatives, appointed by the competent authorities on the basis of proposals from the representative organisations of employers and workers.

LUXEMBOURG
4. Yes.

MEXICO
4. Both formulae are satisfactory.

NETHERLANDS
4. Yes.

NEW ZEALAND
4. Yes.

NORWAY
4. It is considered that the different interests should be equally represented.

PANAMA
4. Yes, by the competent authorities, on the proposals of the corresponding organisations.

POLAND
4. No.

UNION OF SOUTH AFRICA
4. No. Any advisory council or body set up by the State to investigate social or economic questions or legislation should be constituted in a manner best calculated to yield the best and most expertly devised solutions to the problems under consideration. Employers and workers form only two categories of citizens, while social, economic and legislative projects affect all citizens. The most expert advice is what is required, and, while it is desirable that equality on any such bodies should be maintained as between employers and workers, wherever the persons concerned assume membership as representative of such groups, it is considered that it is impracticable to attempt to set out the method of selection. At the most, a Recommendation should suggest that any such nominations be made in consultation with representative organisations.

UNITED KINGDOM
4. No.
IV. Functions of National Advisory Councils

5. Do you consider that it should be provided in a Recommendation that the national advisory councils should have more particularly the following functions:

(a) to study social and economic questions falling within their terms of reference, undertake the necessary investigations to this effect, and submit their opinions and recommendations to the competent authorities?

(b) to give a previous opinion on proposed legislation of an economic or social character falling within their terms of reference, and on proposed regulations to apply such legislation?

AUSTRALIA
5. Yes.

AUSTRIA
5. The functions here set out are considered to be appropriate, subject to the limitation mentioned in the answer to question 3. ¹

BELGIUM
5. (a) Yes.
(b) Yes.

BULGARIA
5. (a) Yes.
(b) Yes.

CANADA
5. (a) Yes.
(b) Yes.

CHINA
5. Yes.

COSTA RICA
5. (a) Yes.
(b) Yes.

DENMARK
5. The Government reserves its decision.
The Confederation of Danish Trade Unions replies Yes.

FINLAND
5. (a) and (b) These functions should be specified by national legislation or by a national agreement. In accordance with the Act

¹ See above, pp. 164-165.
respecting production committees in force in Finland, the Central Commission for Production Committees is an auxiliary consultative agency to the Minister for Social Affairs, which is concerned only with the proposals from production committees.

FRANCE

5. (a) Yes. These are the functions of the Economic Council in France.
    (b) It should be possible for them to be called upon either by Parliament or by the Government to submit opinions on proposed legislation falling within their terms of reference. The question of whether such terms of reference should be of a more general character, both economic and social, or limited to one field or the other, obviously depends on the nature and status of the agencies in question.

INDIA

5. Yes.

IRAQ

5. (a) Yes.
    (b) Yes.

LUXEMBOURG

5. Yes.

MEXICO

5. (a) Yes.
    (b) Yes.

NETHERLANDS

5. (a) Yes.
    (b) Yes.

NEW ZEALAND

5. (a) Yes.
    (b) Yes.

NORWAY

5. (a) Yes, it is considered as being of great value both to the authorities and to the undertakings and the workers that the preparation of matters of such importance is, inter alia, based on statements from central advisory agencies representing all industrial activities.
    (b) It is considered advisable to restrict the activities of the councils to matters which are submitted to them.

PANAMA

5. (a) Yes.
    (b) Yes.

POLAND

5. No.
Union of South Africa

5. (a) and (b) No. As indicated in the reply to question 2, it is not considered to be practicable, in view of the wide variations in national practice, to define in international regulations the character of any such councils. Similarly their functions cannot be defined.

United Kingdom

5. (a) No. The national advisory councils should not have the function of undertaking necessary investigations into social and economic questions falling within their terms of reference, although they may submit their opinions and recommendations to the competent authorities.

(b) While discussions of legislative proposals are desirable, it is not considered that the competent authority should be required to undertake consultation with national advisory councils prior to the introduction of legislation of an economic or social character.

6. Do you consider that it should be provided in a Recommendation that the competent authorities should be required to submit to the national advisory councils, for their opinion, proposed legislation of an economic or social character falling within their terms of reference, and proposed regulations to apply such legislation?

Australia

6. Yes, with the proviso that this should apply to the extent to which it is practicable from the point of view of national requirements.

Austria

6. See reply to question 5. ¹

Belgium

6. It is desirable that the competent authorities should submit to the national advisory councils, for their opinion, proposed legislation of an economic or social character falling within their terms of reference and, if necessary, the general outlines of proposed regulations for applying such legislation. Nevertheless, it would be necessary not to burden these advisory councils with questions of detail, in regard to which they will not always be particularly competent from the technical point of view. Hence, it is considered

¹ See above, p. 169.
that these councils, not having any legislative functions, nor having functions as regulating bodies, should not have referred to them the actual texts of Acts or Orders in course of preparation, but only the general contents of proposed legislation.

6. Yes.

Bulgaria

Canada

6. No, there should be no compulsion to submit such material although it would be desirable to have the advice of advisory councils

China

6. Yes.

Costa Rica

6. Yes.

Denmark

6. The Government reserves its decision.
The Confederation of Danish Trade Unions replies Yes.

Finland

6. See reply to question 5. ¹

France

6. This question should be dealt with under question 5 as suggested.

India

6. Yes.

Iraq

6. Yes.

Luxembourg

6. Yes.

Mexico

6. Yes.

Netherlands

6. Yes, provided that the competent authorities are exempted from this obligation when national interests would be endangered by consultation outside the direct Government sphere.

¹ See above, pp. 169-170.
New Zealand
6. Yes.

Norway
6. Yes.

Panama
6. Yes.

Poland
6. No.

Union of South Africa
6. No. See previous replies.

United Kingdom
6. No.

V. Participation in Administration of Social Institutions

7. Do you consider that it should be provided in a Recommendation that the employers' and workers' organisations should be associated in the administration of national institutions, such as those responsible for social security, organisation of employment, industrial health and safety, and other forms of labour welfare?

Australia
7. Yes, in an advisory capacity.

Austria
7. Provisions on the lines of question 7, expressed in general terms, should be included in the Recommendation. In Austria, participation by the representative bodies is provided for in a number of social institutions, such as, in particular, employment services, war victims assistance, and accident prevention.

Belgium
7. Yes. It is assumed, however, that the word "administration" should not be interpreted in its strict sense, but rather to mean "control".

Bulgaria
7. Yes.
Canada

7. Yes, in an advisory capacity.

China

7. Yes.

Costa Rica

7. Yes.

Denmark

7. The Government reserves its decision. The Confederation of Danish Trade Unions replies Yes.

Finland

7. In principle, yes. The scope should be determined by national circumstances.

France

7. The drafting of this question does not make it clear to what national institutions reference is made. If it is a question of institutions of a semi-public character, the reply is in the affirmative. On the other hand, the national institutions responsible for organisation of employment are, in France, the public administrations themselves. It cannot be visualised how employers’ or workers’ organisations can be associated in the administration of official institutions.

India

7. Yes.

Iraq

7. No.

Luxembourg

7. Yes.

Mexico

7. Yes.

Netherlands

7. Where appropriate, there should be close contact with the organisations of employers and workers in the administration of certain national institutions.

New Zealand

7. Yes.
NORWAY

7. The Norwegian system with representation of workers and employers is recommended.

PANAMA

7. Yes.

POLAND

7. It is considered that the workers' trade unions should be assured of effective supervision over the activities of the administration of national institutions set up in respect of social security and welfare, organisation of employment, industrial health and safety, labour protection, etc.

UNION OF SOUTH AFRICA

7. No. Such association should be voluntary and be sought by the State where the subject matter warrants such action.

UNITED KINGDOM

7. The meaning to be attached to "associated in the administration of national institutions" is not clear, but the competent authorities in their administration of such institutions should seek to secure, in whatever form may be appropriate to the particular case, the co-operation of employers' and workers' organisations.

***

8. Have you any proposal or suggestion to put forward on any point regarding the question of co-operation at the national level which has not been mentioned in the present questionnaire?

No proposals or suggestions have been put forward.
CHAPTER II

SURVEY OF THE REPLIES

The purpose of this chapter is to give a brief analysis of the replies from the Governments which are reproduced in the preceding chapter. This survey will allow a better understanding of the conclusions submitted to the Conference by the Office as a basis for discussion. The proposed conclusions appear as Chapter III.

Preliminary Observations

The four parts which make up the eighth item on the agenda of the Conference—application of the principles of the right to organise and to bargain collectively; collective agreements; conciliation and arbitration; co-operation between public authorities and employers' and workers' organisations—constitute a group of questions which, though referring to clearly distinguished subjects, are nevertheless closely connected one with another.

In their preliminary remarks or general observations regarding the various points in the questionnaires, several Governments have drawn attention to particular aspects of the problem which may affect the question of international regulations.

The Swiss Government, setting out its position in regard to the problem, points out that industrial relations "are based on the traditional Swiss spirit of liberty" and are regulated principally by means of spontaneous agreement between the parties, and considers that the State should not intervene except to encourage or sanction such agreement.

The Governments of Denmark, Norway, Sweden, the United Kingdom and several other countries have expressed
similar opinions in replying to various points in the questionnaires.

The Polish Government declares on several occasions that legislation is the only satisfactory means of providing workers and workers' organisations with adequate guarantees. Mere reciprocity in relations between organisations of employers and workers, the Government urges—more particularly with reference to the question of collective bargaining—may be unfavourable to the trade unions, which, in a non-socialised economy, are only formally in a position of equality with the opposing party.

In the view of the French Government, it is the State, as the protector of public liberties, which should ensure respect for the right to organise, while collective agreements should fix the conditions under which this right is to be exercised.

The United States Government, in its reply to those parts of the questionnaire concerning collective agreements, conciliation and arbitration, and co-operation, considers it essential, owing to the widely varying economic and social patterns in the various countries, that these problems should be studied in their specific national contexts, at least in respect of those countries whose industrial systems belong to the principal recognised types. As it does not feel that there is sufficient information on this subject, the Government of the United States does not consider that it can take up a position in regard to the questions contained in Parts II, III and IV of the report.

In addition to difficulties encountered in preparing international regulations on the matter of industrial relations, as the result of the wide differences in the national systems, the Government of the United Kingdom emphasises the difficulty of applying regulations intended to cover all industries in a country, when conditions in that country are regulated by means of collective agreements and vary from industry to industry, or even—as in the case of works committees—from one undertaking to another. While considering it essential that there should be an effective guarantee as regards the points dealt with in Questionnaires I, II and IV, and that international regulations should be adopted on these subjects, the Government of the United Kingdom has preferred, pending the results of the discussions in the Conference, to reserve its attitude as regards both the practicability of international regulations and the form and content which might be given to them.
The Conference will determine the form in which the various questions included in the problem of industrial relations should be regulated, and the extent to which they might be regulated forthwith. When, in 1947, the Conference placed on the agenda of its 31st Session the four main aspects of the problem of industrial relations, it sought to emphasise the point that it was essential not to dissociate the question of freedom of association from that of industrial relations. But that does not necessarily mean that in so doing the Conference intended that all these questions should be regulated at one and the same time.

It will be for the Conference to decide whether it intends to take a decision at this session with regard to all the problems concerning industrial relations which are before it or whether it wishes to spread the consideration of these problems over several years. In the latter case, it might decide to limit the discussions at its 31st Session to the problem of protecting the right to organise, in the first place, perhaps including the question of collective agreements also, and to place on the agenda of its next session the questions which it has not found sufficient time to examine.
QUESTIONNAIRE I

APPLICATION OF THE PRINCIPLES OF THE RIGHT TO ORGANISE AND TO BARGAIN COLLECTIVELY

I. Desirability and Form of International Regulations

Question 1

The first question asked whether the Conference should adopt international regulations concerning the application of the principles of the right to organise and to bargain collectively in the form of a Convention.

No Government declares itself opposed to the adoption of international regulations. However, a number of Governments make certain reservations. The Swiss Government, without formally opposing the adoption of international regulations, considers that the exercise of the right of association and negotiation is above all a question of "mutual confidence between employers and workers". The Government of the United Kingdom declares that such regulations would be desirable, but asks how far they are practicable, and concludes that it cannot express a final view before the discussion in the Conference has shown to what extent the international regulations could be effectively applied. In consequence, the affirmative replies given by these two Governments to the various points in the questionnaire are not to be regarded as final, but only as indicating the manner in which the regulations might be drawn up (Switzerland), or aiming at certain guarantees rather than a regulation of substance (United Kingdom). The United Kingdom Government concludes that it can only be in the light of the discussions of the Conference that it will be able to express a view on the question whether the international regulations, if found to be practicable, should take the form of a Convention or of a Recommendation, or partly of a Convention and partly of a Recommendation.
The Government of Iceland declares itself in favour of a Convention, but refrains from giving its opinion on the various points of the questionnaire.

It should also be added that certain Governments, though supporting the proposal for a Convention, express a wish that the Convention should be flexible in character and limited to questions of principle, without entering too far into details which might be an obstacle to ratification (Norway and Sweden).

The following Governments reply in the affirmative: Australia, Austria, Belgium, Bulgaria, Canada, China, Costa Rica, Denmark, Finland, France, Iceland, India, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Sweden, the Union of South Africa and the United States.

On the basis of the opinion expressed by the large majority of Governments, the Office suggests in the proposed conclusions contained in the present report that the Conference should adopt international regulations concerning the application of the principles of the right to organise and to bargain collectively in the form of a Convention.

II. Guarantee of the Workers' Right to Organise

Questions 2 and 3

Questions 2 and 3 concerned the protection of the workers' right to organise against all acts of anti-union discrimination in connection with their employment.

Several Governments draw attention to the preliminary question of the scope of the Convention.

The Government of the Union of South Africa expresses the view that the Convention should only apply to industrial workers and organisations of workers covered by national collective bargaining legislation, especially that dealing with wage-fixing machinery. In a large number of countries, the Government explains, agricultural workers and domestic

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1 The reservations made by the Portuguese Government concern only questions of terminology and do not affect matters of substance.
servants, and certain other categories of lesser importance, are excluded from the scope of such legislation. Such countries should not be prevented from ratifying the Convention merely because their national legislation is not universal in scope.

The Swedish Government considers that the scope of the proposed Convention should be explicitly limited to relations between employers and workers, and that the definition of “employers” and “workers” should be left to the national legislation of each country. The Government explains that there are border-line cases in which it may be difficult to decide whether a person should be considered as a “wage-earner”, and refers particularly to the case of foremen who, under Swedish legislation, might be excluded from the protective measures contemplated.

The Finnish Government similarly draws attention to the fact that supervisors, that is to say, “those who, while representing the employer, supervise the work”, should not join trade unions which have to ensure the interests of the workers who are placed under their control. They should belong to a separate trade union for supervisory staff.

In the opinion of the Indian Government, the regulations should not apply to employment in the armed and police forces of the Government, and nothing in the regulations should be construed as preventing the Government from imposing certain restrictions in respect of employment in the administrative services. Nor should the regulations be construed as protecting any organisation of workers from the consequences of an illegal act.

The Government of the United Kingdom, in its general observations, expressly reserves its opinion as to the scope of the regulations, and states that its decision will depend on the decision of the Conference respecting the Convention on freedom of association.

Other Governments appear to be agreed on giving the widest possible application to protection of the workers’ right to organise.

On the principle that protection of the right to organise given by the Convention should be based on full equality and reciprocity between employers and workers, the Swedish Government considers that it would be preferable for Point 3 to apply to both workers and employers.
All the other Governments are in agreement with the Office proposal that this provision should be concerned exclusively with the protection of workers, and most of them also accept the formula suggested by the Office in this connection.

The Portuguese Government, however, suggests that the words "right to organise" should be replaced by the words "right of association" and that the words "of anti-union discrimination" should be deleted. The Government considers that the discrimination in question concerns only the right of the worker to join an already existing union or to withdraw from membership of it.

The Austrian Government suggests that the provision should be supplemented by a guarantee of freedom not to associate. The Polish and Swedish Governments are opposed to this idea, as will be seen from their observations in connection with Points 6 and 7.

While declaring its agreement with the proposals of the Office, the Government of the United States expresses the wish that the Convention should cover not only measures of a repressive character which the employer might bring to bear against workers, but also actions of restraint or coercion restricting or preventing free acts of union association or activity. In order to cover both cases where the employer exercises an immediate discrimination against a worker and cases where the employer threatens discrimination in the future, the Government of the United States suggests that the following formula should be adopted in place of Point 3 (b):

\[ (b) \text{ a worker is interfered with, restrained, or coerced with respect to his membership in a union or his union activities; } \]

\[ (bb) \text{ a worker is discriminated against by reason of his membership in a union or his union activities. } \]

In the opinion of the Swiss Government the right to organise should be protected in general terms on condition that it is not abused.

It will be seen from this survey of the replies that, without exception, the Governments consider that the international regulations should protect the exercise of the workers' right to organise. It should be pointed out that these regulations are aimed at preventing any acts of anti-union discrimination in connection with the workers' employment. That is to say,
they concern relations between employers and workers resulting from a contract of employment, and thus implicitly determine their scope. It should not, therefore, be necessary expressly to define the scope of the international regulations. This appears also to be the view of the Governments.

Most of the Governments also agree that the provision in question should be restricted to the protection of workers. The employer, thanks to his economic position, may well, as the Governments of Belgium and the United States emphasise, be in a position to prejudice organised workers if certain acts of anti-union discrimination are not specifically forbidden, even if such acts do not involve illegal methods of coercion.

Finally, with a few exceptions, the Governments approve the form which the Office has proposed should be given to the provision. The Office has endeavoured both to ensure a general protection of the workers' right to organise and at the same time to give a concrete definition of the acts which, in the words of the French Government, constitute "characteristic violations of freedom of association". In order to show clearly that it is the employer's intention which renders such acts illegal, it might be desirable, in view of the observations made by the United States Government, to state explicitly that the acts mentioned should have as their purpose the prejudicing of a worker.

This is not of course an exhaustive list of all possible forms of discrimination; it merely establishes a minimum list of rules, which States Members are free to supplement as appropriate in view of national requirements.

Point 2 of the proposed conclusion has therefore been drafted in accordance with the opinion of the majority of the Governments.

III. Guarantee of the Rights of Workers' Organisations

Questions 4 and 5

These questions concerned the protection of workers' organisations against interference on the part of employers.

The Governments agree almost unanimously on the desirability of protecting workers' organisations, but there is less
complete agreement on the question of the practicability of regulating the question by an international Convention. While considering it desirable that acts of the type mentioned in question 5, to the extent that they tend to infringe on the independence of unions, should be avoided, the Government of the United Kingdom asks whether it is practicable or appropriate to prohibit them by international regulations. The Swiss Government declares itself in favour of the principle that the rights of workers' organisations should be protected against any infringement, but expresses no opinion on this question since trade unions placed under the control or domination of employers appear from the outset to be without importance.

The South African Government replies in the negative. In its opinion, it is clearly impracticable even to establish whether or not employers dominate unions. The most that the authorities can do is to provide that no recognition shall be given by the State to trade unions subject to direct or indirect control by employers; but this question could hardly be included in an international Convention.

The French Government adds to its affirmative reply the reservation: "in so far as these provisions are compatible with the protection of the freedom of association of the workers".

Other Governments make reservations as to the wording of the provision. For example, question 5 (b), and especially the words "supporting it by financial or other means", has given rise to a number of observations. The Danish Government, while replying in the affirmative, reserves its position on this point, in view of the reservations made by the organisations of employers and workers which it consulted. The employers' organisation was opposed to this provision. The workers' organisation, while supporting the proposal, considered that the term "financial support" was somewhat vague.

The Canadian Government replies in the affirmative, but points out that the prohibition should not prevent employers from providing by agreement (1) free transportation; (2) access to employers' premises for union purposes; and (3) payment to employee or union representatives for time spent during working hours in conferring with the employer or in attending to the business of the organisation.

Similarly, the Norwegian Government gives an affirmative reply, but specifies that the prohibition of financial aid should not preclude contributions of the employer to welfare work.
The remaining Governments give clear answers in the affirmative: Australia, Austria, Belgium, Bulgaria, China, Costa Rica, Finland, France, India, Luxembourg, Mexico, Netherlands, New Zealand, Poland, Portugal (with certain reservations regarding terminology), Sweden and the United States.

From this brief survey of the replies it appears that the Governments are divided in their opinions concerning the desirability of this provision.

It is true that in many countries employer-dominated trade unions no longer play an important part, but it is none the less true, as the Government of the United States has emphasised, that such unions have frequently been an impediment to the development of workers' organisations. For this reason, several Governments have considered that the international regulations should protect workers not only as individuals but also in their organisations.

It might, however, be difficult, as the South African Government points out, to establish whether a union is in fact independent or not. It is therefore necessary to state as clearly as possible the principal forms of interference or infringement which may threaten the independence of trade unions. For this purpose a distinction should be made between direct acts of interference in the establishment, functioning and administration of a workers' organisation and, on the other hand, certain indirect acts of interference, such as the establishment of employer-dominated unions and financial or other support to unions by the employer.

In order to take account of the observations made by a number of Governments in regard to certain contributions on the part of employers which should not be considered unlawful, it would be desirable to specify that the support given to trade unions by financial or other means is only to be prohibited when it is given with the intention of placing the unions under the control of the employer.

In many countries the trade union organisations will be strong enough to defend themselves effectively against any interference on the part of the employer, and the Government of the United Kingdom, therefore, doubts the necessity for international regulations on this subject. Nevertheless, a straightforward prohibition of acts of interference is considered by a large number of Governments to be the surest means of ensuring adequate protection to workers' organisations.
The proposed conclusions therefore include a provision to this effect in Point 3. The Conference will be able to examine the question and take a decision in full knowledge of the facts.

IV. Guarantee of the Right to Organise of Employers and Third Parties

Questions 6 and 7

These questions dealt with protection of the right to organise of employers and third parties, and were more particularly concerned with prohibition of assault, intimidation and violence with the object of forcing an employer or a worker to join or not to join an organisation of employers or workers.

The following Governments reply in the affirmative both to the question of principle and to the proposed form of the regulations: Australia, Belgium, Bulgaria, Canada, China, Costa Rica, Finland, Luxembourg, Netherlands, Norway, Portugal and the United Kingdom. Portugal, however, suggests that the guarantee should be given not to "the right to organise" but to "the right of association" of employers and third parties.

Several other Governments mention strong arguments against the proposal to protect employers and third parties, or against the list of acts of infringement against the right to organise.

The Polish Government is opposed to protection of the employers' right to organise, explaining that the Constitution (Preamble) and the Declaration of Philadelphia (Chapters I, II and III) declare the object of the International Labour Organisation to be to protect the rights of the workers, not to protect the rights of the employers, who are not exposed to any danger.

On the other hand, the Swedish Government considers that protection of the right to organise should cover all organised persons, employers as well as workers and salaried employees. However, as was suggested in connection with Point 3, a single provision of general application should ensure this protection on the basis of full equality and reciprocity.

The Government of the United States is also of the opinion that the international regulations should include provisions relating to the employers' right to organise, which may be
prejudiced in certain circumstances, and which should be
guaranteed more particularly against interference by the State.
The desirability of protecting third parties has been
questioned by several Governments. The Government of the
United States considers that the sense of the term itself is
uncertain, since the persons falling within the scope of the
regulations will either be employers and employers' organisations
or workers and workers' organisations.
The Polish Government is opposed to guaranteeing the
rights of third parties because protection of unorganised workers,
as experience has shown, would be used as a pretext for restrict­
ing freedom of association and discriminating against the rights
of trade unions. In the same way the Swedish Government
considers that the international regulations should be limited
to the protection of the positive right to establish or to join
unions, but should not be concerned with measures for the
protection of unorganised persons, whether employers or workers,
this matter belonging exclusively to national legislation. On the
other hand, the Austrian Government considers it essential
to guarantee freedom not to associate, as already stated in
connection with Point 3.
The Danish Government hesitates to give an opinion on
this point, in view of the reservations made by the employers'
and workers' organisations.
The French Government, though replying in the affirmative,
draws attention to the difficulty of including under the same
head provisions relating to employers and provisions relating
to third parties.
The Austrian Government would also prefer to have protec­
tion of employers and protection of third parties dealt with
separately.
The practical difficulties which might be encountered in
applying the proposed provisions are emphasised by several
Governments. The Swiss Government, for example, declares
that provisions of this kind would only be of value in countries
where the civil or penal law does not offer sufficient guarantees.
The South African Government is opposed even to the prin­
ciple of separate protection for employers and workers. In
countries where the concept of law prevails, citizens have an
unwritten but inherent right to take any action they wish which
does not interfere with the exercise of the similar rights of
others. Thus, employers and third parties automatically enjoy
the right to organise for any lawful purpose, and do not require any legislation, national or international, to enable them to do so. If international regulations were to include such provisions, the South African Government concludes, the paradoxical result might be that a State would be precluded from ratification because it had no specific legislation on the point, whereas the right to organise might well be a basic constitutional, though unwritten, right of its citizens.

Finally, the Governments of the Union of South Africa, the United States and Sweden oppose the proposal to include in the international regulations a prohibition of assault, intimidation and violence, since such illegal acts are already punishable under national criminal and civil law.

Such acts, the South African Government stresses, are criminal acts irrespective of the circumstances in which they are committed. It would be unwise to insert any provision in any law, national or international, which would tend to differentiate between criminal acts done against an industrial background and the same acts done against any other background.

 Whereas the preceding points were exclusively concerned with workers and their organisations, the present question asked Governments whether protection of the right to organise should be guaranteed to employers as well as to workers, whether organised or not.

It should be recalled that in accordance with the principles of the proposed regulations the problem is only regarded from the angle of relations between employers and workers. The guarantee of the right to organise in relation to the State—a point raised by the United States Government—is being dealt with in the Convention on freedom of association, a question which figures as item VII on the agenda of the Conference.

In view of these limitations, the regulations had to be restricted to cases where infringement of the right to organise results from an act of unlawful coercion. While the employer is in a position to exercise anti-union discrimination merely by means of a contract of employment, without having recourse to other coercive measures, other persons, in particular workers and their organisations, are unable to prejudice the employer's right to organise, or that of another worker, except by means of unlawful methods of coercion.

Any act of unlawful coercion, by or against any persons whatsoever, will already be prohibited by criminal and civil
Many Governments have therefore raised the question whether (1) international regulations should explicitly guarantee the exercise of the right to organise against activities which are already forbidden under common law, and (2) such protection should be specifically guaranteed to both employers and workers.

In certain countries "unfair practices" on the part of a workers' organisation or its agents are specifically forbidden; in others, freedom of association is expressly protected against acts of violence or intimidation. In many countries, on the other hand, such acts are delicts at common law and are ipso facto forbidden.

It will be for the Conference to decide whether it is desirable to include a provision of this kind in the proposed Convention. But if the Conference so decides, it could hardly do otherwise than guarantee such protection both to employers and to workers. It would be impossible to except a particular class of persons from a protection which by its nature is of general application. Point 4 of the proposed conclusions has therefore been drafted in this sense.

V. Union Security Clauses

Question 8

This question asked whether the regulations should include a provision to the effect that legislation or a collective agreement requiring membership in a given union as a previous condition to employment is not incompatible with the provisions of the international regulations.

The following Governments have supported this proposal: Australia, Bulgaria, China, New Zealand, Poland and the Union of South Africa.

The Canadian Government supports the proposal in so far as it is in conformity with proposed Dominion legislation under which union security clauses will be lawful, though no stipulation in a collective agreement will be deemed to be valid which requires an employer to discharge an employee because such employee is or continues to be a member of, or engaged in activity on behalf of, a union other than a specified trade union.
Several other Governments accept the proposal with certain reservations. The Mexican Government considers that, as is specified by legislation in that country, the Conference should declare that the Convention does not preclude any statutory provision or clause in an agreement requiring newly engaged workers to be members of an existing trade union representing the majority of the workers. It should, however, declare that the international regulations preclude any provision requiring a worker to be a member of a trade union in course of being established.

The Norwegian Government does not wish the Convention to admit the "closed shop" practice, but will not oppose a text which allows the "union shop" system to be adopted in countries desiring it.

The Danish Government abstains from replying, in view of the contradictory opinions expressed by the organisations of employers and workers.

Several Governments consider that the international regulations should not include any provision on this point, having regard to the controversial character of the question and existing differences in national laws and regulations. This view is taken by Luxembourg, the United Kingdom and the United States. In the opinion of the Austrian and Finnish Governments the question should be reserved to national legislation.

The following Governments have declared themselves opposed to the proposal on principle: Belgium, Costa Rica, France, India, Netherlands, Portugal, Sweden and Switzerland. The French Government argues that the provision would be incompatible with that contemplated in questions 3 and 6. In its opinion, any provision in a legislative enactment or a collective agreement intended to force a worker to belong or not to belong to a particular trade union, under threat of not being engaged or of losing his employment, would be incompatible not only with the principle of freedom of association, but also with the principle of freedom to work, especially in those countries in which there exists a plurality of trade unions.

It will be seen from this brief survey that several Governments approve the inclusion in the Convention of a clause relating to union security. Other Governments recommend that the Conference should not deal with this question in the international regulations. Others again declare themselves opposed in principle to the union security clause.
As has been stated in the report submitted to the Governments, the Office was guided in formulating its proposal by the idea that the international regulations, in view of the controversial nature of the question, should leave this matter to be dealt with by legislation and practice in the various countries. However, in order to achieve this result, the international regulations should not merely pass over this question in silence, as otherwise—as has been emphasised by the French Government—a national system recognising the union security clause to be lawful might be considered incompatible with the principle set out under Point 3. Consequently, ratification of the Convention would not be facilitated, and would in fact be made more difficult for several States Members which, though allowing the union security clause in practice, are nevertheless in full agreement with the Convention. If therefore the Conference considers that it would not be desirable to express any opinion on this point, the regulations should declare expressly that the Conference wishes to leave the States Members full freedom on this question.

The Office has therefore drafted Point 5 of the proposed conclusions on the basis of the suggestion put forward by the United States Government.

VI. Guarantee of the Principle of Collective Bargaining

Question 9

This question concerned the reciprocal obligation of employers and workers to give effect to the principles of union recognition and collective bargaining. Several Governments express disagreement with this proposal, but the arguments put forward are of widely differing character.

The Polish Government is opposed to the principle of reciprocity. In its opinion, the workers' organisations in a non-socialised economy can only be said as a matter of form to have a position equal to that of employers. The principle of reciprocity would therefore be to the disadvantage of the workers' organisations.

The Governments of the Netherlands, the United Kingdom and the Union of South Africa consider that, since trade union
recognition and the principle of collective bargaining can only develop by natural evolution, they cannot be the subject of an international commitment as such. The Government of the Netherlands admits, however, that in countries where mutual agreements do not ensure effective application of these principles the national authorities should guarantee that there is no unreasonable refusal to recognise unions and to bargain collectively on the part of either side.

The South African Government is not opposed to regulations which would give the unions the right to bargain on behalf of their members and, in certain circumstances, require the employer to negotiate with unions so authorised.

The Swiss Government is not formally opposed to international regulation of the question, but would prefer to leave to those concerned the responsibility for concluding, on a voluntary basis, such collective agreements as appear to them useful and necessary. The Belgian Government considers that the question might better be dealt with in a Recommendation.

The following Governments reply in the affirmative: Australia, Austria, Bulgaria, Canada, China, Costa Rica, Denmark, Finland, France, India, Luxembourg, Mexico, New Zealand, Norway, Portugal, Sweden and the United States.

In the opinion of the United States Government, the Conference should make a determined effort to arrive at common understanding and agreement on the principles of union recognition and collective bargaining to which employers' and workers' organisations are obliged to give effect, as these principles are fundamental to the whole Convention. An effort should be made to express these principles with greater clarity and precision, especially by establishing the rights which Governments are bound not to deny to those concerned.

It will be seen from this survey of the replies that most of the Governments approve the provision, or at least do not oppose it. However, it is impossible to ignore the cogency of certain arguments which a number of Governments have put forward against this provision. Recognition of trade unions and the right to bargain collectively is essentially a question of fact, and any regulation would merely give force of law to an existing fact. It has been observed in the report that the methods used in different countries to guarantee trade union recognition and the principle of collective bargaining show wide divergencies.
In some countries the question is left to custom and practice, in others the law establishes the requirements to be fulfilled by organisations entitled to claim recognition and to conclude collective agreements. Therefore, if the Conference considers that it is essential, as stated by the Government of the United States, to include in the international regulations a provision guaranteeing these principles, it will have to take account of different national circumstances as regards their application. Point 6 of the proposed conclusions has been so drafted as to reconcile as far as possible the various points of view expressed by the Governments.

VII. Supervisory Measures

Question 10

This question asked whether the international regulations should specify the obligation to establish appropriate machinery for the purpose of ensuring respect for the right to organise.

Most Governments reply in the affirmative: Austria, Bulgaria, China, Costa Rica, Denmark, India, Luxembourg, Mexico, Netherlands, New Zealand, Poland and Portugal.

Several Governments, while declaring themselves in favour of the provision, make certain reservations. For example, the French Government thinks that there should be a more thorough study of the *modus operandi* advocated. The Governments of Australia, the United States and the United Kingdom would wish the obligation to be restricted to cases where it appears necessary. The Finnish and Norwegian Governments would prefer that the international regulations should leave the question entirely to national legislation.

The Governments of Belgium, Canada and the Union of South Africa express the view that the ordinary courts are competent to enforce the regulations. The final position of these Governments therefore depends on whether or not the machinery contemplated includes the ordinary courts.

The Swiss Government is of the opinion that the question should, if at all, be dealt with in a Recommendation.

The purpose of the proposal is essentially to establish a principle. In view of the varying character of existing machinery
in the different countries—labour courts, ordinary courts, conciliation and arbitration machinery, labour relations boards, etc.—it would be impossible in practice to define the nature, structure or methods of operation of the machinery contemplated. If the Conference considers that the principle should be included in the Convention, it might leave the question of methods of applying the principle to be decided by national legislation.

Point 7 of the proposed conclusions takes account of the observations made in this connection by a number of Governments.

VIII. Methods of applying the International Regulations

Questions 11 and 12

These questions asked: (1) whether effect might be given to the international regulations, (a) by means of legislation, (b) by means of agreements between the organisations of employers and workers, or (c) by means of a combination of (a) and (b); and

(2) whether, in case of an affirmative reply to (b) or (c) above, the following conditions should be fulfilled: (a) mutual recognition by the organisations and effective guarantee of the exercise of the right to organise and to bargain collectively; and (b) effective authority of the organisations of employers and workers.

The following Governments consider that the international regulations should be applied solely by means of legislation: Bulgaria, Canada, Costa Rica, India, Poland, Sweden and the Union of South Africa.

The Danish Government reserves its position, in view of the opposing points of view expressed by the organisations consulted. The employers' organisation declared itself in favour of collective agreements, though not excluding as a possible alternative the application of the Convention by means of legislation; the Confederation of Danish Trade Unions declared itself in favour of applying the Convention by means of legislation, though preferring the method of mutual agreement.

Most Governments declare themselves in favour of flexibility in the methods of applying the international regulations, citing especially the possibility of giving effect to the regulations
not by legislation alone but by means of collective agreements (Australia, Austria, Belgium, China, Finland, France, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Switzerland, United Kingdom and United States).

The Government of the United Kingdom points out that a Convention to which effect could only be given by legislative action would have little likelihood of obtaining widespread ratification. The introduction of new legislation or the conclusion of special collective agreements should not be required of Governments if the objectives of the international regulations are already secured by other means. The British Government also draws attention to the difficulties likely to arise in applying international regulations by means of collective agreements when the regulations in question are not limited to a single industry or to a limited number of industries, but must be applied to all the industries in the country.

In view of the wide divergencies between the various systems, the Government of the United States asks whether the Conference should not refrain from specifying methods of applying the regulations.

As regards the supplementary conditions which must be fulfilled if effect is to be given to the international regulations by means of mutual agreement, the opinions of the Governments are divided.

The following Governments agree to the conditions: Australia, China, Finland, Luxembourg, Netherlands, Norway and Portugal. The Governments of Denmark and the United States express no opinion. In accordance with their replies to question 11, the following Governments declare themselves opposed to this provision or make no reply: Canada, Costa Rica, Poland, Sweden and the Union of South Africa. The Government of India replies in the affirmative to Point 12, and the Bulgarian Government to Point 12 (a).

The Austrian and Norwegian Governments refer to their reply to question 11 and recommend measures of a general character, which should not include details of a kind to make ratification of the Convention more difficult.

The French Government considers that Point 12 (a) might be dangerous, because of the conflicting interests of the various organisations concerned, but replies affirmatively to question 12 (b), subject to the need for further study of methods of applying the regulations.
In the view of the Swiss Government, these conditions would be dealt with more appropriately in a Recommendation.

In the opinion of the United Kingdom Government, this proposal reveals the very great difficulties which might arise if an attempt were made to apply the regulations by means of collective agreements. The first condition (mutual obligation on the part of the organisations to recognise each other and to guarantee the exercise of the right to organise) would not appear to be sufficiently clear. The second condition (effective authority of the organisations), or some such criterion, is essential in order to apply the Convention throughout the whole of the country, but this could hardly be dealt with by means of international regulations. The question whether any other criteria should be applied requires further examination.

It appears from a study of the replies that some Governments are of the opinion that the international regulations should be applied solely by means of legislation, but that the majority of Governments take the opposite view.

In some countries, particularly in those where, thanks to the strength of the workers' organisations, the principle of collective bargaining is widely recognised, intervention by the legislative authority has not been considered necessary; in other countries such intervention has been limited to the regulation of a few specific questions. It would therefore certainly be difficult for these States to ratify the Convention if they were obliged to take special legislative measures.

In view of this situation the Office suggested three methods of application: (1) the normal method of application by means of legislation; (2) the method of application by means of collective agreements; and (3) a combination of the two methods. Moreover, to safeguard the principle of reciprocity of obligations, which underlies all international regulations, the Office stated a number of conditions which should be fulfilled if a State wishes to avail itself of the method of applying the Convention by means of agreements.

A number of Governments observe that it would be difficult to specify in the international regulations the method by which States Members should give effect to them. The text of the regulations submitted to the Conference seeks to overcome this difficulty. Points 2, 3 and 4 merely provide that workers, employers and their respective organisations should enjoy "adequate protection". In Point 6 it is further proposed
that "appropriate measures" should be adopted to induce the parties to engage in collective negotiations. Finally, Point 7 provides that appropriate machinery should (if necessary) be established.

It results from this text that States are free to choose the most suitable method to afford the necessary protection to those concerned. It also results from the text that States already possessing an adequate system of protection by virtue either of legislation or other means will not be required to take further measures before ratifying the Convention.

In these circumstances the Office refrains from suggesting any specific methods for applying the international regulations.
QUESTIONNAIRE II

COLLECTIVE AGREEMENTS

General Observations

Iceland declares that its legislation assumes as a general principle the practice of collective bargaining covering individual organisations, groups of organisations or whole industries. The Government considers that, while legislation should prescribe the fundamental principles of how to use the right to organise and to make collective agreements, the question of wages, above all, should be a matter for free agreement between workers' and employers' organisations. As regards the matters contained in questionnaire II, as in the case of questionnaires I and III, Iceland favours the adoption of an international Convention.

The United States considers that, before adopting international regulations concerning collective agreements, more agreement and general understanding is required concerning the fundamental principles with regard to the relative rights of workers' associations, employers and Governments. The importance of this consideration is enhanced especially as the questions concerning collective agreements, inter alia, "deal largely with matters of procedure and structural organisation in the operating relationships" of the parties mentioned, and it would not be possible to achieve uniformity in such matters until after a settlement of the basic problems and rights and also after much further study of the law and practice in countries with varying types of economic and social background and conditions and different conceptions of labour-management relations. Therefore, the United States defers expressing any definite attitude on the question of collective agreements, either generally or as regards specific points, until the basic problem of freedom of association has been settled.
The Governments of Switzerland and the United Kingdom likewise make general observations, but also answer the specific points raised in the questionnaire.

Switzerland stresses the fact that its workers and employers, relying on mutual confidence based on the traditional spirit of freedom of the country, have evolved their system of collective bargaining with a minimum of legislation. The Government, therefore, considers that from a Swiss point of view the adoption of international regulations may be regarded as superfluous but, being mindful of the general aims of the International Labour Organisation, does not oppose the international regulation of the question, merely pointing out that the replies do no more than indicate the opinion of the Government as to how any international regulations, if adopted, might be drawn up.

The United Kingdom agrees in principle that international regulations concerning collective agreements are desirable but, pending the discussions at San Francisco, reserves its opinion as to what it may be found practicable to include in such regulations, and indicates that the replies given by the Government to the various questions are for the time being nothing more than an expression of opinion which must be read subject to the aforesaid reservation. The Government also suggests that consideration might be given to the inclusion in any Recommendation which may be agreed of a provision to the effect that States Members should take steps to encourage employers' and workers' organisations to promote the development of collective bargaining.

The Governments of Belgium, Denmark and Luxembourg preface their replies by statements relating to the general law and practice concerning collective agreements in their respective countries.

I. Desirability and Form of International Regulations

Questions 1 and 2

In the first question, Governments were asked whether they considered that the International Labour Conference should adopt international regulations regarding collective agreements in the form of a Convention and one or several Recommendations. If so, they were then asked in the second
question whether they considered that the Conference should adopt a Convention relating to the points covered by questions 4, 5, 6 and 7 and a Recommendation relating to the points covered by questions 3, 8, 9 and 10.

The adoption of a Convention and either one or more Recommendations is favoured by the Governments of Australia, Austria, Belgium, Bulgaria, Canada, China, Costa Rica, Finland, France, India, Luxembourg, New Zealand, Norway, Poland, Portugal, Sweden and the Union of South Africa.

Of these seventeen Governments, all agree that the points covered by questions 4 (definition of collective agreements) and 5 (non-derogation from a collective agreement by individual contracts) are suitable for inclusion in a Convention.

As to whether the points covered by questions 6 (application of collective agreements to a whole undertaking) and 7 (extension of collective agreements) should be covered by the Convention, the opinion of the seventeen Governments is somewhat divided.

Ten of the Governments—Belgium, Bulgaria, China, Costa Rica, France, Luxembourg, New Zealand, Poland, Portugal, and the Union of South Africa—agree that the points covered by questions 6 and 7 should be included in the Convention as well as the points covered by questions 4 and 5. Austria, Canada, Finland, India and Norway agree to the inclusion of the point covered by question 6 but not of that covered by question 7, although Austria would agree to the Convention covering the main principle underlying question 7(a) but would exclude the procedural matters dealt with in question 7(b). Australia and Sweden consider that neither of the points covered by questions 6 and 7 is suitable for inclusion in the Convention. Australia feels, however, that the Convention should also cover the point concerning collective bargaining machinery referred to in question 3, while Sweden expresses the view that the Convention might possibly include the points covered by questions 8(a) (interpretation of collective agreements) and 9 (responsibility of the parties to collective agreements).

While the eighteen Governments (including Iceland) favouring a Convention, therefore, are by no means in general agreement as to the points to be covered by it, six Governments are not in favour of a Convention covering any of the points in the questionnaire. These are Denmark, Mexico, the Netherlands, Switzerland, the United Kingdom and the United States.
Denmark reserves its position as to the type of regulation and what should be included in it, pending the discussions of the Conference, and indicates that, while the Danish workers' organisations favour a Convention and a Recommendation, the Danish employers favour one or more Recommendations only. Mexico, Switzerland and the Netherlands are not in favour of a Convention covering any of the points concerned in the questionnaire, Mexico and Switzerland stressing the view that a subject on which there are so many differences in national opinions is more suitable for regulation by one or more Recommendations only.

With regard to the suggestion contained in question 2 (b) that a Recommendation might cover the points referred to in questions 3, 8, 9 and 10, fourteen Governments replied in the affirmative: Austria, Belgium, Bulgaria, Canada, China, Costa Rica, France, India, Luxembourg, the Netherlands, New Zealand, Norway, Poland and Portugal. Of these, Canada and India would also include the point covered by question 7, the Netherlands would also include the points covered by questions 4, 5, 6 and 7, and Portugal would have the point covered by question 7 (b) included in the Recommendation in addition to the Convention.

Australia would agree to the inclusion of the points covered by questions 8 and 10 only; Finland would agree as regards questions 8 and 9 but not as regards questions 3 and 10, with the inclusion also of the point covered by question 7; Mexico would include the points covered by questions 9 and 10, and also by questions 4, 6, 7 (a) and (b), but not those covered by questions 3 and 8; Sweden approves the inclusion of the points covered by questions 3 and 8 (b) and possibly by questions 8 (a) and 9, but not the others; the Union of South Africa favours the inclusion of the points covered by questions 3 and 10 but not those covered by questions 8 and 9; Switzerland would prefer the Recommendation to be confined to a statement of general principles.

The replies briefly analysed above reflect the many differences in the national laws and practices relating to collective bargaining.

Certain countries with a long history of collective bargaining—some of them being of great industrial importance—have few or no legal regulations governing collective agreements. In the United Kingdom, collective bargaining is a purely de facto
institution, although most firmly established, the still existing war-time regulations being no more than a temporary expedient.

Most countries do, however, possess legal enactments or regulations concerning collective agreements, but they differ widely in extent and character. Very often such legislation covers only those aspects of the question which a particular country feels especially to be in need of regulation, while from other aspects collective agreements are left to pursue their de facto development. Most systems of regulations, therefore, define the legal character of collective agreements.

In certain countries, such as the United States, legislation deals with such questions as the machinery for negotiation and the responsibility of the parties to collective agreements. In others, for example the Scandinavian countries—and especially Norway and Denmark—the crucial question requiring legislation has been that of disputes regarding the interpretation and application of collective agreements.

Again, the rôle and importance of collective agreements differ according to the social and economic conditions of the countries concerned. In most countries, collective agreements are purely a means of establishing wages and conditions of employment under a system of free enterprise. In some others, collective agreements are a means of fulfilling an economic plan, as, for example, in many of the States of Eastern Europe.

Bearing in mind such great differences, it is difficult to decide which principles would be so sure of acceptance by all countries as to justify their adoption in the strict form of a Convention. But the basic principles, whether embodied in legislation or recognised by practice, are favoured by almost all countries and would therefore be suitable for inclusion in a Recommendation, which would be sufficiently flexible to allow national regulations to take account of special problems or would enable those countries which prefer to adhere to a de facto rather than a legislative system concerning collective agreements to do so without difficulty.

In the proposed conclusions concerning collective agreements, contained in Chapter III, the Office, therefore, suggests points which might be suitable for inclusion in a Recommendation covering the whole subject, at least as a first step. In doing so, the Office has endeavoured to reflect the most general consensus of opinion as based on the replies, although of course the Conference may ultimately decide that there is sufficient
agreement regarding some at least of the principles under review to enable them to be included in a Convention or to be dealt with by such other form of international regulation as the Conference may deem appropriate.

II. Collective Bargaining Machinery

Question 3

Governments were asked whether they considered that it should be provided, in a Recommendation, that they should establish appropriate machinery which would be available to assist the parties in the conclusion, revision and renewal of collective agreements.

The following seventeen Governments replied in the affirmative: Austria, Belgium, Bulgaria, Canada, China, Costa Rica, Denmark, France, India, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Portugal, Sweden and the Union of South Africa. Of these, Belgium, France and Portugal indicate that they have already established machinery of this kind.

Some of the countries mentioned attach certain reservations to their replies.

Austria stresses the point that these matters should generally be left entirely to the parties, and that intervention by any authority is justifiable only if the parties request it or if it is necessary to preserve industrial peace. The Government therefore proposes that the Recommendation should include a general provision to the effect that Governments should set up the machinery indicated, which would be available to assist the parties if either of them so requested or if the public authorities themselves proposed that assistance should be rendered by the machinery in the interests of industrial peace.

Norway, like Austria, stresses the importance of the free will of the parties, but declares that if collective bargaining fails to effect a settlement, the existing machinery for conciliation should endeavour to do so. The Government considers that the Recommendation should leave it to the States Members to decide if machinery of the kind indicated should be used by the parties on a voluntary or a compulsory basis.
France expresses the reservation that any provision adopted should be sufficiently broad to allow each country to choose a formula appropriate to its needs.

In addition to the seventeen countries mentioned above, Australia considers that a provision drawn up as suggested in question 3, but with the addition of the words "where necessary", should be included in a Convention, which would be a stronger way of supporting the principle than a Recommendation. The United Kingdom sees no objection to a provision being included in a Convention if such a course is found to be practicable.

Switzerland sees no necessity for any such provision, and urges that the question concerned should be left to the free will of the parties and that, if they wish and need it, the State can intervene to help them to reach agreement without there being any need for the establishment of special machinery.

Finland and Poland reply in the negative, Poland considering that such machinery might influence developments in a manner unfavourable to the workers.

Almost all the countries, therefore, stress the importance of machinery established by the parties. In several countries, however, machinery established by or with the aid of the authorities has proved to be of the utmost value. In Belgium, for instance, the joint committees have brought together groups which otherwise would have remained separated on religious or political grounds. In many cases, similar results have been achieved in France, through the medium of other machinery. In the United States and Canada, National Labor Relations Boards play an equally important part, although in a different way, by designating the representative organisations for the purpose of collective bargaining. In other countries, for example, Luxembourg, the Netherlands and Sweden, it is conciliation machinery which aids the parties in the conclusion, revision and renewal of collective agreements. In all these cases the main object is the same in principle, although the means employed vary, so that it would hardly be possible for international regulations to recommend identical types of machinery to meet all cases.

Accordingly, it is suggested in Point 9 of the proposed conclusions that any Recommendation should cover only the main principle involved. It is proposed that appropriate machinery should, if necessary, be established; the insertion
of the words "if necessary" may go some way to meet the views expressed by certain countries which are not in favour of the establishment of such machinery if Governments do not consider it necessary. It is also proposed, in order to take account of the existing differences in the methods of procedure with regard to such machinery in the various countries, that the organisation, methods of operation and functions of such machinery should be determined by national regulations.

III. Definition, Legal Effect and Extension of Collective Agreements

A. Definition of Collective Agreements

Question 4

Governments were asked whether they considered that collective agreements might be defined as agreements regarding conditions of work concluded between an employer, a group of employers or an employers' organisation on the one hand, and one or several organisations of workers on the other. Nineteen Governments replied to this question in the affirmative: Australia, Belgium, Bulgaria, Canada, China, Costa Rica, Denmark, Finland, France, India, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Switzerland and the Union of South Africa. Of these, the Swiss Government states that it assumes that the terminology includes all organisations or groups of employers and workers.

The United Kingdom is also in agreement, subject to the words "terms and conditions of employment" being substituted for the words "conditions of work".

Sweden desires a widening of the terminology by inserting after the words "conditions of work" the words "or regarding the relations between employers and workers in other respects".

Belgium agrees with the suggested definition as corresponding sufficiently to the terminology used in that country, but also suggests possible alternatives, for example:

A collective agreement is the regulation of conditions of employment drawn up by mutual agreement by one or several employers' organisations and one or several workers' organisations. Its object is to determine the general rules with which future individual contracts of employment in a given occupation must comply.
The Government considers that such a definition would reflect the juridical nature of collective agreements.

Austria does not find that the definition proposed corresponds sufficiently closely with the legal position in that country. The Government considers that account should be taken of the fact that a collective agreement contains provisions of two kinds: those constituting the general rules governing contracts of employment covered by the collective agreement, and those governing the mutual relations between the actual parties to the collective agreement. Moreover, under Austrian law, not only voluntary organisations of employers and workers, but also statutory bodies representing their respective interests may conclude collective agreements.

Austria, therefore, proposes the following definition:

A collective agreement should be taken to mean an agreement concluded between an employer, a group of employers, or a body representing the interests of employers, on the one hand, and a body representing the interests of employees, on the other hand, for the purpose of regulating the rights and obligations imposed on both parties by virtue of the contract of employment and the legal relationship between the parties to the agreement. National legislation may lay down stricter regulations defining the parties to collective agreements.

It seems clear that, as regards the actual parties to collective agreements, legislation and practice in most countries have accepted the principle that, while on the employers' side such contracts may be entered into by a single employer or a group of employers or an organisation of employers (and this enumeration would include private employers, public corporations or statutory associations), on the workers' side collective agreements become practicable only if concluded by one or more workers' organisations.

As regards the objects of a collective agreement, legislation and practice are almost always based on the assumption that the principal object is to determine conditions of employment. This, however, is a minimum definition, and there is nothing to prevent the law of a particular country from giving a wider definition to the objects of a collective agreement, e.g., so as to draw a distinction between provisions governing the individual relations of persons bound by the collective agreement and provisions which affect the collective relations of the actual parties to the agreement.
For these reasons, in Point 10 of the proposed conclusions, the Office submits to the Conference a definition which corresponds as nearly as possible to what is most generally accepted in legislation and practice. Account is taken of the drafting amendment proposed by the United Kingdom and implied in the replies of certain other Governments.

B. LEGAL EFFECT OF COLLECTIVE AGREEMENTS

Question 5

Governments were asked whether they considered that the international regulations should provide that the stipulations of individual or group contracts of employment concluded between employers and workers bound by a collective agreement should be valid only to the extent to which they are more favourable to the workers than the corresponding stipulations of the collective agreement.

The following fourteen Governments reply in the affirmative: Australia, Austria, Bulgaria, Canada, China, Costa Rica, India, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal and Switzerland.

Austria adds that, under Austrian law, where separate agreements are not prohibited by the collective agreement, they shall be valid only if more favourable to the employees than the collective agreement or if they relate to matters not covered by the collective agreement.

Finland and France are in favour of the general principle, but consider that an individual contract should be valid not only in so far as it is more favourable but also in so far as it is equally favourable to or identical with the collective agreement. This consideration is also inherent in the Belgian reply, although the Government answers the question in the affirmative as it is presented.

Sweden considers that it should not be permissible to derogate from the collective agreement (that is to say, in a manner either favourable or unfavourable to the workers) and that any variation in an individual contract should not be valid “except in so far as the variation may be deemed to be permissible under the collective agreement.”
Denmark reserves its decision, while indicating that the Danish workers agree with the proposition as stated in the question and that the Danish employers hold the same view as is expressed by the Governments of Finland, France and Belgium.

Mexico replies in the negative, on the ground that the workers will clearly want to take advantage of the most favourable conditions possible.

The United Kingdom does not consider that the question is appropriate for international regulation.

The Union of South Africa points out that, if the collective agreement is considered under the system of any given country to be a private contract, a private remedy based on the individual contract will be available, while, if a collective agreement is considered to be legally enforceable as such, there will be a public or criminal remedy involving fines or other penalties.

It is a principle generally recognised by legislation and accepted in practice that collective agreements do no more than lay down minimum standards which shall govern terms and conditions of employment. It follows therefore that where individual contracts contain exactly the same terms as those laid down by a collective agreement they contain no derogation, favourable or otherwise, from the terms of the collective agreement.

It also follows from the acceptance of the main principle that the object of collective agreements would be defeated if derogations from the collective agreement in a downward or unfavourable direction were permitted in the terms of individual contracts. Many legal systems give practical effect to this principle by declaring that such terms which derogate from a collective agreement are null and void and to be replaced by the corresponding terms of the collective agreement. Even where they do not specifically do so, this is the course most usually followed in practice. This point, therefore, has been retained in the proposed conclusions.

Finally, it follows from an acceptance of the principle that collective agreements lay down minimum conditions, that a provision in an individual contract which accords to the worker more favourable conditions than are laid down in the collective agreement should not be considered to derogate from the collective agreement unless the collective agreement has expressly or implicitly provided otherwise. This is the principle most usually followed in national labour legislation.
Point 11 of the proposed conclusions has consequently been drafted to meet these views.

**Question 6**

Governments were asked whether they considered that the international regulations should provide that the stipulations of a collective agreement should apply to all the workers in the service of the employer or employers bound thereby, even if these workers are not members of the organisation which concluded the agreement.

Eighteen Governments replied to this question in the affirmative: Austria, Belgium, Bulgaria, Canada, China, Costa Rica, Denmark, Finland, France, India, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal and the United Kingdom.

India stipulates that if such a provision is to be applied, the organisation concluding the agreement should be a representative organisation.

Canada directly and Austria by inference stipulate that the workers who are to become thus bound be of the same categories as those covered directly by the collective agreement.

The replies of Austria and Belgium and the statement made by the Danish employers' organisations stress the point that one of the fundamental reasons for such a provision is the manifest undesirability of workers who are doing similar work in an undertaking being remunerated or working under conditions other than on a standard basis. Belgium points out further that in the absence of this principle employers would be able to engage at inferior wages unorganised workers or workers not belonging to the contracting organisation, thus not only engaging in unfair competition but also weakening the very status of collective agreements.

Luxembourg has had experience of a serious industrial dispute between different industrial organisations over this question, which causes the Government to feel some hesitation in consenting to such a derogation of the common law principles of contract as is implied in the question. However, the Government is led to agree, because in practice the consequence of not subscribing to the principle would be an impossible situation in which workers in similar categories in the same undertaking
might be employed on a different basis of remuneration. The Government suggests that, in the light of the situation outlined in its reply, the International Labour Office might make a thorough study of the legal effects of collective agreements.

Sweden answers the question in the negative, and Switzerland considers that the principle suggested goes too far and should not be included in the international regulations.

Australia cannot agree for a different reason. The Government considers that the principle is contrary to the practice in many cases in the Commonwealth and the Australian States of providing members of particular unions or associations with special benefits which are not extended to all employees.

The Union of South Africa is not in favour of such a provision for several reasons. Where a union includes only a minority of the employees in an undertaking, the Government considers that it should only speak for its own members, South African law giving the majority, even if unorganised, the right to conclude their own collective agreements. Even where the majority of the employees are included in a contracting organisation, the provisions of a collective agreement should not automatically apply to the minority. This should depend, in the South African view, on State action, and the Government points out—in this confirming the Australian view—that many unions seek privileges for their members to the exclusion of non-members. For these reasons, the South African Government suggests that no such provision should be included in the international regulations, but that a provision might be included to the effect that where a collective agreement has been legally sanctioned by the legislative machinery of the State, the State shall have the power and the discretion to apply the terms of such an agreement to persons who are not members of the party thereto, if in its opinion the parties are sufficiently representative of the employees and employers respectively.

In fact, the opinion that it is in practice impossible to distinguish, as regards remuneration and other conditions of employment, between organised and unorganised workers employed in the same establishment, has gained such widespread acceptance that it is either applied in practice without legislation or, more frequently, embodied in the national legislation in a considerable number of countries.

This has been considered to be practicable and desirable especially where the organisation concluding the collective
agreement includes among its members a majority of the employees of the undertaking or undertakings concerned. It is felt more probable, therefore, that general agreement may be secured and the reservations made by certain countries be met, at least in part, if the suggestion is made to the Conference that, for the principle to operate, the contracting organisation should be representative of a majority of the employees concerned. This would also correspond more properly to the criteria whereby recognition of a collective bargaining agency is accorded in certain other countries, for example, in the United States.

Point 12 of the proposed conclusions has therefore been drafted in this sense.

C. Extension of Collective Agreements

Question 7

Governments were asked whether they considered:

(a) that it should be provided in the international regulations that collective agreements binding the majority of the workers and the majority of the employers (who should also employ the majority of the workers) may be rendered applicable to all employers and workers engaged within the industrial and territorial scope of the agreement as defined by the contracting parties;

(b) that any employers and workers to whom the stipulations of a collective agreement are to be rendered applicable should be authorised to submit their observations and objections in advance; and

(c) that the international regulations regarding the extension of collective agreements should take the form of a Convention or that of a Recommendation.

With regard to the main point covered by question 7 (a), affirmative replies were received from seventeen countries: Austria, Belgium, Bulgaria, Canada, China, Costa Rica, Finland, France, India, Luxembourg, Mexico, the Netherlands, New Zealand, Poland, Portugal, Switzerland and the Union of South Africa.
Austria considers such a provision desirable on the ground that workers in the service of an employer who declines to conclude an agreement or who does not belong to an employers' association party to such an agreement should be entitled to participate in the advantages of collective agreements. But the Government makes a reservation that one collective agreement should not affect contracts of employment drawn up under another collective agreement, and that the extension of a collective agreement should cease to have effect where the contracts of employment concerned are subsequently covered by the conclusion of a separate collective agreement. Austria also considers that the question of which authorities should be competent to extend the application of a collective agreement might be left to be decided by national legislation, but suggests that consideration might be given to the addition of a provision that such authorities should include among their members representatives of employers and workers in equal numbers.

Belgium, Portugal and Switzerland refer to provisions in their legislation which already give effect to this principle. France does likewise, but also points out that such a provision would be unnecessary if countries were to adopt the present French system of concluding national collective agreements covering major branches of activity; the Government considers, therefore, that any international regulation of this question should be sufficiently flexible to take account of systems of this kind.

The Union of South Africa refers once more to the arguments mentioned in the analysis of the Government's reply to question 6. In the present case, the main point of those arguments, namely, that extension of the effects of a collective agreement should not be automatic but should be left to action on the part of the State authorities, which induced the Government not to agree to the provision suggested in question 6, is deemed to be an equally cogent reason for agreement to the provision now being considered.

Four countries—Australia, Norway, Sweden and the United Kingdom—reply to the question in the negative.

Australia considers that the provision should not be included in international regulations at all, but that, if it is included, it should be in a Recommendation only.

Norway considers that, while such extension of a collective agreement may appear desirable on certain occasions, this
SURVEY OF THE REPLIES

consideration is more than counterbalanced by organisational and other arguments against it.

Sweden gives no specific reason for its negative reply.

The United Kingdom feels that, although a somewhat similar provision (though in different terms) is at present in force in that country as a temporary measure, the Government cannot, without further experience, commit itself to supporting the inclusion of such a stipulation in the international regulations.

The Government of Denmark reserves its decision, pending discussions at the Conference, pointing out that the Danish employers are against such a provision, while the Danish workers are also inclined to postpone the defining of their attitude on certain aspects of the question.

Most of the replying countries are therefore shown to be in favour of including in the proposed international regulations some such provision as is suggested by question 7 (a).

With regard to the point covered by paragraph (b) of question 7, fifteen Governments reply in the affirmative: Belgium, Bulgaria, Canada, China, Costa Rica, Finland, France, India, Luxembourg, Mexico, the Netherlands, New Zealand, Poland, Portugal and Switzerland. Of these, Poland’s agreement is dependent on what conditions may exist in a particular case, France’s reply depends on what system is adopted, and Portugal considers that the provisions would be difficult to apply in practice.

Austria and the Union of South Africa do not subscribe to such a provision, the former considering that it should be left to the countries concerned to decide, while the latter feels that it would lead to unnecessary administrative delay.

The negative replies of Australia, Norway, Sweden and the United Kingdom are consequent on their answers to question 7 (a). Denmark again reserves its attitude.

Thus, only twelve Governments can give complete approval, without any reservations, to any such provision as suggested in question 7 (b), while the replies given to question 7 (a) show a strong desire in certain quarters for the purely procedural issues to be left to the countries themselves.

Finally, as regards question 7 (c), the following nine Governments consider that the international regulations regarding the extension of collective agreements should take the form of a Convention: Belgium, Bulgaria, China, Costa Rica, France, Luxembourg, New Zealand, Poland and Portugal (the last
country as to the point in question 7 (a) only). A Recommendation is favoured by eight countries: Austria, Canada, Finland, India, Mexico, the Netherlands, Portugal (as to the point in question 7 (b)) and Switzerland.

A Convention would be supported by the Union of South Africa, but the Government considers nevertheless that a Recommendation would be more likely to gain general approval.

Australia wants neither a Convention nor a Recommendation concerning this question, but of the two would prefer a Recommendation.

Norway, Sweden and the United Kingdom support neither a Convention nor a Recommendation, while Denmark does not wish to express any opinion at present.

The question of extension of collective agreements, which is the logical development on a wider scale of the principle of the collective agreement itself, is an extremely important aspect of the question of collective bargaining. It would, therefore, seem appropriate to refer once more briefly to the practical and legal considerations relating to this question which were set forth on pp. 65-67 in Report VIII (1).

If unorganised persons within an industry can accept conditions less favourable than those applying to organised persons within the same industry, some employers might engage workers on inferior terms, thereby occasioning serious disputes as well as competing unfairly with employers bound by collective agreements, while the status of collective agreements might be weakened and the advantages of collective bargaining nullified.

Consequently, legislative measures, differing in method but with the same principal objects in view, have been introduced in many countries to make collective agreements apply to all employers and workers within their scope, either by a process of extension or by a system of making agreements of national application ab initio. Such legislation, in one form or another and to a varying degree, exists in Australia, Austria, Belgium, Brazil, Canada—Province of Quebec—Colombia, Costa Rica, Ecuador, France, Greece, Guatemala, Hungary, Ireland, Luxembourg, Mexico, the Netherlands, New Zealand, Poland, Portugal, Switzerland, the Union of South Africa and, although only temporarily, in the United Kingdom.

In some countries—for example, the Scandinavian countries and, apart from the temporary legislation mentioned, the
United Kingdom—collective agreements do in fact, without a procedure of extension being prescribed by legislation, cover far more workers than are members of organisations. In such cases no need for a legal system has been felt.

In a few countries, for example, the United States, the size of undertakings or of groups of undertakings operated by one business concern may be so vast that a collective agreement covering only one undertaking will in fact include within its scope as many workers as constitute the personnel of a whole major branch of industry in smaller countries. This fact, and the fact that a country of such territorial extent contains within its borders such great regional and climatic differences as may affect a whole continent, make it clear that a legal system of extension would raise complications for the United States of a kind quite different from those which would prevail in almost all other countries. But, even in the case of the United States, practical considerations have led to uniformity being sought as far as possible as between the collective agreements covering several major branches of industry, notably coalmining and shipbuilding.

Where the system of extension is by legislation, or comes about as a natural result of practical developments, the general ruling principle is that, before a collective agreement may bind all the employers and workers carrying on their activities within its industrial and territorial scope, it must already bind the majority of all such employers and workers. For collective agreements to assume such scope even in practice it must necessarily be so. For collective agreements to be so extended by law, it is a consideration which almost all legislatures which have dealt with the question have felt obliged to treat as paramount.

But there is far less uniformity in the manner by which legislation gives effect to the principle than there is as regards the basic principle itself.

In some countries, for example, Belgium, it is brought about through the medium of joint councils; in others, such as Australia, it may be the result of arbitration procedure; while in yet others, as in France, collective agreements achieve their nationwide status by being drawn up on that legal basis from the beginning.

The opinions expressed in the replies, as well as reference to existing law and practice, make it apparent that there is a very
wide acceptance of the general principle of extending the scope of collective agreements where they have acquired the necessary importance. Accordingly, although effect is given to this principle by many different methods, the Office feels that it cannot by-pass this problem, and therefore lays before the Conference, in Point 13, a suggestion concerning the main principle which would leave it to the individual countries to adopt such methods of application as they deem appropriate.

IV. Application of Collective Agreements

A. Interpretation of Collective Agreements

Question 8

Governments were asked whether they considered:

(a) that it should be provided in a Recommendation that disputes arising out of the interpretation and application of collective agreements should be submitted to a procedure for settlement agreed to by the parties and, if this breaks down, should be referred to an appropriate judicial procedure; and

(b) if so, that it should be provided in a Recommendation that the parties should receive appropriate guarantees regarding the gratuitous character of the judicial procedure, its rapidity, the technical competence of the judges, etc.

Seventeen Governments reply to question 8(a) in the affirmative: Australia, Austria, Belgium, Bulgaria, China, Costa Rica, Finland, France, India, Luxembourg, Mexico, New Zealand, Norway, Poland, Portugal, Sweden and Switzerland. Sweden might even envisage the inclusion of such a provision in a Convention.

Austria and Portugal refer to methods by which this question is already covered by their legislation.

Certain reservations are made in the replies of France, Poland and Switzerland.

France explains that, while conciliation and arbitration procedure in that country is temporarily suspended in view of the economic situation, conciliation procedure prescribed by agreement may still be allowed in the case of legal questions
arising out of the interpretation or application of collective agreements. France prefers that the words "arbitration procedure" should be substituted for "judicial procedure".

Poland desires the deletion of the words "and, if this breaks down, should be referred to an appropriate judicial procedure".

Switzerland supports the proposition in principle, but cannot go so far as to establish a special and permanent labour court.

Sweden makes a further suggestion that the Recommendation should include provisions concerning the right of an organisation to bring an action concerning the interpretation or application of a collective agreement in the appropriate court on behalf of members or ex-members of the organisation.

The United Kingdom considers that it may be provided in a Recommendation that disputes of this character should be referred for settlement to a procedure agreed upon by the parties, and that there should be means available for securing a final determination for all such issues, such means to be specified if possible by agreement between the parties. The international regulations should not refer specifically to procedure of a judicial character.

Canada also gives approval to settlement by an agreed procedure, and suggests that if either party fails to nominate a representative the administration should nominate on its behalf in order to ensure a settlement of the dispute.

The Netherlands considers that it should be left to the parties themselves to decide how such disputes should be settled.

The Union of South Africa considers that a Recommendation should provide that where collective agreements carry statutory legal sanction, their interpretation should fall to the judiciary. Where collective agreements rely on their contractual basis for enforcement, their interpretation should be referable to the judiciary, with the proviso that the parties may, in the agreement, agree to be bound by interpretation secured from mutually agreed upon arbitrators or other procedure.

The Danish Government reserves its decision.

As regards question 8 (b), thirteen Governments reply in the affirmative: Austria, Belgium, Bulgaria, China, Costa Rica, France, Luxembourg, Mexico, New Zealand, Norway, Poland, Sweden and Switzerland. Of these, Belgium considers that the procedure should be gratuitous in so far as ordinary costs and expenses are concerned, France makes the same reservations as in
the reply to question 8 (a), while Norway desires the deletion of the word "technical".

India would prefer a simple provision that the procedure should be gratuitous, speedy and efficient. Portugal agrees with the suggested drafting except with regard to the gratuitous nature of the procedure. The United Kingdom agrees that the procedure provided by the State should be available without charge, but doubts whether the judicial procedure could be "gratuitous", and does not feel that the points mentioned are appropriate for international regulations. The Union of South Africa considers the provision of such guarantees to be unnecessary.

Austria and the Netherlands both consider that this question should be left to national legislation, while Canada feels that the parties should bear their own costs and themselves decide as to the other points mentioned. Denmark reserves its decision.

As to the point covered by question 8 (a), therefore, none of the replies objects to the principle that disputes concerning the interpretation or application of collective agreements should be submitted to a settlement procedure agreed by the parties. Hence this principle is retained in Point 14 of the proposed conclusions. However, there is some disagreement as to whether, if such a procedure breaks down, an alternative procedure should be available, and, if so, of what kind. It is nevertheless recognised that disputes arising out of the interpretation or application of a collective agreement are different from economic disputes and should, therefore, be dealt with in an appropriate and final way if the parties cannot settle them by their own agreed procedure. In most countries such disputes are considered to be legal disputes, and, for that reason, a judicial authority is deemed to be competent. In other countries conciliation and arbitration machinery is available.

For these reasons, it appears desirable to establish the principle that provision should be made for some kind of alternative machinery to be made available. However, the nature of this machinery, the methods of procedure and other particulars regarding its application might appropriately be left to national legislation and regulations or agreements. It would not as a rule be invoked except where the machinery for settlement agreed to by the parties had broken down. Point 14 is therefore drafted in this sense.
B. RESPONSIBILITY OF THE PARTIES TO COLLECTIVE AGREEMENTS

Question 9

The Governments were asked whether they considered:

(a) that there should be included in a Recommendation stipulations regarding the responsibility of the parties to collective agreements;

(b) if so, that it should be provided that the parties to collective agreements should undertake to determine their respective responsibility by agreement;

(c) that, failing an appropriate determination by agreement, the responsibility of the parties to collective agreements should be determined by legislation; and

(d) if so, that, in such legislation, limits to the liability of the parties should be prescribed.

To question 9 (a), affirmative replies were received from eighteen countries: Belgium, Bulgaria, Canada, China, Costa Rica, Finland, France, India, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Sweden, Switzerland, the Union of South Africa and the United Kingdom. Sweden might even envisage the inclusion of such a stipulation in a Convention.

Belgium observes that the provision should relate only to the civil responsibility of the parties to collective agreements, but that in Belgium this civil responsibility is related to the problem of the juridical personality of the parties to collective agreements.

Portugal makes the reservation that the responsibility for the execution of the stipulation in collective agreements should be limited to the undertakings and persons to whom or to which the clauses apply, and that responsibility cannot be imposed on the contracting organisations for every specific case of violation.

The Government therefore proposes that the phrase "responsibility of the parties to collective agreements" should be replaced by "responsibility of the persons to whom collective agreements are applicable".
Australia replies in the negative, on the grounds that experience has demonstrated the impracticability of any attempt to impose financial sanctions.

Austria also replies in the negative, considering that the whole question of the determination of responsibilities should be left to the agreement itself, the Austrian courts affording an appropriate remedy for enforcing all private rights flowing from the agreement.

Mexico considers that the whole question should be omitted from the Recommendation and left to national legislation.

The Danish Government reserves its decision.

Certain other points are raised in the replies of the Union of South Africa and the United Kingdom to this paragraph which are more appropriate for consideration when analysing the replies to paragraphs (b) or (c) of the question.

On the question whether there should be some provision in the Recommendation regarding the responsibility of the parties there is, therefore, agreement among the majority of the Governments.

As regards the point covered by paragraph (b), thirteen Governments reply in the affirmative: Belgium, Bulgaria, Canada, China, Costa Rica, Finland, France, Luxembourg, the Netherlands, New Zealand, Norway, Poland and Portugal.

Portugal considers that collective agreements by their definition are intended to determine on a contractual basis the obligations of the responsible parties, and that it would be more appropriate to provide in the Recommendation that "parties to collective agreements should undertake to lay down in those agreements the penalties for violation of the respective provisions".

Switzerland observes in a general way that it may be desirable for the Recommendation to make provision for the application of contractual sanctions in the event of the terms of a collective agreement not being observed and where ordinary civil sanctions are inadequate.

India considers that the determination of the responsibilities of the parties to collective agreements should be left entirely to the discretion of the Government. Sweden also considers that it is not appropriate for these responsibilities to be determined by agreement as an alternative to legislation.

The United Kingdom points out that in that country collective agreements as such are not enforceable at law and
that it is not appropriate to refer to the responsibilities of the parties to collective agreements in a legal sense. Subject to this, the Government considers that the Recommendation might provide that the parties to a collective agreement should enter into that agreement with a full sense of their responsibility for observing it.

The Union of South Africa considers that the Recommendation should go no further than to specify that, if the parties to a collective agreement are required by the agreement to assume duties and responsibilities, they should be clearly set out in the terms of the agreement itself.

The opinion of the majority of the Governments is, therefore, in favour of some provision on the lines suggested in question 9 (b).

With regard to paragraph (c), affirmative replies were received from thirteen Governments: Belgium, Bulgaria, Canada, China, Costa Rica, Finland, France, Luxembourg, the Netherlands, New Zealand, Norway, Portugal and the Union of South Africa.

France considers it most appropriate for the principle of responsibility to be determined by legislation, while leaving the methods of application to be determined by agreement.

Portugal would prefer the words “parties to collective agreements” to be replaced by “persons to whom collective agreements are applicable”.

The Union of South Africa agrees only if the subject matter of the agreement is such as to require any responsibility being assumed by the parties and provided that such agreement involves the State by reason of enjoying statutory legal sanction, but not otherwise.

India and Sweden consider that legislation should determine the responsibilities not as an alternative to, but to the exclusion of, their determination by agreement.

Poland and the United Kingdom consider that the question is not appropriate for legislative regulation.

The Danish Government reserves its decision.

Here again a large number of countries are in favour of the principle that legislation should determine the responsibility of parties to collective agreements, but the majority of these hold the view that legislation should effect such determination only if the agreement has failed to do so.

To paragraph (d), eleven Governments reply in the affirma-
tive: Belgium, Bulgaria, Canada, China, Costa Rica, Finland, France, Luxembourg, the Netherlands, New Zealand and Portugal.

France considers that some such provision is indispensable, and refers to the French legislation which protects certain of the assets of industrial associations from distraint.

Portugal refers once more to its reply to question 9 (a), pointing out that the Portuguese method of achieving such limitation is to confine the responsibility for violation of a collective agreement to the actual undertaking or workers committing the violation.

Sweden agrees only in so far as the legal limitation of the responsibility of the parties is concerned, but states that no limit to damages for loss incurred should be laid down except in relation to the liability of individual workers.

The Union of South Africa answers in the negative on the ground that the responsibilities, if to be laid down, must be laid down in the collective agreements themselves.

Denmark reserves its decision, pointing out that the Danish workers hold the same view while the employers oppose such a suggestion.

Poland and the United Kingdom having replied in the negative to paragraph (c), no further reply is called for under paragraph (d).

Of those Governments, therefore, which reply in the affirmative to question 9 (c), the majority favour a limitation of responsibility in accordance with the suggestion made under question 9 (d).

In practice, the question of responsibility gives rise to problems of an extremely complicated nature. It is not possible to view on the same basis the responsibility of contracting associations and the responsibility of individuals bound by a collective agreement. For the purpose of this report, the point under review is that of the responsibility of contracting organisations with regard to the application of a collective agreement. The responsibility of individuals in respect to those provisions of the collective agreement which are translated into individual contracts is a matter to be governed by the ordinary law of contract. The organisations parties to an agreement can lay down rules governing the relations of their members, but they cannot be responsible for the observance or non-observance of those rules by their constituent members, at least in so far as
the organisations are not guilty of provoking a breach by such constituents of their obligations.

Consequently—and here any survey of legislation and practice fairly reflects the replies made to this question—legislators in most countries have preferred to leave the question of the responsibility of the contracting parties to collective agreements to be decided by those same agreements. It appears reasonable to suggest, therefore, as a first conclusion, that the parties to collective agreements should undertake to determine by agreement their respective obligations resulting from the application of such agreements.

Where legislation has taken cognisance of the question, it has frequently, though not always, prescribed rules to be invoked only where the collective agreements themselves fail adequately to determine the responsibilities of the contracting parties. It is therefore suggested as a second conclusion that the legal regulation of such responsibilities should be contemplated only in the absence of its regulation by agreement.

Where legislation has sought to determine the responsibility of contracting organisations, it is recognised in the majority of cases that a strict application of common law principles regarding contractual liability would generally lead to the material ruin of the organisations concerned. The most general principle applied in such cases has been to prescribe such penalties as may prove deterrents to deliberate incitement to the breach of a collective agreement and so to secure the real object, which is the specific carrying out of the agreement, rather than to seek to impose any liability to make good the full extent of any loss or damage caused by the breach of the agreement.

The greatest divergence appears when a study is made of the methods by which such responsibility is prescribed and at the same time limited. In some cases the liability is limited to a lump sum, in other cases a fixed fine is prescribed, in others certain of the assets of an organisation are protected, in yet others the whole of the liability is imposed on the actual persons (not the parties) who violate the agreement.

It is not possible to draw up a specific formula which would cover all views and all systems, yet it is necessary to suggest in general terms that, in so far as the question may be regulated by legislation, an assurance should be given regarding the protection of such assets as are necessary to the continued existence
of organisations, while leaving the methods by which this purpose is to be achieved to be worked out by national legislation.

For all these reasons, and in the light of the replies of the Governments, the Office has ventured to suggest, in Point 15, that consideration should be given to the inclusion in a Recommendation of certain aspects of the question of the responsibility of the parties to collective agreements.

C. SUPERVISION OF APPLICATION OF COLLECTIVE AGREEMENTS

Question 10

Governments were asked whether they considered that it should be provided in a Recommendation that the labour inspectors should be empowered to supervise the application of collective agreements in all the establishments covered thereby.

Fourteen Governments replied in the affirmative: Australia, Austria, Belgium, Bulgaria, China, Costa Rica, France, India, Luxembourg, New Zealand, Poland, Portugal, the Union of South Africa and the United Kingdom.

Belgium points out that under Belgian law special officials are appointed for this purpose.

Austria considers that the machinery representing the staffs of undertakings should also exercise supervision.

The United Kingdom is of the opinion that, while it may be appropriate for labour inspectors to supervise the application of collective agreements in industrially backward countries, in the more advanced countries the organisations should do it for themselves.

The Union of South Africa supports the proposition in cases where agreements have statutory criminal sanction, otherwise the organisations concerned should be responsible for supervision.

Canada, the Netherlands and Switzerland reply in the negative, on the ground that the parties themselves should be responsible for this supervision without any intervention by the labour inspectorate.

Finland, Norway, Sweden and Mexico also reply in
the negative, Mexico on the ground that this duty would be outside the duties of labour inspectors as laid down in the Convention adopted at the 30th Session of the Conference, even though labour inspectors do, in fact, perform such duties in Mexico.

The Danish Government reserves its decision, indicating that the Danish workers hold the same view while the Danish employers are against the proposal.

While the majority of the countries replying, therefore, are in favour of the proposition, several of them, as well as the countries replying in the negative, stress the importance of employers’ and workers’ organisations supervising the application of their own agreements. In practice, it is evident that the parties are in a position, either directly or through works committees, at least to contribute considerably towards ensuring the supervision of collective agreements. But in a growing number of countries, and particularly where collective agreements are given legal force, and above all where their breach may involve a penalty, supervision is entrusted to the labour inspectors or to a special inspectorate, although this in no way removes the need for close and continuous observation by the parties themselves, as it may only be by this means that a labour inspector is made cognisant of many kinds of violation of collective agreements.

Point 16 of the proposed conclusions has been drafted accordingly.
QUESTIONNAIRE III

CONCILIATION AND ARBITRATION

I. Desirability and Form of International Regulations

Question 1

The first question asked whether the Conference should adopt international regulations concerning voluntary conciliation and arbitration in the form of a Recommendation.

Of the twenty-four replies received to the questionnaire, twenty-three Governments indicated their position on this question, declaring themselves to be in favour of regulations under the form of an international Recommendation. The United States replies neither affirmatively nor negatively to the questionnaire, but suggests the usefulness of further information of a specified character. Without formally opposing them the United States expresses the view that the proposed regulations, dealing largely with matters of procedure and structural relationships, should perhaps be approached more gradually, with primary emphasis on the consideration of the principles which are to control in the application of the right to organise and bargain collectively.

The reply of Iceland is likewise in the form of general observations, but, as regards voluntary conciliation and arbitration, the Government is in favour of the adoption of international regulations.

The reply of Australia notes that, while a Recommendation of the proposed character could have little bearing on the Australian position at the present time in view of its fairly comprehensive systems of compulsory conciliation and arbitration, the conditions envisaged in the questions (with the exception of the implied condition of voluntary acceptance by the parties of conciliation and arbitration—admittedly a condition fundamental to the whole voluntary scheme) would not be
incompatible with the Australian systems. Accordingly, Australia would support a Recommendation on voluntary conciliation and arbitration for the assistance it might afford to other countries which do not adhere to the compulsory systems.¹

The Danish Government, in its reply, communicates the opinions of the Danish Employers’ Confederation and of the Confederation of Danish Trade Unions with regard to each question, indicating that the replies are such that in general the Government can subscribe to them. It adds, however, that it would have some hesitation in voting in favour of a Recommendation which did not correspond to the distinction made in Denmark between “conflicts of law” and “conflicts of interest”, and recalls the proposed amendments to the questionnaire submitted to the 30th Session of the Conference—amendments which were not discussed owing to lack of time. Since the Office Report VIII (1)² considers the question of voluntary conciliation and arbitration of labour disputes only in so far as it affords a means of settling and, if possible, preventing economic disputes, i.e., disputes arising out of conflicts of interests, and since the opinions of both the employers’ and the trade union confederations favour the adoption of international regulations in the form of a Recommendation, it may be concluded that the reply of Denmark is favourable thereto.

Switzerland, as already noted ³, states that its answers merely indicate the manner in which it considers that international regulations might be drawn up, reserving its preference for procedures agreed upon by the organisations of employers and workers. Its reply to question 1 is in the affirmative.

Norway and Poland consider that international regulations would be appropriate only in so far as they pertain to voluntary conciliation. Norway, in addition, expresses the view that the regulations should sanction the basic principles and not go into too great detail.

The United Kingdom, while favouring international regulations, observes that the subsequent questions appear to envisage

¹ Since the replies of Iceland and Australia do not deal with the specific parts of the questionnaire, they have been excluded from consideration in the following parts of the analysis of the replies of the Governments. Thus in most instances the replies of only 21 Governments are involved.
² P. 91.
³ See above, pp. 176 and 179.
a more formal and rigid type of conciliation procedure than that obtaining in the United Kingdom, and considers that many of the matters raised are not suitable for inclusion in international regulations. Austria also considers that the Recommendations should be limited to a few basic principles, without specifying details, especially as regards methods of procedure.

The replies of France and India are in the affirmative. However, in response to question 10 certain suggestions are made. France emphasises the desirability of recommending not only systems of voluntary conciliation and arbitration but also compulsory systems. The Government suggests the desirability, after the first stage as contemplated in the proposed Recommendation has been reached, of recommending to the States Members a system of compulsory procedure to supplement contractual procedure and to come into operation if the latter breaks down. The Government of India proposes that where parties to a dispute do not use voluntary conciliation or arbitration there should be provision for Government conciliation machinery to undertake conciliation and, if necessary, for reference of disputes to adjudication, at least in the case of public utility undertakings.

The remaining countries, Belgium, Bulgaria, Canada, China, Costa Rica, Finland, Luxembourg, Mexico, Netherlands, New Zealand, Portugal, Sweden, and the Union of South Africa, reply in the affirmative without qualification.

It is therefore clear that the majority of the replies support the principle of international regulations of voluntary conciliation and arbitration in the form of a Recommendation. However, there is a diversity of opinion as to the scope which might be given such Recommendation. An examination of the replies to the remaining questions shows the nature of the different views.

II. Voluntary Conciliation

Question 2

Governments were asked whether the international regulations should provide that regional and national conciliation authorities should be established to aid the parties in the prevention and settlement of collective industrial disputes. The replies of six countries (Austria, Belgium, Denmark, Poland,
Switzerland and Union of South Africa) are qualified, and fifteen countries reply in the affirmative.

The Union of South Africa considers that conciliation bodies should be set up on an industrial basis and then only as *ad hoc* bodies to settle specific disputes. Machinery having the dual function of preventing and settling disputes should be more permanent, and the employers' and workers' organisations rather than the State should have the responsibility for establishing and administering such machinery. The State should confine its action to enactment of legislation which recognises and empowers to act in disputes such joint bodies as the parties themselves may desire to establish. This is particularly the case, the Government states, in industries or countries where the workers are predominantly drawn from groups whose stage of social and economic development is behind that of other groups or that of workers in highly industrialised countries. In such cases the Government's function is that of guardian and it often has to fix wages and conditions instead of leaving the task of bargaining to be carried out by workers who lack the necessary experience and development and who would therefore be at a disadvantage in dealing with the employers.

Switzerland considers that, while the establishment of regional and national conciliation authorities, including within that definition agencies established by occupational organisations, might be useful, the Swiss Government prefers the procedure to be established by the parties themselves.

Poland states that the type of assistance to be rendered by such authorities should be specified.

Austria considers the establishment of national authorities to be in the public interest, but thinks it important that recourse thereto by the parties should be on a voluntary basis.

The opinions of both the employers' and the workers' confederations of Denmark favour the inclusion of a provision such as is proposed in this question, but the employers' confederation expresses a preference that conciliation functions should not be given to regional authorities.

The affirmative reply of Belgium observes that the authorities should not necessarily be established only for the purpose of conciliation, but that this function might be entrusted to existing agencies with wider terms of reference—such as the joint committees in Belgium.
Fifteen countries, a clear majority, reply to this question in the affirmative and without qualification: Bulgaria, Canada, China, Costa Rica, Finland, France, India, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Portugal, Sweden and the United Kingdom; six countries make reservations of one kind or another. These reservations have been taken into account, in so far as possible, in the present drafting of Point 1, relating to the establishment of voluntary conciliation authorities. The object of a regulation of this type is to establish conciliation facilities which may be quickly called into operation, when disputes arise, in order to encourage the peaceful resolution of disputes rather than a trial by strength. To accomplish this end it is necessary that the facilities should be of a permanent character, as permanent facilities can be brought into immediate operation when the need arises. On the other hand, the Conference may not consider it material, for the purpose of international regulations, whether the facilities are established on a regional, national or other particular basis, so long as they are sufficient in number to ensure efficient operation of the conciliation procedure. Point 18 as drafted, takes account of these different characteristics.

Questions 3 and 4

In question 3 the opinions of Governments were sought on the desirability of providing in international regulations that the organisations of the employers and workers concerned in disputes should be associated in all stages of the conciliation procedure. Question 4 enquired whether the conciliation procedure should be free and expeditious, and whether the periods prescribed for appearances of the parties, hearing of witnesses and submission of other evidence should therefore be fixed in advance and kept to a minimum.

Austria, in a single reply to the two questions, considers the principle of association implied in the very nature of conciliation, and self-evident. The Government opposes the inclusion of details regarding procedure, deeming it sufficient to establish the principle that procedure before national conciliation authorities should be free, subject to a minimum of formalities, and expeditious.
The remaining replies deal with each question separately. As regards question 3, one Government (Sweden) replies in the negative, without explanation; five Governments (United Kingdom, France, Union of South Africa, Switzerland and India) give qualified affirmative answers; and, fourteen Governments reply in the affirmative without qualification.

The United Kingdom observes that, subject to the procedure agreed between the parties for the settlement of disputes at the level of the undertaking, the organisations concerned should be associated in all stages of conciliation, but that the exact procedure should be left to the agreement of the parties.

France likewise replies in the affirmative, but suggests that, inasmuch as the organisations concerned in a dispute are parties thereto and not merely associated in the procedure, it might be desirable to amend the phraseology used.

The Union of South Africa replies in the affirmative, except for the backward groups referred to in its reply to question 2. Switzerland states that the proposed regulations "appear to be necessary". The affirmative reply of India suggests that in the absence of organisations the Government might nominate representatives of employers and workers to be associated at all stages of the procedure.

The affirmative replies of Belgium, Bulgaria, Canada, China, Costa Rica, Denmark, Finland, Luxembourg, Netherlands, New Zealand, Norway, Mexico, Poland and Portugal are not qualified.

The principle contained in question 3 is one of general application, that is, the association of the organisations of the employers and workers concerned in a dispute is indispensable to the functioning of conciliation authorities. Through this means the parties obtain confidence in the procedure, confidence that is necessary to the success and effectiveness of conciliation authorities, depending as they must on the voluntary acceptance by the parties of their procedure and recommendations. By reason of the diversified forms of conciliation authorities and procedures which may be established by Governments, the Conference will desire to consider the association of organisations both in relation to the authorities and to the procedures. In so far as conciliation authorities are concerned, only those of a multilateral character need be involved in international regulations, for obviously the principle could not be applicable to single conciliators or similar authorities. With reference to the conciliation procedure, it is evident that where the organisations are
directly involved in a dispute they are parties thereto. Where the organisations are not parties, yet at the same time are concerned in the dispute, the very nature of conciliation requires that they should be associated in all stages of the procedure. Accordingly Point 19 has been drafted in two parts in recognition of the two fields of application.

With regard to question 4, in addition to Austria, twenty Governments replied, seven of whom (Union of South Africa, United Kingdom, Norway, Sweden, India, Belgium and Switzerland) give qualified, and thirteen unqualified affirmative answers.

The Union of South Africa agrees that the conciliation procedure should be free and expeditious, etc.—as far as ad hoc conciliation bodies are concerned. As regards permanent machinery for the prevention and settlement of disputes in particular industries, the Government states that since this machinery is mainly of concern to the particular industry it should be financed by the industry, although its handling of matters should be expeditious. The Government does not feel that rigid periods for various procedural stages should be fixed fixed in either case, as flexibility is required in keeping with the circumstances of the particular dispute. An attempt to apply rigid rules in the course of conciliation or negotiation would be a serious error.

The United Kingdom also agrees that the procedure should be free and expeditious, but does not consider the remaining matters, which presuppose a more formal and stereotyped method of conciliation than is customary in the United Kingdom as suitable for international regulations. Norway likewise agrees that the procedure should be free and expeditious, but otherwise considers it difficult to prescribe certain periods and forms of procedure. The reply of Sweden observes that any Recommendation on this point should only provide that the procedure should be free and expeditious. India, while replying in the affirmative, deems it sufficient if the period for completing the conciliation proceedings is fixed in advance. Belgium, replying in the affirmative, observes that the organisation of conciliation procedure should be left to each country and that the Recommendation should provide merely for the establishment of a very simple procedure without giving details of the forms such procedure should assume.

The Government of Switzerland replies "Yes, generally". In its reply to question 10 the Government suggests that
where a party has recourse to the voluntary conciliation or arbitration procedures for rash or malicious motives, the defaulting party should be made liable to judgment for the payment of legal costs.

The other replies, i.e., those from Bulgaria, Canada, China, Costa Rica, Denmark, Finland, France, Luxembourg, Netherlands, New Zealand, Mexico, Poland and Portugal, are all in the affirmative.

With one possible exception all the Governments accept the principle that the conciliation procedure should be free and expeditious, but concern is expressed over the regulation of the details of the procedure. However, in the absence of some regulation there can be no assurance that the procedure will be expeditious. The Conference will, therefore, probably wish to include measures in the international regulations sufficiently broad to ensure the expeditious form of the procedure, once it has come into operation, as well as expeditious means of bringing the procedure into operation, yet flexible enough to permit each Government freedom in regulating procedural details.

In the first instance, once the procedure has been initiated, if it remains possible for either party to a dispute to interpose delaying tactics to his own advantage the purpose of the procedure will be largely defeated. Where the national regulations prescribe a period fixed in advance for the completion of the proceedings, delaying tactics of this kind are highly improbable, but such regulations need not preclude extensions of the period where both parties agree. On the other hand, it makes little difference how efficient a particular procedure may be once it comes into operation, if the purpose of conciliation may be defeated by delays in bringing the machinery into operation. If any party to a dispute is free to invoke the procedure, it becomes fairly certain that such delays will not normally occur unless all parties so wish. But there still remains the possibility that for varying reasons no party will initiate the conciliation procedure. In such cases, the authorities themselves must be empowered, as is done in many countries, to proffer their services, which may be freely accepted or rejected by the parties concerned, as it is inherent in voluntary conciliation that the parties are free to utilise or reject the procedure.

For the above reasons Point 20 has also been drafted in two parts.
Question 5

This question asked the Governments if it should be provided that, once a dispute has been submitted to a conciliation authority with the consent of all the parties concerned, the latter should be required to abstain from strikes and lockouts while conciliation is in process.

The Government of Poland replies in the negative, without explanation. The Government of Belgium observes that it should be left to national legislation to discourage strikes or lockouts during the course of conciliation procedure, since any absolute prohibition might result in causing the parties to refuse to engage in such procedure.

The United Kingdom considers that it should be open to each of the parties to appeal to the conciliation authority and should not be implied that the prior consent of all parties is necessary in order to bring the conciliation machinery into operation. The Government agrees that conciliation should be based on the principle that the parties should abstain from strikes and lockouts during the proceedings and that recourse to conciliation should carry with it such intention on the part of the parties, but does not deem it practicable to impose this by international regulations.

Norway proposes that the following text, which is in accordance with the position taken up by the Nordic countries during the discussion on freedom of association at the 1947 Session of the Conference, should be substituted with regard to this question:

Once a dispute has been referred to conciliation the parties must be obliged to refrain from establishing a strike or lockout during the procedure of conciliation in accordance with existing provisions. The conciliation procedure cannot without the consent of the parties exceed a time limit, fixed in advance, with the effect to exclude the rights of the parties to declare a strike or lockout.

Portugal replies in the affirmative, observing, however, that in Portugal it is sufficient for one of the parties concerned to ask for a dispute to be submitted to the joint conciliation committee, and that strikes and lockouts are prohibited by law.

The opinions of both the employers' and the trade union confederations of Denmark favour a provision such as is contemplated by this question. However, the opinion of the employers' confederation is subject to the observance of the expeditious form of procedure outlined in question 4 of the questionnaire.
The remaining fifteen replies are in the affirmative, without qualification, i.e., those of Austria, Bulgaria, Canada, China, Costa Rica, Finland, France, India, Luxembourg, Netherlands, New Zealand, Mexico, Sweden, Switzerland and the Union of South Africa.

Although fifteen Governments fully support the principle suggested by question 5, the replies of several Governments indicate a possible lack of clarity in the wording of this question. The principle advanced is simply that once all the parties to a dispute have mutually agreed to conciliation they should be required to abstain from a strike or lockout during the course of conciliation. It was not intended to prohibit strikes or lockouts absolutely during all conciliation procedure, nor was it intended to apply to instances where the conciliation machinery is set in operation ex officio, or on the request of one party only, as provided in the previous point, for in that case the mutual agreement of the parties to utilise the conciliation procedure is lacking. The purpose of such a provision, applicable only in those instances where the parties have mutually agreed to utilise the conciliation procedure, would be to enhance the possibilities of a peaceful settlement of the dispute through negotiations conducted in an atmosphere free of the tensions and bitterness engendered in strikes and lockouts.

The procedure of voluntary conciliation is intended as a means of aiding parties to reach an amicable adjustment of disputes without recourse to direct action. Where the parties have mutually agreed to substitute this procedure for direct action it would seem to be self-evident, as an indication of the good faith in accepting the procedure, that they should be required to abstain from recourse to direct action while the procedure is in process. However, in order to take account of the different forms of legislation, the proposal has now been modified, in Point 21 of the proposed conclusions, so that, while expressing the principle involved, it leaves sufficient latitude for Governments to provide more concise regulations if they so wish.

Questions 6 and 7

Question 6 asked whether it would be desirable to provide that if the recommendation of a conciliation authority has been voluntarily accepted by the parties it should be binding upon
them. Question 7 asked if it should be provided that agreements reached by the parties during the procedure, and recommenda-
tions of a conciliation authority freely accepted by the parties, should have the same legal force as collective agreements concluded in conformity with national legislation.

The Government of Sweden does not reply to either question.

The Swiss Government indicates that it would be desirable to leave these matters to the wishes of the parties. The Union of South Africa replies to question 6 "Morally 'yes', but legally 'no'; it should only carry legal criminal sanctions or apply to non-parties if so promulgated by the State as legisla-
tion, thus indicating the State's approval of the settlement". This reply is considered "equally applicable" to question 7.

The Government states that where a settlement is reached through conciliation and accepted by the parties it is in effect a collective agreement and the legislative machinery of the State should be capable of making such an agreement binding by promulgation by the national authority as law. Private concilia-
tion agreements outside the aegis of enabling legislation should be void of criminal enforcement procedure, and should depend solely upon the civil rights, if any, of the parties to the settlement, arising ex contractu.

The United Kingdom considers, as regards question 6, that it should not be implied that the only outcome of concilia-
tion is a recommendation of a conciliation authority, and observes that the main object of conciliation is the promotion of joint agreement between the parties. It does not consider that such agreements, or recommendations of the authorities freely accepted by the parties, should be made legally binding upon the parties. With reference to question 7 the Government states that agreements reached by means of conciliation are in fact collective agreements and in the United Kingdom have the same validity as collective agreements normally concluded. It should not be implied that such agreements or recommendations should be enforceable at law. The form of question 7 suggests to the Government "some confusion as to the effect of collective agreements which in the United Kingdom are not, as such, enforceable at law".

Austria answers both questions in the affirmative, but suggests that consideration should be given to the question whether the binding force of such settlements should not be
made subject to acceptance having been given in writing; in any case agreements and settlements made by the parties during the conciliation procedure should be drawn up in writing if they are to have the legal force of collective agreements.

The Netherlands Government replies in the affirmative to question 6, but as regards question 7 considers that agreements reached during the procedure of conciliation and recommendations of conciliation authorities should be regarded as ad hoc settlements. If it is felt to be desirable to give wider scope to the standards set by these settlements, these standards should be formally included in collective agreements.

Canada replies in the affirmative to both questions, conditioned upon the consent of the parties concerned.

The reply of India is also in the affirmative to both questions. However, in response to question 10, the Government suggests that the Recommendation should specify the period of operation of settlements.

The remaining replies, those of Belgium, Bulgaria, China, Costa Rica, Denmark, Finland, France, Luxembourg, New Zealand, Norway, Mexico, Poland and Portugal, are in the affirmative for both questions.

The object of question 6 is to apply the principle of good faith, which should govern all industrial relations, to the recommendations of conciliation authorities freely accepted by the parties. The following question seeks to establish the broader principle, which is indeed the object of the conciliation procedure, that agreements reached through that procedure should be considered to be collective agreements. A majority of the replies support the principle suggested in each instance.

Recourse to voluntary conciliation, and the acceptance or rejection of solutions arising therefrom, is a matter solely within the discretion of the parties. But once a formula has been accepted by the parties they should be obliged to abide by it. The purpose of the proposed international regulation, then, is to establish the principle that agreements reached through the conciliation procedure, whether as a result of an accord reached by the parties in the course of the procedure or of the acceptance of recommendations of the conciliation authorities, should have the same value, and no more, as that which each country accords to collective agreements concluded by the parties without the assistance of outside authorities. Neither question
prejudices in any way the juridical nature of collective agreements, a matter discussed elsewhere in this report.

The replies do not all concur that agreements reached through conciliation can be assimilated to collective agreements, but they do seem to indicate that to the extent that such agreements may be so assimilated they must be treated as collective agreements. To facilitate this end, and for the broader purpose of rendering conciliation settlements proof against doubt as to the terms thereof, they should be reduced to writing. Point 22 has accordingly been drafted in this sense.

III. Voluntary Arbitration

Questions 8 and 9

Question 8 asked whether a system of voluntary arbitration should be established to which the parties might have recourse, either at the outset or after breakdown of the conciliation procedure. Question 9 enquired whether it should be provided that, once a dispute has been submitted to arbitration with the consent of all the parties concerned, they should be required to accept the arbitration award.

As in earlier instances, several countries (Finland, Norway, Poland, Austria and Denmark) reply to the two questions by single or related answers. Finland considers that these matters should be left to the national legislation. Norway refers to its answer to question 1, where the Government stated that international regulations would be appropriate only in so far as they pertained to voluntary conciliation. Poland, as foreshadowed by its reply to question 1, answers "No" to both questions. At the present time the relation of the social forces in the majority of countries does not lead Poland to expect that arbitration, even voluntary arbitration, will result in an improvement of working class opportunities; it may even result in the lessening of the opportunities and ability of the working class to defend its interests, as is shown, for instance, by the changes which have been brought about in the trade union movement of a number of countries, under external influence, which have diminished the guarantee of any effective utilisation of joint machinery. In the course of voluntary conciliation procedure
circumstances may arise requiring resort to the strike weapon. There is then no reason why the workers should suffer any diminution of their freedom to defend themselves, particularly where the conciliation procedure has been deliberately prolonged by the employers, and especially since settlement negotiations may be continued even during a strike.

Austria suggests the desirability of making the conciliation authorities referred to in question 2 responsible for arbitration, so that if the parties to a dispute so agree during the course of conciliation the dispute may be settled by an award. Nor should the possibility of the parties agreeing to arbitration by an independent agency be excluded from the scope of the proposed regulations. The award of the national arbitration authority should only be made binding on the parties to the dispute if all the parties have previously agreed to abide by the award. Such an award might be given the same force of law as a collective agreement in the same way as written agreements and settlements made by the parties during conciliation procedure.

The Danish Government refers to the replies of the Danish confederations forwarded with its answer. The employers' confederation answers in the affirmative to both questions; the trade union confederation reserves its answers to both questions, noting that their form does not seem clear, and states that it must await the discussion during the course of the Conference.

The remaining Governments reply to the two questions separately.

In relation to question 8, the United Kingdom agrees that a system of voluntary arbitration should be established to which the parties may have recourse to secure the settlement of industrial disputes, but it should be comprehensive enough to cover the type of case where the disputes procedure in an industry provides for a reference to arbitration in the event of a breakdown of direct negotiations between the two sides. Where such procedure exists in an industry it should be fully utilised before reference to any system of arbitration that may be established.

The Union of South Africa favours the establishment of a system of voluntary arbitration to be available after, not before, the breakdown of conciliation procedure. In the Government's opinion, conciliation, negotiation and agreement should always be tried before recourse is had to arbitration. State arbitration
machinery should only be available where statutory conciliation machinery has been used. The Government has no objection to private arbitrators being voluntarily agreed to by parties to private conciliation proceedings, but considers that statutory enforcement machinery should not be applied to awards, agreements, etc., in which the State has not participated.

Belgium considers that as a rule voluntary arbitration would follow the breakdown of conciliation procedure, so that any system established should be of a subsidiary character to come into operation where the parties themselves do not establish in full freedom an arbitration procedure.

The Government of New Zealand replies in the affirmative, provided existing compulsory systems are protected. Switzerland likewise answers in the affirmative, reserving its preference for procedures established by the parties themselves. The reply of Canada is "Yes", provided the parties may freely accept or reject such services. The affirmative reply of France is based on the understanding that initial recourse to arbitration, without any stage of conciliation, could only be contemplated where the parties so agreed.

The affirmative replies of the remaining Governments to question 8 are unqualified, i.e., those of Bulgaria, China, Costa Rica, India, Luxembourg, Netherlands, Mexico, Portugal and Sweden.

The object of the principle contained in question 8 is to supplement the voluntary conciliation procedure by providing an alternate method, voluntary arbitration, to which the parties may turn for the peaceful settlement of disputes if they so desire; compulsory systems are not within the scope of the proposals submitted to the Conference.

The principle of voluntary arbitration is supported by a majority of the replies, but certain observations have been made with reference to procedural details. As in voluntary conciliation, the facilities established should be of a permanent character—a characteristic that has been recognised in the procedure established by a large number of countries—in order that they may be immediately available to disputing parties. Once this principle is established, the form of the facilities and the procedure to be followed is largely a matter to be determined by the Governments in the light of experience within each country. Accordingly, it is within the discretion of a Government to require the parties to follow a certain procedure before
its voluntary arbitration facilities are made available. The international regulations must, therefore, be such as will permit this type of control, an end that may be obtained by conditioning the voluntary arbitration facilities upon the breakdown of conciliation, the usual stage at which arbitration procedure is normally invoked. At the same time, Governments are free to make their facilities available before this stage of the dispute is reached, if they so wish. Point 23 has been drafted accordingly.

With regard to question 9, in addition to the replies of Finland, Norway, Austria, Denmark and Poland, referred to above, sixteen countries replied to this question.

Mexico replies “Yes” in the case of private arbitration, and “No” as regards official arbitration, pointing out that Mexico possesses a protective jurisdiction deeply enrooted in its legislation which enables recourse to be had to official arbitration awards, i.e., awards given by the competent authority.

The Union of South Africa deems such a provision unnecessary, as it is obvious that a party which has agreed to accept arbitration must accept the awards; such a party is bound ex contractu. There would be no objection to such a provision in the case of awards under statutory aegis, though it would appear to be a principle of obvious application not requiring specific mention in international regulations.

The reply of the United Kingdom states that no provision should be included to make the arbitration award legally binding on the parties. It should, however, be recommended that recourse to arbitration should imply an intention of the parties to abide by the award.

The Canadian Government replies in the affirmative, but only if the parties have agreed beforehand to be bound by the award.

The Government of India also replies in the affirmative, but in response to question 10 suggests that the Recommendation should specify the period of operation of awards.

The other countries, Belgium, Bulgaria, China, Costa Rica, France, Luxembourg, Netherlands, New Zealand, Portugal, Sweden and Switzerland, reply in the affirmative without qualification.

The object of question 9 is to include in the international regulations the commonly recognised principle that the parties freely accepting an arbitration procedure should be required
to accept the award. The replies indicate that a majority of the Governments favour the principle, although certain reservations are noted and some Governments are opposed to a provision of this kind.

As indicated in the preceding question, the purpose of voluntary arbitration is to provide, as a supplement to voluntary conciliation, an alternate method which the parties may employ, if they so wish, for the peaceful resolution of industrial disputes. It is thus a substitute for the trial by strength method of strikes and lockouts. The procedure of voluntary arbitration enables the parties, though unable to resolve their dispute by agreement, to agree nevertheless on a method of resolving their dispute, that is, by reference to one or more independent persons who are authorised by the parties to compose the differences by an award. The mere fact that the parties mutually agree to have recourse to this means of settling their disputes carries an implied intent to abide by the result, and as a rule the terms of submission contain an express provision that the parties agree to be bound thereby. In the absence of such agreement, the arbitration procedure could result in nothing more than an advisory opinion which the parties might either accept or reject. Point 24 has been drafted to take account of these views.
QUESTIONNAIRE IV

CO-OPERATION BETWEEN PUBLIC AUTHORITIES AND EMPLOYERS' AND WORKERS' ORGANISATIONS

Before beginning the analysis of the replies made by the Governments to the various questions comprising the three parts of questionnaire IV, it appears desirable to refer to the position taken up by some of them with regard to the questionnaire as a whole.

The Government of the United States has refrained from replying to this questionnaire. As an explanation of this, it gives two principal reasons: first, that the problems covered by the questionnaire deal with matters of procedure and structural organisation of the relationships between the State, employers and workers. Before examining these problems, it is necessary to study carefully and to define clearly the principles and criteria on which the respective rights of workers, employers, and Governments are based. That is the first task before the Conference and, in view of the very crowded Conference agenda, it is, in the opinion of the United States Government, doubtful whether the Conference can do more than consider the principles which shall control in the application of the right to organise and to bargain collectively. Secondly, if the problems of industrial relations are to be considered in detail, it is indispensable to discuss them in specific national contexts. The United States Government considers that, in Report VIII (1), these problems have been studied only on a procedural basis. In its opinion, before the Conference can discuss them it must be in possession of further information relating to the principal systems of industrial relations and the economic and social conditions in the countries in which those systems are represented.

The Government of Iceland also has not replied to this questionnaire. Indeed, in view of the fact that co-operation between public authorities and employers' and workers' organ-
Co-operation at the level of the undertaking

I. Desirability and form of international regulations

General observations and question 1

In question 1, Governments were asked whether the International Labour Conference should adopt international regulations concerning co-operation between employers and workers in the undertaking, in the form of a Convention or of a Recommendation.

Of the Governments which reply to this question, a large majority declare themselves to be in favour of the adoption of international regulations concerning this subject. Only the Government of the Union of South Africa replies in the negative, agreeing, however, that it might be suggested in a Recommendation that the Members should encourage co-operation between employers and workers on a voluntary basis.

The Governments of Bulgaria and Panama, while replying in the affirmative, do not specify whether they prefer a Convention or a Recommendation.

On the other hand, the Governments of the following countries declare themselves definitely in favour of a Convention: Austria, China, France, India, Iraq, Luxembourg and Poland, supporting their replies by references either to the development of methods of co-operation in various countries (Austria) or to the satisfactory results achieved by their legislation relating to this subject (Luxembourg). The French Government asks only that the provisions of the Convention should not be too rigid, and the Luxembourg Government observes that, if

Organisations, in the manner envisaged in the various points covered by the questionnaire, is as yet comparatively undeveloped in Iceland, the Government does not consider that it has yet gained sufficient experience with regard to this subject.

Finally, it should be observed that the reply of the Portuguese Government does not relate to questionnaire IV.
necessary, the Convention might be supplemented by one or several Recommendations.

But the majority of the Governments reply in favour of regulations in the form of one or several Recommendations: Australia, Belgium, Canada, Costa Rica, Denmark, Finland, Mexico, the Netherlands, New Zealand, Norway, Sweden, Switzerland and the United Kingdom.

Several of these Governments, however, attach certain reservations to their replies.

The Danish Government considers that the best method of dealing with the question of co-operation at the level of the undertaking is by the conclusion of an agreement between the central organisations; such an agreement has been concluded in Denmark but, as it has so far been in force only for a few months, the Government does not consider that it yet possesses sufficient experience of its application and, consequently, it refrains from replying to the remaining questions in Part I of questionnaire IV and reserves its decision thereon.

The United Kingdom Government considers that the Recommendation should be limited to general principles, and observes, further, that its replies must not be regarded as committing the Government, as it reserves its attitude entirely, pending the discussions at the Conference.

The Swiss Government, in view of the complex nature of the question, is not convinced that it is yet time for it to be dealt with in the form of a Recommendation.

The Australian Government desires to stress the advantages of a Recommendation. Although the committees, etc., for co-operation in the undertaking can be effective, in its opinion, only where the parties voluntarily undertake to co-operate, the adoption of a Recommendation on the subject would greatly encourage the voluntary development of machinery for co-operation; moreover, by reason of the discussion to which it would give rise at the Conference, a Recommendation would be of great educational value for the employers' and workers' representatives.

From this brief survey of the replies to question I, it becomes clear, in the first place, that the very large majority of the Governments consider it desirable that the Conference should adopt regulations concerning co-operation between employers and workers in the undertaking, but that differences of opinion appear with regard to the form and contents of such regulations. With regard to the form of the regulations, opinion is divided.
between a Convention and a Recommendation; nevertheless, a clear majority of those opinions favour the latter solution. With regard to the matters to be covered by the regulations, certain Governments stress the point that these should include very general principles, or even that the regulations should be limited to stressing the desirability of developing methods of co-operation between workers and employers in the undertaking on a voluntary basis.

In fact, these two questions of form and content are inseparable from each other, for the provisions of any text can be drawn up only with reference to the character of the undertakings involved if such a text is adopted.

In the proposed conclusions which it submits to the Conference, the Office has felt that it must suggest that the regulations contemplated should take the form of a Recommendation, as a Convention does not appear likely at the present time to obtain a sufficient number of ratifications. The adoption of a Recommendation would not exclude the possibility of a Convention on the same subject being adopted later, as has already happened with regard to other questions. As a consequence of this suggestion, some of the observations put forward by the Governments in reply to the subsequent questions contained in Part I lose their substance, as they would apply only if it were suggested to the Conference that the regulations should take the form of a Convention.

Moreover, it is important to stress, at the outset, that the Office considers that the Recommendation should not consist only of a general formula intended to encourage the development of machinery for co-operation, but that, without entering into too many details, it should outline, on the basis of the various national regulations at present in force, the essential characteristics which the structure and functioning of such machinery should possess, the principle functions which it should exercise, and the obligations which, as a result of its establishment, should be assumed by representative members and the management of undertakings. It has appeared to the Office that it was necessary that the proposed Recommendation should cover such minimum points as would ensure the attainment of its object, which is to aid the Governments and the parties concerned in developing their methods of co-operation in the undertaking by indicating to them the lines to be followed and the kind of action to be encouraged.
II. Establishment of Machinery for Co-operation

Question 2

In question 2 Governments were asked whether it should be provided in the international regulations that machinery for co-operation such as, for instance, works committees, production committees, staff delegations, etc., should be established, either by agreement between the parties or by legislation, in order to promote a gradual raising of the conditions of work and life of the personnel and a continuous improvement in the organisation of production.

This question concerned three distinct points: the actual principle of the establishment of machinery for co-operation, the methods of that establishment, and a general definition of the objects of such machinery.

With regard to the first point, whether the establishment of machinery for co-operation should be recommended under the regulations, the Governments of the following countries reply in the affirmative: Austria, Belgium, Bulgaria, Canada, China, Costa Rica, Finland, France, India, Iraq, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Panama, Poland, Sweden, Switzerland, the Union of South Africa and the United Kingdom.

The Danish Government reserves its decision, and the Australian Government, without replying clearly in the affirmative, suggests, however, that the regulations should contain a provision “for a national agency to be responsible for encouraging and assisting employers and workers in the establishment of machinery for co-operation”.

Differences of opinion are revealed with regard to the method of establishment. The Governments of Costa Rica and Iraq favour the method of legislation. The Governments of India, Sweden and Switzerland prefer the method of agreements between the parties, but India and Switzerland admit that legislation may be found to be necessary in certain cases. The Governments of Mexico, the Union of South Africa and the United Kingdom are in favour only of the method of agreements between the parties, and the South African Government goes so far as to state “that no good purpose would be served by requiring such committees to be established by law”.

The
reply of the Australian Government also indicates that it is in
favour of the establishment of machinery for co-operation by
means of agreements between the parties.

Another group of Governments, and the most numerous,
prefers, as suggested in the question as presented, that the
regulations should leave a choice between the two methods
indicated above. This view is supported by the Governments
of the following countries: Austria, Belgium, Bulgaria, Canada,
China, Finland, France, the Netherlands, New Zealand, Norway
and Panama. The French Government emphasises the point
that such a solution would have the advantage of respecting the
traditions of each country.

With regard to the question of a general definition of the
objects to be attained by the machinery for co-operation in the
undertaking, certain Governments suggest different formulae
from that indicated in the question as presented. It may be
observed, for instance, that in the view of the Austrian Govern­
ment, the machinery should be responsible first for representing
the social and economic interests of the workers in their rela­
tions with the employer and, secondly, for a certain degree
of collaboration in the management and administration of the
undertaking. The Polish Government wishes any definition
of the objects of such machinery to include the continuous
raising of the real earnings of the workers. The Government of
Finland considers it desirable that the advisory character of the
machinery should be emphasised. Finally, the Government
of the United Kingdom refers to the functions of such
machinery as “being to provide a means for joint consultation
on any matter of common interest”.

When drawing up Point 26 of the proposed conclusions, the
Office has endeavoured to reconcile the observations made by
the various Governments. With regard to the actual principle
of establishment, it has adopted a more flexible formula than
that used in the question as presented, in order to include all
types of action which might be taken in a country to promote
the establishment of machinery for co-operation in the under­
taking and, in particular, that suggested by the Australian
Government. Further, in view of the differences of opinion with
regard to the methods by which the machinery should be
established, Point 26 contains no suggestion, leaving it to the
Governments and to the parties concerned, therefore, to judge
what method may best correspond to the requirements of
their countries. Finally, the definition of the objects of the machinery for co-operation is very similar to that proposed by the United Kingdom Government, being both less detailed and more general than the one contained in the question as presented. The Office hopes, therefore, that the point in question will receive the approval of the large majority.

### III. Scope of the Regulations

**Question 3**

Question 3 was concerned with the scope of the international regulations, that is to say, the determination of the undertakings in which machinery for co-operation should be established, from the point of view both of the character of the undertaking concerned and of its method of management, public or private, as well as of the number of wage-earners employed.

With regard to the first two points (the character of the undertaking and the method of management), a large number of Governments reply in the affirmative: Australia, Austria, Belgium, Bulgaria, Canada, China, Finland, France, Iraq, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Sweden and Switzerland. Some of these countries wish certain additions or amendments to be made to the proposed text. Thus, Austria would like the international regulations to apply to mining undertakings, and Belgium to agricultural undertakings. India, on the other hand, refers only to industrial undertakings. France considers that special regulations should be prescribed in respect of the public services, in order to adapt the general regulations to the nature and conditions of operation of such services. Sweden wishes that a provision should be added to the effect that machinery for co-operation should be established only at the request of one of the parties.

But several of these Governments either consider it preferable that the regulations should not specify the minimum number of employees which would require the establishment of machinery

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1 In views of its replies to questions 1 and 2, the Government of the Union of South Africa makes no reply to this question, or to the subsequent questions concerning co-operation at the level of the undertaking, with the exception of an observation relating to question 10.
for co-operation (Belgium, the Netherlands, Switzerland), or propose a different figure from that suggested in the question as presented; for example, Austria considers that a lower figure than fifty might be contemplated, while India proposes one hundred and Poland twenty. Norway and Sweden indicate that the agreements in force in those countries provide for figures of twenty and twenty-five respectively.

With regard to the question as a whole, three Governments reply in the negative (Costa Rica, Panama and the United Kingdom). The Government of Costa Rica, indeed, considers it preferable that each country should determine the undertakings in which the establishment of machinery for co-operation is deemed to be necessary. The Government of Panama expresses a similar point of view, and the Government of the United Kingdom considers that the question is one which should be settled between the employer and representatives of his workpeople in accordance with the relevant collective agreement.

The analysis of the replies shows that a majority of the Governments reply in the affirmative to the principle covered by question 3. Only the question of determining the minimum number of employees which would require the establishment of machinery for co-operation in the undertaking raises certain differences of opinion. To fix a definite figure seems, indeed, to be a delicate matter. The important point is to emphasise that machinery should be established in the undertakings where it is necessary, in order to promote co-operation which, in the absence of such machinery, could not be effectively realised, in view of the nature of such undertakings and the size of the staffs which they employ. It is this criterion as to the desirability of such machinery that the Office has retained in Point 27 of the proposed conclusions, which would leave it to the Governments and to the parties concerned to determine the precise figure which may be appropriate according to the circumstances.

IV. Appointment of Representatives of Personnel

Question 4

In question 4 Governments were asked to express an opinion concerning the method of appointment of representatives of the personnel on the committees, etc., for co-operation, i.e., whether
the regulations should provide for (a) election by the whole of the personnel by direct secret ballot, or (b) appointment by the representative organisations of the workers.

The Governments of the following countries declare themselves to be in favour of (a): Austria, Bulgaria, China, Costa Rica, Finland, India, Iraq, Luxembourg, Mexico, New Zealand, Norway and Poland. Explaining its reply, the Austrian Government indicates, first, that the activities of the representatives of the staff can be assured of success only if they possess the direct confidence of the personnel and, secondly, that this method of appointment is in accordance with democratic principles. The Mexican Government indicates that the election should be held by such method as is desired by the workers in the undertaking, and the Norwegian Government considers that the voting should be in writing.

The Government of Panama states that it is in favour of (b).

The Governments of Belgium, France and the Netherlands advocate election by the staff from lists of candidates drawn up by the representative organisations of the workers. The Belgian Government stresses the desirability of ensuring that both the representative organisations and the whole of the workers in the undertaking should take part in the appointment of the representatives of the personnel.

The Swiss Government, while inclined to favour (a), nevertheless considers that the workers' organisations might, in certain cases, be concerned in the elections. The Polish Government observes that the committee, etc., representing the workers in the undertaking and elected by them should constitute a subordinate trade union agency, because, in its opinion, this is necessary, as is demonstrated by experience, in order to enable the machinery genuinely to improve the material and social position of the workers.

But some of this latter group of Governments consider that it is indispensable to allow for some liberty of choice in the matter. Thus, the Netherlands Government considers that other methods of appointment might be found to be equally appropriate, and that these matters should be left to be settled by national regulations, as should the question of conditions regarding eligibility. This is the view taken also by the French Government, which considers that it would be desirable to take account of the practice and procedure traditionally followed in
each country. In this the two Governments are in agreement with the Government of Sweden, which considers that either method (a) or method (b) might be adopted, as desired; the Canadian Government, which, while favouring method (a) (provided that the election is held on a constituency basis), nevertheless would consent to method (b) in the case of undertakings in which labour is well organised and the parties are in agreement; and the Australian Government, which considers it undesirable to lay down hard and fast rules. In the opinion of Australia, the national authority responsible for encouraging the establishment of machinery for co-operation should recommend to the parties which method should be adopted in each case, and should be guided by the circumstances, and should avoid sponsoring the establishment of machinery which, on account of the method of appointment of the representatives, might give rise to the feeling that it was an employers' instrument or dominated by a trade union. Moreover, the Australian Government considers that account should be taken, when candidates for the committees, etc., are nominated, of their length of service in the industry or undertaking.

The United Kingdom Government considers that the question of the method of appointment of representatives of the personnel is not an appropriate subject for international regulation; in its view, this is a question to be determined by collective agreements between the two sides of the industry concerned, or between the employer and representatives of his workpeople in accordance with the relevant collective agreement.

It emerges from this brief survey that, while the majority of the Governments are in favour of the principle of election of the representatives of the personnel by the whole of the personnel in the undertaking, many of them consider it necessary that this election should take place according to the procedure prescribed in the various national regulations, in particular as regards the participation of workers' organisations in the elections. Moreover, a considerable number of Governments emphasise the freedom of choice which should be left to the parties in this matter, or express a wish that the international regulations should not provide exclusively for a single method of appointment.

It is in order to reflect these various observations that the proposed conclusion has been modified. Point 28 now expresses
in the first place the principle of election which, indeed, appears to be fundamental, as the Austrian Government emphasises, if the machinery for co-operation is to possess the confidence of the staff which it has to represent, but it proposes that this election shall be held in accordance with the provisions laid down by national regulations, which will have to determine in particular the position of the workers' organisations in this connection, conditions of eligibility of electors and candidates, etc. In its second paragraph, Point 28 admits of the possibility of representatives being appointed by workers' organisations where this method of appointment is prescribed under a collective agreement.

V. Composition of Representative Bodies

Question 5

In question 5, the Governments were asked whether the international regulations should provide that the number of representatives of the personnel on the committees or other bodies for co-operation should be proportionate to the number of persons employed in the undertakings.

The principle implied in this question appears to be clear, hence the very large majority of the Governments declare themselves to be in favour of it: Australia, Austria, Belgium, Bulgaria, Canada, China, Costa Rica, Finland, France, India, Iraq, Luxembourg, the Netherlands, New Zealand, Norway, Panama, Poland, Sweden and Switzerland. Several of them merely recommend either that the committees, etc., shall not become too large (Austria, Canada, India, New Zealand, Switzerland), or that the regulations shall not prescribe any definite numerical proportion (Austria, France).

The Mexican Government replies in the negative, considering that it is for national regulations to determine the composition of the machinery for co-operation. The United Kingdom Government considers that this question should be determined under collective agreements between the two sides of the industry concerned, or between the employer and representatives of his workpeople in accordance with the relevant collective agreement, and that the question is in no way appropriate for international regulation.
The analysis of the replies to question 5 shows that the large majority of the Governments consider that the international regulations should include a provision to the effect that some definite proportion should exist between the size of the committee, etc., for co-operation and the number of wage-earners employed in the undertaking. If it is agreed that it is desirable to include this principle in the international regulations, that will not prevent national regulations, as the Netherlands Government observes, from fixing this proportion.

Point 29 of the proposed conclusions, submitted by the Office to the Conference, does no more therefore than express the principle.

Question 6

In question 6, Governments were asked whether it should be provided in the international regulations that the different categories of persons employed in the undertaking—manual workers, salaried employees, technicians—should be represented on the said committees, etc.

A large number of Governments reply to this question in the affirmative: Austria, Belgium, Bulgaria, Canada, China, Costa Rica, Finland, France, India, Iraq, Luxembourg, the Netherlands, New Zealand, Norway, Panama, Poland, Sweden and Switzerland. However, the Government of Canada does not consider the provision indispensable; the Austrian Government feels that it is desirable to provide separate representation for manual workers and salaried employees, in view of the fact that in certain cases their interests do not coincide; while the Polish Government, on the other hand, thinks that all the wage-earners in the undertaking, regardless of the type of work which they perform, should be included in a single representative body. Admittedly, the Austrian Government observes that where separate representation is provided, the representatives should act jointly in respect of matters affecting the common interests of the groups which they represent. The Government emphasises, moreover, that employees who exercise managerial functions should not be included among the workers entitled to vote for or to be elected to the co-operation bodies. The Norwegian Government considers that the following categories should be represented: management, salaried employees and
workers; the Australian Government also emphasises that it is an essential condition for the effective functioning of any committees, etc., which are established that the management should be represented. The Indian Government, like the Canadian Government, observes that the chief categories should each be represented.

The United Kingdom Government would favour a representation on the committees, etc., for co-operation on as wide a basis as possible, but it considers that to be a matter for agreement between the two sides of the industry concerned, or between the employer and representatives of his workpeople in accordance with the relevant collective agreement, and that it is not suitable for international regulation. The Australian and Mexican Governments express similar views.

The principle contained in question 6, namely, that the various categories of wage-earners employed in the undertaking should be represented on the committees, etc., for co-operation, is recognised by the majority of the Governments as also being suitable for inclusion in the international regulations. The Office, therefore, has drafted Point 30 of the proposed conclusions to cover this matter, feeling, indeed, that a definition in the international regulations of the principle of representation of the various categories of wage-earners does not prevent national regulations (legislation, collective agreements or other agreements) from adapting this principle in accordance with local requirements.

VI. Working of the Co-operation Machinery

Questions 7-9

Questions 7, 8 and 9 all referred to the working of the machinery for co-operation in the undertaking.

Question 7 concerned the regularity and frequency of the meetings of the committees, etc. The Governments of the following countries reply in the affirmative without qualification: Australia, Austria, Bulgaria, Canada, China, Costa Rica, France, Iraq, Luxembourg, Mexico, New Zealand, Norway, Panama and Poland.
The Indian and Swedish Governments, while replying in the affirmative, would consider it preferable that the meetings should be held every three months. The Swiss Government considers that they should be held only when necessary. The Belgian Government feels it essential that the frequency of the meetings should be such that the committees, etc., for co-operation may act effectively regarding all those questions for which they are competent, but it is of the opinion that it is for national legislation to determine the actual frequency of the meetings. The Government of Finland holds a similar view and considers that one meeting per year would be a sufficient minimum. The Netherlands Government thinks that this question should be determined by the rules of procedure of the works council.

The United Kingdom Government answers the question in the negative, on the ground that the matter should be determined under collective agreements between the parties concerned and that it is not suitable for international regulations.

To question 8, by which Governments were asked whether it should be provided in the international regulations that the committees, etc., for co-operation should be able to have the assistance of trade union representatives whenever their deliberations related to matters for which such persons are competent, the Governments of the following countries reply in the affirmative: Austria, Belgium, Bulgaria, Canada, China, Costa Rica, France, India, Iraq, Mexico, the Netherlands, New Zealand, Panama, Poland and Sweden. Several of them accompany their replies by observations or reservations.

The Australian, Indian and Swedish Governments consider that the committees, etc., should be entitled to obtain the assistance not only of trade union representatives but of any other persons having particular knowledge of any questions submitted to them. The Belgian Government feels that trade union representatives should not be called upon unless they belong to organisations represented in the undertaking by a sufficient percentage of members among the workers. The Canadian Government considers that the assistance of trade union representatives must not involve any confusion of the fields of activity of the committees, etc., for co-operation and the trade unions. The French Government, too, is of the opinion that the circumstances of intervention by trade union representatives should be clearly defined in order to avoid any duplication
of activities, and the New Zealand Government specifies that these representatives should not have the right to vote. The Netherlands Government sees no objection in the committees, etc., seeking the assistance of trade union representatives, but emphasises the point that the committees, etc., should not deal with questions which are trade union matters.

The Swiss Government thinks that in principle the committees, etc., for co-operation should not call on trade union representatives, but that cases might nevertheless arise in which the assistance of such representatives would be necessary, and points out finally that trade union representatives would often be found among the members of the committees, etc., for co-operation.

The Governments of Luxembourg, Norway and the United Kingdom reply to question 8 in the negative. The Luxembourg Government points out that there does not appear to be any advantage to be gained by arranging that trade union representatives shall share in the functions of the elected committees. The United Kingdom Government considers that these points of procedure are matters for determination under collective agreements between the parties concerned and are not suitable for international regulations.

In question 9, the Governments were asked whether it should be provided in the international regulations that appropriate action should be taken to secure close collaboration between the machinery for co-operation in the undertaking and the occupational organisations of the employers and workers concerned.

The Governments of the following countries reply to the question in the affirmative: Austria, Belgium, Bulgaria, Canada, China, Costa Rica, India, Iraq, Mexico, New Zealand, Norway, Panama and Poland. The Austrian Government, however, emphasises the point that the co-operation of occupational organisations with the representative bodies should be limited to questions of major importance so as not to diminish the sense of responsibility essential to the members of the committees, etc., for co-operation if they are to carry out their duties. The Belgian Government observes once more than the best formula for ensuring constant collaboration between the machinery for co-operation and the occupational organisations is for the candidates for election to the committees, etc., for co-operation to be nominated by the representative organisations.
of the workers. The Canadian Government stresses that collaboration should be confined to production problems. The Norwegian Government would like the international regulations to include a provision to the effect that bodies similar to the Norwegian Council of Production Committees should be given the duty of ensuring close collaboration between the undertakings and the employers' and workers' organisations.

The Swiss Government does not feel that close collaboration, as envisaged in question 9, is necessary; it contemplates simply good neighbourly relations. The Netherlands Government is of the opinion that such collaboration should be aimed at, but that it can hardly be made obligatory. The French Government considers that this question should first be studied in order that the conditions for such collaboration shall be clearly defined. The Government of Finland wishes the regulations to ensure the independent action of the committees, etc., for co-operation. It points out that the committees, etc., should be able to make proposals not only to the management of an undertaking but also, if the steps taken by the management do not give effect to the proposals made, to the competent organisations of workers, salaried employees, or employers.

The Governments of Sweden and the United Kingdom reply in the negative, the latter for the same reasons as were given in the replies to the two preceding questions.

The analysis of the replies to question 7 shows that the Governments are in general agreement that the regulations should include a principle in general terms recommending that the meetings of the committees, etc., for co-operation should be held at certain intervals in order that they may carry out their duties effectively, but several of them desire that the international regulations should not determine these intervals in precise terms.

Point 31 of the proposed conclusions submitted by the Office therefore endeavours to define the principle, emphasising the need for regular or extraordinary meetings, but leaving it to the various kinds of national regulations (legislation, collective agreements, agreements between employers and their workpeople, rules of procedure of works committees, etc.) to determine the precise details governing the regularity and frequency of the meetings of the committees, etc., for co-operation.

Point 31 also omits any reference to the question whether persons having a particular knowledge of a subject under
discussion shall take part in an advisory capacity in the meetings of the committees, etc., for co-operation. The view has been taken, in fact, that, with reference to the working of the co-operation machinery, it is desirable not to include in the international regulations anything more than the essential points, leaving as much freedom as possible to national regulations.

On the other hand, the Office feels that the principle of collaboration between employers' and workers' organisations and the machinery for co-operation, with which questions 8 and 9 were concerned, should be retained in the regulations, and Point 32 of the proposed conclusions contains a general provision on this subject, which, in accordance with the views expressed by a majority of the Governments, recommends that collaboration between employers' and workers' organisations and the machinery for co-operation in the undertaking should be secured, but does not lay down any details as to the methods by which such collaboration should be achieved. This might be realised, for instance, by according to the trade unions the exclusive right or the option to present lists of candidates for election to the committees, etc., for co-operation, or the right to take part in an advisory capacity in the meetings of these committees, etc., or in the general meetings of the staff, etc. It is clear that it is at the national or local level that the various kinds of procedure for applying this principle can most effectively be determined.

VII. Functions of the Co-operation Machinery

Questions 10 and 11

Questions 10 and 11 referred to the social and economic functions of the machinery for co-operation in the undertaking.

In question 10, Governments were asked whether it should be provided in the international regulations that the machinery for co-operation in the undertaking should have more particularly the following functions of a social character:

(a) to secure application of collective agreements, social legislation and regulations regarding health and safety;
(b) to give an opinion regarding the engagement and
dismissal of employees and their allocation to different jobs;

(c) to promote the vocational training of the different
categories of employees;

(d) to set up and administer social schemes for the welfare
of the employees and their families; and

(e) in general, to promote a good understanding between
the management and the personnel.

The following Governments reply in the affirmative to the
question as a whole, without adding any qualifications to their
replies: Bulgaria, China, India, Iraq, Luxembourg, Mexico,
New Zealand, Panama and Poland.

A second group of Governments comprises those which
are in agreement with the five paragraphs of question 10 as a
whole, but which accompany their replies by observations or
reservations relating to one or other of those paragraphs (Bel­
gium, Costa Rica, France, Norway and Sweden) and those
whose replies are in the affirmative or in the negative according
to the various paragraphs to which they relate (Canada, Finland).
The replies of all these Governments will be analysed together
and the analysis will be made paragraph by paragraph.

In regard to paragraphs (a) and (b), several Governments
emphasise the necessity of avoiding any confusion between the
functions of the committees, etc., for co-operation in the under­
taking and those of other agencies or institutions such as the
labour inspectorate (Costa Rica, France), the staff delegations
(France) and, above all, the trade unions (Austria, Norway,
Sweden, Union of South Africa). The Norwegian and Swedish
Governments particularly stress the fact that the application
of collective agreements is a trade union function, whereas
supervision of health and safety is a matter for the production
committees. The Austrian Government emphasises the point
that to fulfil their rôle the members of the committees, etc.,
for co-operation should be present during inspections of the
undertaking arranged by the labour inspectorate. The Govern­
ment of Finland considers that the points dealt with in para­
graphs (a) and (b) should be determined by national legislation.

With regard to paragraph (a), the French Government desires a
provision which would distinguish 'clearly' between the general
mission of the committees, etc., and the function of co-operation
which devolves on them. The Government suggests a formula to the effect that the works committee "should co-operate with the management to improve the collective working and living conditions of the staff and the regulations relating thereto". With regard to paragraph (b), the French Government considers it necessary to draw a distinction between questions affecting individual cases and problems of a general kind. The Swedish Government feels that, with regard to the engagement of workers, the committees, etc., should be consulted only in cases concerning the re-engagement of temporarily dismissed employees. The Canadian Government replies in the negative with regard to these two paragraphs.

As regards paragraph (c), the Belgian Government expresses the view that the paragraph should refer to the committees, etc., as co-operating in the promotion of the vocational training of the different categories of employees, as vocational training itself is not a function simply of the committees, etc. The French Government considers that any initiative taken by the committees, etc., in the undertaking must be in conformity with the general plans and regulations prescribed by the relevant legislation. The Government of Finland replies in the affirmative, while the Canadian Government replies in the negative.

In regard to paragraph (d), the Belgian Government agrees with the provision unless the staff of the undertaking themselves administer the social schemes concerned. The Canadian Government also agrees with regard to social schemes administered in the local area, and the Government of Finland feels that the question should be left for settlement by national legislation.

With regard to paragraph (e), the Canadian Government agrees with the provision in so far as such good understanding can be promoted by co-operation with a view to increasing production. The replies of all the other Governments comprising the second group referred to above are in the affirmative as regards this paragraph.

Finally, a third group of Governments (the Netherlands, Switzerland and the United Kingdom) do not give separate answers to the separate paragraphs. The Netherlands Government proposes a much more general formula which would emphasise equally the recognition of the independent functions of the employer and the advisory nature of the functions of the committees, etc., for co-operation; these two criteria appear to
be equally essential to the Swiss Government. The United Kingdom Government, while of the opinion that one of the main functions of the machinery for co-operation should be the promotion of a good understanding between the management and the personnel, considers, however, that all questions relating to the functions of that machinery are matters for determination under collective agreements or by agreement between the employer and the representatives of his workpeople in accordance with the relevant collective agreement, and that such questions are not suitable for international regulation.

In question 11, the Governments were asked whether it should be provided in the international regulations that the machinery for co-operation should have more particularly the following functions of an economic character:

(a) to inform the personnel regarding the economic and technical situation of the undertaking;

(b) to study any suggestion put forward by the management or by the personnel with the object of raising the level of production or improving efficiency;

(c) to propose to the management the rewards to be granted to employees whose suggestions have been effectively applied; and

(d) to study the methods of production and to make proposals to the management regarding the best utilisation of the material and human resources of the undertaking.

This question is answered in the affirmative by the following Governments: Australia, Austria, Belgium, Bulgaria, Canada, Costa Rica, China, Finland, France, India, Luxembourg, Mexico, New Zealand, Norway, Panama, Poland and Sweden. Observations or reservations, however, have been made by certain Governments with regard to paragraphs (a) and (d).

With regard to paragraph (a), the Belgian Government observes that the information should be given in regular form and at specified intervals; the Government of Costa Rica considers that the information should not include technical or commercial secrets or any private administrative information, the divulging of which might prejudice the undertaking; the French Government expresses a similar point of view; the Government of Finland feels that the management of the
undertaking must be consulted as regards the scope of such information.

As regards paragraph (d), the Government of Finland observes that any provision which may be adopted should not involve any intervention in respect of the engagement and dismissal of employees or their allocation to different jobs.

The Government of Iraq replies in the negative.

The Governments of the Netherlands and Switzerland, while not replying directly to the separate paragraphs of this question, emphasise the advisory character of the functions of the committees, etc., for co-operation and the need to avoid any infringement of the prerogatives of the employer. The Government of the United Kingdom considers that, while functions of an economic character of the kind suggested in the question may be of much value, the functions of the committees, etc., are a matter for determination by agreement between the parties and are not suitable for international regulation.

The survey of the replies to questions 10 and 11 shows that a majority of the Governments are in general agreement in according to the committees, etc., for co-operation the functions suggested under the different paragraphs of these two questions. Nevertheless, several of them express disagreement or reservations with regard to one or other of the functions contemplated or else declare that certain functions are a matter for determination at the national or local level.

In spite of these observations, the Office feels that it should retain in the proposed conclusions substantially the same text as it suggested in the first place. In fact, as already indicated in the concluding part of the analysis of the replies to question 1, some of the observations made by the Governments are dependent on the text proposed to the Conference being drawn up in the form of a Convention. In view of the more formal and strict undertaking required of the Governments in such a case, it is natural that they should be meticulous to a degree with regard to the existing differences between their national regulations and the text proposed. A Recommendation is generally drawn up in more flexible terms. Hence, the proposed text (Points 33 and 34) indicates the types of function which the committees, etc., for co-operation may exercise and which in fact they do exercise with success in one group of countries or another. It will clearly be a matter for national regulations to define precisely the functions of the machinery for co-operation in the undertaking
and to delimit its competence in relation to the competence of the trade unions and other institutions, such as the labour inspectorate, staff delegations, etc.

VIII. Obligations of the Management

Question 12

In question 12, Governments were asked whether it should be provided in the international regulations that the management of an undertaking should be required to assume a number of obligations towards the committees, etc., for co-operation: (a) material facilities; (b) time required for performance of functions and remuneration therefor; (c) consultation on questions concerning the organisation and general conduct of the undertaking; (d) regular information, given at least once a year, regarding the activity of the undertaking and the plans for the coming twelve months; (e) in the case of a limited company, submission to the committees, etc., for co-operation of the same documents as are submitted to the general meeting, and more particularly the annual balance sheet and the profit and loss account.

The following Governments reply in the affirmative to these questions as a whole, without making any further observation: Bulgaria, China, India, Luxembourg, Mexico and New Zealand.

A second group of Governments comprises those which reply in the affirmative to the question as a whole, while making observations or reservations with regard to certain paragraphs (Australia, Austria, Belgium, Costa Rica, Finland, France, the Netherlands, Panama, Poland and Sweden), and those which reply in the affirmative to certain paragraphs and in the negative to others (Canada, Norway, Panama and Switzerland). All these replies are analysed below in relation to each separate paragraph.

As regards paragraph (a), the Austrian Government observes that the obligation in question should be required so far as is feasible in the undertaking. The Government of Finland considers that it should be limited to the premises, material and other reasonable expenses of the committees, etc., for co-operation; the Government of Norway feels that office staff
will be required in exceptional cases only; the French Government also considers that the fulfilment of this obligation can be insisted upon only within reasonable limits. The Governments of Panama and Switzerland reply in the affirmative, while the Canadian Government replies in the negative.

In regard to paragraph (b), the Belgian Government considers that national legislation should be left to limit the time which may appear necessary for the purpose of the functions concerned; the Government of Finland holds the view that efforts should be made to hold the meetings of the committees, etc., outside working hours; the Norwegian Government observes that when the meetings are held outside working hours the members should be paid their hourly wages, and the Governments of Costa Rica and France are in agreement that this provision should be interpreted within reasonable limits. The Governments of Canada, Panama and Switzerland reply in the affirmative, Canada considering that this obligation, like those prescribed in the following paragraphs, should be fulfilled in accordance with the agreement concluded between the parties.

With regard to paragraphs (c) and (d), the Government of Costa Rica holds the view that the consultation of the committees, etc., for co-operation should be at the option of the employer and should not be obligatory. The Government of Finland thinks that it should be left to the judgment of the management to decide whether any information concerning plans for the coming year should be given or not. The Government of Norway proposes a more general formula with regard to these two paragraphs which would provide simply for reports to be delivered by the management to the committees, etc., for co-operation. The Government of Panama replies in the affirmative, while the Swiss Government considers that such provisions go too far.

As regards paragraph (e), the Governments of Norway, Panama and Switzerland reply in the negative.

Finally, two Governments (Iraq and the United Kingdom) reply in the negative to the whole of question 12, the United Kingdom considering that the obligations of the management are questions for determination by agreement between the parties concerned and are not suitable for international regulations.

After considering the replies of the Governments, the Office, for reasons similar to those given in the conclusion of the analysis
of the replies to the two previous questions, has felt that it should retain most of the text as originally proposed, and Point 35 of the proposed conclusions has been drafted accordingly. It has appeared necessary, indeed, to include in the international regulations the principle that the establishment of committees, etc., for co-operation should necessarily entail the fulfilment by the managements of undertakings of a certain number of obligations, in order that such committees, etc., may carry out their functions.

According to the method adopted for establishing these committees, etc., it will be for legislation or for agreements concluded by the parties to determine the extent of these obligations.

IX. Obligations of Representatives of the Personnel

Questions 13 and 14

Questions 13 and 14 refer to the obligations of the representatives of the personnel, both in relation to the management of the undertaking and in relation to the personnel.

Question 13 relates to the secrecy which the members of the committees, etc., for co-operation should preserve with regard to confidential information which may be communicated to them by the management.

This provision receives almost unanimous approval. The Governments of the following countries reply in the affirmative: Australia, Austria, Belgium, Bulgaria, China, Costa Rica, Finland, France, India, Iraq, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Panama, Poland, Sweden and Switzerland. Some of them emphasise in their replies the point that such a provision is essential (Costa Rica and Panama) or suggest that it might be desirable to define more explicitly the scope of professional secrecy (France). The Canadian Government considers that secrecy should be enjoined; but not by legislation. The Government of the United Kingdom feels that the question should be determined by agreement between the parties concerned and not by international regulations.

In question 14, Governments were asked whether it should be provided in the international regulations that the represen-
tatives of the personnel should be required to give an account of their activity to the whole personnel at regular intervals but at least once a year.

Affirmative replies to this question, without further observation, are made by the Governments of the following countries: Australia, Bulgaria, China, Costa Rica, Iraq, Luxembourg, Mexico, New Zealand, Norway, Panama and Sweden. The Governments of France and India reply in the affirmative, but the French Government observes that this provision should not negative the obligation to preserve professional secrecy, and the Indian Government points out that the provision may be difficult of application in countries where the workers are illiterate. The replies of the Austrian, Belgian and Polish Governments are also in the affirmative, but they wish the account of the representatives' activities to be given at more frequent intervals—six months (Austria, Belgium) or three months (Poland).

The Government of the Netherlands considers that the account should be given at regular intervals, but that in what way, to whom, and at what intervals, should be a matter for national regulation. The Swiss Government expresses a similar point of view.

The Canadian Government replies in the negative, but considers that there should be a recommendation for voluntary action of this kind. The Government of Finland also replies in the negative, on the ground that such a procedure might lead to undue influence being exercised against the representative of the personnel who has been placed in a position of trust as the result of an election. The United Kingdom Government adopts the same attitude with regard to this point as with regard to the points covered by the preceding questions and especially by question 13 above.

The analysis of the replies to question 13 shows that a very large majority of the Governments are in favour of the inclusion in the international regulations of a provision laying down the principle of the professional secrecy which the members of the committees, etc., for co-operation should preserve with regard to confidential information communicated to them by the management. Point 36 of the proposed conclusions has therefore been drafted in this sense.

With regard to question 14, although the majority of the Governments reply in the affirmative, the Office when drawing
up the relevant Point 37 of the proposed conclusions has done no more than express the principle of an account of the activities of the representatives being given at regular intervals, in accordance with the desire of the Netherlands Government, which will make due allowances for differences in the national regulations concerning the form which this account shall assume and the frequency at which it shall be given.

X. Protection of Representatives of the Personnel

Question 15

In question 15, Governments were asked whether it should be provided in the international regulations that appropriate action should be taken to ensure that the representatives of the personnel are adequately protected in the performance of their functions.

The Governments of the following countries reply in the affirmative to this question: Australia, Austria, Belgium, Bulgaria, China, Costa Rica, Finland, India, Iraq, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Panama, Poland and Sweden. The Austrian Government points out that this protection should be provided both to ensure the free exercise of their functions by the members of the committees, etc., for co-operation and to ensure that they shall not be dismissed, except for grave reasons, during their period of office. The latter point is also emphasised by the Belgian Government. The Swiss Government considers that such protection is necessary in so far as it relates to the activities of the staff representatives whose function it is to defend the legitimate interests of their constituents, and stresses the point that mutual confidence is the only way of ensuring good relations between employers and workers.

The Canadian Government replies in the negative, pointing out that such a provision is not necessary while the operation of the committees, etc., is on a voluntary or permissive basis. The Government of the United Kingdom expresses the view that this is a matter for determination by agreement between the parties concerned and is not suitable for international regulation.

This brief analysis shows that the large majority of the
Governments are in favour of the inclusion in the international regulations of a provision to the effect that the representatives of the personnel should be protected in the performance of their functions. The Office, therefore, submits to the Conference—as Point 38 of the proposed conclusions—without modification, the text which was included in the questionnaire.

XI. Application of the International Regulations

Questions 16 and 17

Questions 16 and 17 refer to the application of the international regulations.

In question 16, Governments were asked whether the international regulations should provide that effect might be given to their provisions: (a) by means of legislation, or (b) by means of collective agreements.

The Governments of the following countries reply in favour of (a): Austria, Bulgaria, China, Costa Rica, India, Iraq, Panama and Poland.

The Governments of Canada, Mexico, New Zealand and Switzerland declare themselves to be in favour of (b). The Swedish Government is also in favour of this formula, but agrees that recourse might be had to legislation where it is impossible to conclude collective agreements. The Government of the United Kingdom would be in favour of (b), if it did not consider that the question was premature, inasmuch as it has not been decided whether international regulations are possible and in what form they ought to be adopted.

Several Governments, namely, those of Belgium, Finland, France, Luxembourg and the Netherlands, agree that both alternatives might be possible.

Question 17 applied only to cases where the application of the international regulations would be ensured by means of collective agreements, and concerned the information which should be communicated by the Governments of the countries adopting this method of application.

The Governments of the following countries reply in the affirmative: Austria, Belgium, Bulgaria, Canada, Finland, France, Luxembourg, Mexico, the Netherlands, New Zealand and Norway.
The Australian Government considers that the State Member concerned should communicate to the International Labour Office the reports normally prescribed. The Swedish Government emphasises the fact that it would probably be difficult to supply complete information. The Swiss Government holds the view that the information prescribed should not embrace too many details.

The Governments of China, Iraq and the United Kingdom reply in the negative to this question.

Questions 16 and 17 were addressed to the Governments on the hypothesis of the text submitted to the Conference being drawn up in the form of a Convention. In view of the fact that a Recommendation is being proposed, they cease to be of importance, the Governments simply assuming the obligation to give effect to the Recommendation in accordance with the provisions of the Constitution of the International Labour Organisation.

II

CO-OPERATION AT THE LEVEL OF THE INDUSTRY

I. Desirability and Form of International Regulations

*General Observations and Question 1*

Question 1 asked whether the International Labour Conference should adopt international regulations concerning co-operation at the level of the industry, in the form of a Recommendation.

The Governments of Australia, Austria, Belgium, Bulgaria, Canada, China, Costa Rica, Denmark, France, India, Iraq, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Panama, Sweden and the United Kingdom give an affirmative reply. Some of these Governments attach reservations to their answers and others add comments.

The Government of Australia argues that the arrangements in question will only be effective where the parties concerned have voluntarily undertaken to co-operate, but that the debates preceding adoption of a Recommendation by the Conference
will be of great value and enable delegates to gain ideas which they may take back to their own countries. According to the Austrian Government, the structure, composition, powers and functions of the machinery for co-operation now existing are so diverse in character that the Recommendation should be limited to an expression of general principles. In the view of the Belgian Government, a Recommendation appears desirable, although the extent of co-operation at the level of the industry varies widely from one country to another and from one sector of industry to another. The French Government is in favour of a Recommendation, provided it is stipulated that the machinery in question shall be of an advisory character only, in order to prevent any return in one form or another to the system of corporations. The Government of Luxembourg considers that a Recommendation might make a valuable contribution towards agreement regarding the possible establishment of new advisory agencies in economic life. Although it appears to the Government of the United Kingdom desirable to embody the main principles of the questionnaire in a Recommendation, that Government cannot express a final opinion, in advance of the discussions at San Francisco, on the question of the possibility of drawing up an acceptable Recommendation on this subject.

The Governments of Poland and the Union of South Africa, on the other hand, are opposed to the adoption of international regulations regarding co-operation at the level of the industry. The Polish Government considers that, under the social and political conditions now existing in a large number of countries, co-operation at the level of the industry does not provide the workers with any effective material or social advantages, but frequently diverts their attention to problems in no way connected with the raising of their material and social standards. The South African Government considers that any action taken by the International Labour Conference should be limited to a recommendation to Members to encourage co-operation of this kind; the Government regards it as essential that employers and workers should be willing and should wish to co-operate on a voluntary basis. The Government of Finland, though it does not express a definite opinion against international regulations, states that the question of co-operation at the level of the industry should be left to national law. The Danish Government favours co-operation between employers and workers in a given industry or branch of industry, which—it says—is desired
by the central employers' and workers' organisations in Den­mark, but considers that decisive importance should be attached to the wishes of such organisations as to the form and extent of the co-operation, and therefore reserves its own position on a number of points and merely indicates the views of the Danish organisations concerned.

The Swiss Government refrain from expressing a positive view. It regards co-operation at the level of the industry as desirable, but considers that the question raises complex problems connected with the structure of economy and is not sufficiently ripe for international regulation at the present time.

Thus, most of the Governments recognise the desirability of international regulations regarding co-operation at the level of the industry and consider that such regulations should take the form of a Recommendation. The Office has therefore drafted Point 39 of the proposed conclusions in this sense.

II. Establishment of National Industrial Boards

Question 2

In this question Governments were asked first, whether the international regulations should recommend that joint national boards should be established on a permanent basis in the different branches of industry and commerce, either by agreement between the employers' and workers' organisations concerned or by legislation, and secondly, where there were several representative organisations of employers and of workers in the branch concerned, whether the representation of the employers and workers on the board should be proportionate to the membership of such organisations.

The Governments of Australia, Austria, Belgium, Bulgaria, Canada, China, Costa Rica, France, India, Iraq, Mexico, Netherlands, New Zealand, Norway, Panama, Sweden and the United Kingdom give an affirmative reply regarding the desirability of establishing joint national boards in the different branches of industry and commerce. Some of these Governments, however, make individual suggestions regarding the name given to the proposed agencies and their scope and composition.
The Government of Australia considers that the agencies should be called by some other name than "industrial boards", in order to avoid confusion with bodies already so-called which deal with wages and conditions of work.

As regards the scope of the boards, the Belgian Government would wish agriculture to be included. Furthermore, since certain branches of economic activity are sometimes concentrated in one region of a country the Government would wish joint boards established in such regions to be assimilated to the national boards. A similar observation is expressed by the Government of the United Kingdom in its reply to question 6, where it is stated that in some circumstances and industries (e.g., mining, transport, electricity supply) joint consultation at a regional or area level would be appropriate. The Government of Australia also draws attention to the regional aspect of this matter.

In the view of the Belgian Government, the establishment of machinery for co-operation at this level should not exclude the establishment of such machinery on a wider occupational basis (for example, a national joint committee for salaried employees) irrespective of industry.

The French Government would prefer a more flexible provision than that contemplated in the questionnaire, as regards both the scope and the character of the machinery in question. Such a formula would simply refer to appropriate measures for permanent co-operation between the employers' and workers' organisations concerned in all branches of industry in which it was found to be necessary.

In view of the Austrian Government, care should be taken that the establishment of co-operation machinery at the industrial level does not overburden the national administrative system and complicate excessively economic and social administration; the proposed boards should not be set up under the public authorities, but, in accordance with the principle of economic and social self-government, should be established by the parties concerned at the suggestion and with the support of the national authorities.

The Government of the Union of South Africa takes up a negative attitude, but would agree to boards confined to dealing with conditions of work, provided their establishment were conditional upon the agreement of representatives of employers' and workers' organisations; the international
regulations should at most recognise such bodies if the organisations desired to set them up.

As regards the composition of the proposed agencies, the Norwegian and Swedish Governments wish representatives of the public authorities to be included in them; the Swedish Government considers it desirable to include also the consumers and perhaps other interested groups. The Government of the United Kingdom also wishes it to be clear that proposals regarding joint boards should not prejudice the establishment of tripartite bodies in particular industries.

The method of establishing national boards for the different industries has given rise to divergent opinions. The Governments of Belgium, Bulgaria, China, India, the Netherlands, New Zealand, Norway and Sweden consider that the agencies for cooperation might be established either by agreement between the employers' and workers' organisations concerned, or by way of legislation. Establishment by agreement only is supported by the Governments of Canada, Costa Rica, Mexico and the United Kingdom, whereas the Governments of Iraq and Panama reply in favour of establishment by way of legislation only.

Lastly, divergent opinions are expressed on the question whether, where more than one organisation exists in a given industry, the representation of the employers or workers on the board should be proportionate to the respective membership of such organisations. Only the Governments of Bulgaria, China, Costa Rica, Mexico, Netherlands, Norway and Panama agree unreservedly that the representation of the employers and workers should be proportionate to the membership of their organisation.

The Governments of Belgium, Canada, France, India and New Zealand attach reservations to their acceptance of this procedure. In the view of the Belgian Government, in order to be considered as representative an organisation should include at least 10 per cent. of the personnel in the branch concerned. The Governments of Canada and India accept in general the method of representation suggested, on condition, the Canadian Government adds, that such representation shall not prejudice co-operation. The French Government accepts this procedure, in so far as the membership of the organisations can be accurately ascertained, and expresses its preference for some more flexible formula. Such is also the wish of the Government of Australia, which would like to see the Recommendation permit each
country to adopt the method of organisation best suited to local needs. The South African Government shares this attitude, and considers that the basis of partitioning representation should be agreed upon by the parties which set up the agency. The latter point of view is also held by the Government of the United Kingdom.

The Government of New Zealand considers that the representation of the different organisations should be so limited as to avoid large unwieldy committees.

On the whole, the establishment of co-operation machinery at the industrial level on a permanent footing is supported by almost all the Governments, particularly if it should be agreed, as some of these Governments wish, that the machinery need not be of an exclusively joint character but may be made tripartite by participation of representatives of the authorities.

Nevertheless, even though it should be decided not to specify the structure of the proposed boards, it will be necessary to indicate at the outset the general object for which they would be established (e.g., to study the social, technical and economic problems of the trade or industry concerned). Of course, national laws and regulations might more exactly define the terms of reference of the boards, and might fix, in particular, the boundaries between their functions and those of the occupational organisations. Both the possible methods of establishment mentioned in the questionnaire have received support, and both may consequently be retained. The machinery in question should, as a general rule, be of a national scope, but in some cases regional boards might be established and these should be treated on the same footing as the national boards.

Opinions vary as to the composition of the boards, particularly as regards the proportionate representation of the occupational organisations in cases where several representative organisations exist. As it is difficult to secure exact information regarding the strength of the various organisations, it appears preferable that the Recommendation should not be too rigid and that it should confine itself in this connection to stating the principle that the organisations of employers and workers respectively should be equally represented.

Points 40, 41 and 42 of the proposed conclusions are drafted accordingly.
III. Functions of National Industrial Boards

Questions 3 and 4

In question 3, the Office asked whether the agencies for co-operation established at the industrial level should have the function of taking all appropriate action: (a) to raise the standard of life of the workers; (b) to increase the level of production and the efficiency of the industry; and (c) in general, to examine the social, technical and economic problems of the industry or trade concerned.

All these functions are unreservedly accepted by the Governments of Australia, Bulgaria, China, Costa Rica, India, Iraq, Mexico, the Netherlands, New Zealand and Panama.

The Governments of Austria, Belgium, Canada, France, Norway, Sweden and the United Kingdom also reply in the affirmative, but with certain reservations. The most important of these relates to the line of demarcation between the functions of the boards and those of the trade unions (Austria, Canada and Norway). The Government of Austria asks for the addition of a limiting provision stating that the boards should not intervene in the application of collective agreements. The Government of Canada would like to see action to raise the standard of living of the workers excluded from the scope of the industrial boards, this being in its opinion a trade union function. The Norwegian Government agrees that the boards should have the functions in question, provided these are not performed by the parties in their normal organisational work; questions of wages and conditions of work should therefore not be dealt with by the boards.

The Government of Belgium points out that the functions mentioned in the questionnaire are very comprehensive and do not take account of the possible coexistence of other agencies competent in social and economic fields. The Government of France wishes that the purely advisory function of the boards should be made clear; in its view they should have the function of proposing, and not of taking, the appropriate action. With a similar object, the Government of Sweden states that the boards should not have power to take administrative action. The Government of the United Kingdom considers that the matters referred to should lie within the scope of discussion
of national industrial boards, but that the extent to which appropriate action can be taken must depend on agreement.

The Government of the Union of South Africa is opposed to the functions to which the question refers, but adds that the subjects mentioned may well be incidental to the deliberations of joint bodies responsible for fixing conditions of labour; the responsibility for raising the standard of living is clearly a matter for the Government, and it is not a function of employers and workers as such to deal with this question.

In preparing the point of the proposed conclusions which would cover the subject, the Office has been guided by the following considerations: once the preceding provision has defined the general object of the boards—i.e., to examine the social, technical and economic problems of the industry or trade concerned—it appears necessary to give some brief indication of the functions which should be conferred upon them in order that they may achieve that object. These functions are essentially of two kinds: social, connected with improving the workers' standard of living; and economic or technical, connected with improving production and efficiency. It has seemed preferable not to determine the precise action by means of which these functions should be performed, since such practical action may vary with the requirements of the industry or trade in question. On the other hand, it has appeared desirable, in accordance with the wishes of the French and Swedish Governments, to bring out clearly the essentially advisory character of the proposed agencies, which will have only to suggest such action as they think appropriate to the authorities and to the parties concerned. Being advisory bodies, the boards should clearly not encroach on the rights of the trade unions or on the prerogatives of the authorities; it has therefore not appeared necessary for the international regulations to include an express reservation in this regard. Point 43 of the proposed conclusions has therefore been drafted to take account of these views.

Question 4 concerned the power of the industrial boards to submit to the competent authorities opinions or recommendations on all questions of an economic or social character falling within their terms of reference.

The Governments of Australia, Austria, Belgium, Bulgaria, Canada, China, Costa Rica, France, India, Iraq, Mexico, Netherlands, New Zealand, Norway, Panama, Sweden, the
Union of South Africa and the United Kingdom are in general agreement with this suggestion. The terms used ("opinions or recommendations") clearly indicate the advisory character of the boards.

The Australian Government points out that the national employers' and workers' organisations, in order to ensure uniformity of policy, may not be willing to have submissions and opinions made direct to the competent authorities without prior reference to themselves. The Government of Austria considers that the boards should not deal with matters affecting the application of collective agreements. In the view of the Swedish Government, it should not be recommended that the boards should have the power to take administrative action; they should however be able to study the problems referred to in this question and to publish the results of their research work whenever feasible. The South African Government considers that the boards should have recommendatory powers on such questions as properly fall within their scope, but refers to its remarks in reply to question 3. In view of the general agreement, Point 44 has been drafted accordingly.

IV. Co-operation in Nationalised Industries and those Established in the Public Services

Question 5

In question 5 Governments were asked whether, in nationalised industries and those established in the public services, there should be close and permanent co-operation between the authorities responsible for the administration of such industries and the workers' organisations concerned.

The Governments of Australia, Austria, Belgium, Bulgaria, Canada, China, Costa Rica, France, India, Iraq, Mexico, Netherlands, New Zealand, Norway, Panama, Poland, Sweden, the Union of South Africa and the United Kingdom give affirmative replies to this question. The Government of Austria, however, points out that it should be possible to include statutory bodies representing the interests of the workers in the suggested co-operation, and that the expression "workers' organisations" should be replaced by the wider term "bodies representing the
workers”. The South African Government considers that such co-operation should only take place in the activities in which, in the opinion of the competent authority, it is desirable having regard to considerations of good administration and governmental policy. The Belgian Government sees no difference in principle between the co-operation which should be established in nationalised industries and that established in industries belonging to the private sector of economy. On this part of the questionnaire also, the Danish Government reserves its decision.

As the original suggestion has met with no opposition, the original text has been retained in Point 45 of the proposed conclusions.

III

CO-OPERATION AT THE NATIONAL LEVEL

I. Desirability and Form of International Regulations

*General Observations and Question 1*

Question 1 asked whether the Conference should adopt international regulations concerning co-operation at the national level, in the form of a Recommendation.

The Governments of Australia, Austria, Belgium, Bulgaria, Canada, China, Costa Rica, Finland, France, India, Iraq, Luxembourg, Mexico, Netherlands, New Zealand, Norway and Panama reply in the affirmative. The Government of Australia, however, expresses doubts regarding the results of formalising co-operation which already exists on an informal basis. The Government of Austria is doubtful regarding the possibility of adopting such regulations, which would in any case have to be limited to very general principles.

The Government of the United Kingdom considers that it would appear desirable to embody the main principles of the questionnaire in a Recommendation, but cannot express a final opinion, in advance of the discussions at San Francisco, on the question of the possibility of drawing up an acceptable Recommendation on this subject.
The Government of the Union of South Africa is of the opinion that any Recommendation adopted should, at the most, require a State Member to consider whether the subject matter of any projected measures of national scope falls within the terms of paragraph (e) of Section III of the Declaration of Philadelphia.

The Danish Government considers also that such a Recommendation would be difficult to adopt, and reserves its decisions pending discussion in the Conference.

The Government of Sweden states that the establishment of national economic councils, etc., does not appear to be of immediate interest to that country; it has therefore not replied to the questionnaire; Swedish employers and workers are represented on the various appropriate boards and agencies, and their organisations are systematically consulted during the preparation and implementation of economic and social measures of national scope.

The Swiss Government also abstains from a definite reply, but says it is clear that employers' and workers' organisations may be consulted during the preparation and implementation of economic and social measures of national scope; this Government also considers it justifiable in certain cases that these organisations should be associated in the administration of national institutions.

As most of the countries consulted give a favourable reply, Point 46 has been drafted in that sense.

II. Consultation of Employers' and Workers' Organisations

Question 2

In this question Governments were asked whether the international regulations should provide that the employers' and workers' organisations should be consulted during the preparation and implementation of economic and social measures of national scope.

The Governments of Australia, Austria, Belgium, Bulgaria, India, China, Costa Rica, Finland, France, India, Iraq, Luxembourg, Mexico, Netherlands, New Zealand, Norway, and Panama reply in the affirmative. The Government of Austria, however, is of opinion that such consultation should be provided for only
in the case of important economic and social measures, so as to avoid overburdening the national administrative system. Several Governments point out that the question of consulting these organisations is closely bound up with that of the establishment of agencies for co-operation at the national level. In this connection the Government of Austria states that bodies representing the interests of the workers and employers should only be consulted in so far as no advisory councils exist on which they are represented. The Government of the Netherlands takes up a similar point of view. The Government of Belgium states that the agencies for co-operation established by the State at the national level will necessarily include among their members representatives or delegates of the representative organisations of employers and workers; it is usual, it continues, for these organisations to be consulted in regard to all economic and social measures of national scope on which a Government may ask the agencies in question for an opinion, or which the agencies may examine on their own initiative in order to supply information to the competent authorities. The French Government also points out that questions 2 and 3 should be linked together.

The Governments of Poland, the Union of South Africa and the United Kingdom reply in the negative. In the opinion of the United Kingdom Government, while the fullest co-operation between the Government and the organisations of employers and workers is to be welcomed, it is not appropriate to bind the sovereign legislation or executive authority to consult these organisations in the preparation and implementation of economic and social measures of national scope.

The principle of a consultation of the occupational organisations is accepted by most of the Governments. Nevertheless, in order to take account of the remarks made by several Governments, which point out that the question of consultation is closely linked up with the method of establishing machinery for co-operation at the national level, it has been considered preferable that this point of the proposed conclusions should be restricted to laying down the principle that the occupational organisations should be associated in the preparation and implementation of economic and social measures of national scope, and that an indication of the methods of securing this co-operation should be left to the following point. Point 47 has been drafted accordingly.
III. Establishment of Machinery for Co-operation at the National Level

Questions 3 and 4

Question 3 asked whether the international regulations should recommend the establishment, by legislative or other means, of national advisory councils of a social and economic character, such as national economic councils, national labour councils, etc.

The Governments of Australia, Belgium, Bulgaria, Canada, China, Costa Rica, Finland, France, India, Iraq, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Panama, and the United Kingdom approve of the establishment of such advisory agencies. The Government of Austria considers that the establishment of special machinery for co-operation at the national level should not be laid down as a general obligation, but that the countries should be left free to obtain authoritative opinions on economic and social measures by consultation with the various representative bodies concerned or by taking the opinion of an advisory council. The Government of Norway states that it can agree in principle, and points out that in Norway, in the discussion of social questions of major importance, the organisations of the parties concerned have been represented.

The Governments of Poland and the Union of South Africa, on the other hand, are opposed to the establishment of such agencies. The South African Government argues that, given the wide existing variations, it is not practicable in any international instrument to attempt to detail the type of councils which should be established; the acceptance of paragraph (e) of Section III of the Declaration of Philadelphia appears to this Government to be adequate; it considers that this is not a matter on which an international instrument can require legislative action.

The only Governments which express a preference as between the different means (legislative or other) of establishing the proposed councils are those of Australia and Canada, which prefer establishment by or in consultation with the organisations concerned; and those of Iraq and Panama, which prefer establishment by legislative means. The other Governments accept either of the two methods suggested.
As explained at the close of the analysis of replies to question 2, this point of the proposed conclusions deals with the methods by which the co-operation of the occupational organisations at the national level can be secured, i.e., either by direct, and to some extent occasional, consultation of the organisations concerned, or by consultation arranged through national advisory councils on which they are represented. In the latter case Point 48, as drafted, leaves it to Governments to decide which method of establishment is preferable.

Question 4 related to the composition of the national advisory councils and the method of appointing their members. It referred to equality of representation of employers and workers, and to their nomination either directly by the representative occupational organisations, or by the competent authorities on the basis of proposals from these organisations.

Equality of representation for employers and workers is expressly accepted by the Governments of Austria (with the same reservations as are attached to its reply to question 3), Belgium, Bulgaria, China, Costa Rica, Finland, France, India (if such organisations exist), Iraq, Luxembourg, Mexico, Netherlands, Norway, New Zealand and Panama.

Direct nomination by the representative organisations of employers and workers is supported by the Government of China, and appointment by the competent authorities on the basis of proposals from the representative occupational organisations by the Governments of Belgium, Iraq and Panama. The other Governments express no preference.

In the opinion of the Australian Government, the form of any national advisory councils should be left to be determined locally, in full consultation with the appropriate employers' and workers' organisations.

The Governments of Canada, Poland, the Union of South Africa and the United Kingdom reply in the negative to this question. The Canadian Government considers that the proposed councils should be established by voluntary means and that the parties should therefore remain free to constitute them as they think fit. The South African Government is of the opinion that any advisory council or body set up by the State to investigate social or economic questions should be constituted in the manner calculated to yield the best and most expert solutions to the problems under consideration; the Government considers that social, economic and legislative projects affect
all citizens, whereas employers and workers form two categories only; it states further that it is desirable that equality between employers and workers should be maintained on any bodies where these questions are discussed, when representing their respective groups, but that it is impracticable to attempt to set out the method of selection, and that a Recommendation should at the most suggest that any such nominations should be made in consultation with representative organisations.

If co-operation between the occupational organisations and public authorities is to be secured at the national level, it appears indispensable that any advisory councils established should include representatives of the employers' and workers' organisations among their members. In view of the opinions expressed by the large majority of Governments, the form used in the questionnaire may be retained, with the addition, in order to give the method of appointing members greater flexibility when this function is entrusted to the competent authorities, that in such a case appointments would be made “on the basis of proposals from or after consultation with” the organisations concerned. Point 49 of the proposed conclusions has therefore been drafted in this sense.

IV. Functions of National Advisory Councils

Questions 5 and 6

Question 5 related to the functions of the national advisory councils, and asked more particularly whether they should have the functions of: (a) studying social and economic questions within their terms of reference, undertaking the necessary investigations to this effect, and submitting their opinions and recommendations to the competent authorities; and (b) giving a previous opinion on proposed legislation of an economic or social character within their terms of reference and on proposed regulations to apply such legislation.

The functions mentioned are accepted by the Governments of Australia, Austria (with the same reservations as are attached to its reply to question 3), Belgium, Bulgaria, Canada, China, Costa Rica, France, India, Iraq, Luxembourg, Mexico, Netherlands, New Zealand, Norway and Panama. The Norwegian
Government, however, considers it advisable to restrict the activities of the councils to matters which are submitted to them. The Government of Finland is of opinion that the functions of the councils should be specified by national legislation or by national agreement.

The Governments of Poland, the Union of South Africa and the United Kingdom are opposed to the list of functions contained in this question. The United Kingdom Government considers, in the first place, that the national advisory councils should not have the function of undertaking investigations, although they may submit their opinions and recommendations to the competent authorities; and secondly that the competent authority should not be required to undertake consultation with national advisory councils prior to the introduction of legislation of an economic or social character, although the Government regards discussion of such legislative proposals as desirable. The South African Government also considers that it is not practicable in international regulations to define the character of such councils or their functions.

In order to take account of the objections put forward, in the replies to this question and to question 6, regarding the investigatory functions of the agencies and their previous examination of proposed economic or social legislation or regulations to apply it, the terms of reference of the national advisory councils might be expressed in a more general way; this would of course not prevent Governments from giving the councils all the functions they thought fit, and particularly those mentioned above. Therefore only the functions of study and of submitting recommendations and opinions are specified in Point 50 of the proposed conclusions, which deals with this matter.

In question 6 Governments were asked whether the competent authorities should be required to submit to the national advisory councils, for their opinion, proposed legislation of an economic or social character falling within their terms of reference, and proposed regulations to apply such legislation.

This suggestion is approved by the Governments of Australia, Austria (with the same reservations as are attached to its reply to question 3), Belgium, Bulgaria, China, Costa Rica, France, India, Iraq, Luxembourg, Mexico, Netherlands, New Zealand, Norway and Panama. The Australian Government, however, adds "to the extent to which it is practicable from the point of view of national requirements". In the opinion
of the Belgian Government, in order to facilitate the task of the councils, the authorities should submit to them only the general outlines of proposed legislation and not the actual texts. The Netherlands Government states that the authorities should be exempt from this obligation when national interests would be endangered by consultation outside the direct Government sphere.

The Governments of Canada, Poland, the Union of South Africa and the United Kingdom, on the other hand, are firmly opposed to such an obligation. The Canadian Government states that there should be no compulsion, although it would be desirable to have the advice of advisory councils.

The Government of Finland states this is a matter for national legislation or national agreement.

In view of the objections made to compulsory consultation in the replies of Governments, and in view also of the considerable length of the preceding point, which specifies various possibilities, it does not appear advisable to include in a special point the idea of compulsory consultation touched on in question 6.

V. Participation in Administration of Social Institutions

Question 7

Question 7 related to the association of employers' and workers' organisations in the administration of national institutions for social security, employment, industrial health and safety, and other forms of labour welfare.

The principle of such association is accepted in general by the Governments of Australia, Austria, Belgium, Bulgaria, Canada, China, Costa Rica, Finland, France, India, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Panama, Poland and the United Kingdom. Nevertheless, some of these Governments make reservations regarding the character and extent of such association.

The Australian and Canadian Governments would prefer the occupational organisations to act in an advisory capacity only. The Government of Finland agrees in principle, but states that the scope of the association should be determined by national circumstances. The Netherlands Government considers
that, where appropriate, there should merely be close contact with the organisations of employers and workers in the administration of certain national institutions. In the view of the Polish Government, the suggested association should take the form of effective supervision over the administration of the national institutions in question. The United Kingdom Government replies that the competent authorities, in their administration of the institutions in question, should seek to secure the co-operation of employers' and workers' organisations in whatever form may be appropriate to the particular case; furthermore, the Government considers that the expression "associated in the administration of national institutions" is not clear, and would prefer a more precise formula. The French Government points out that it is not clear to what national institutions reference is made here; if institutions of a semi-public character are intended, the Government's reply is in the affirmative; on the other hand, if the national institutions in question are public departments themselves, the Government cannot see how occupational organisations could be associated in their administration.

The Government of Iraq is opposed to mention of this subject in the Recommendation. The Government of the Union of South Africa also replies in the negative, adding that such association should be voluntary and should be sought by the State where the subject matter warrants it.

In accordance with the opinion generally expressed by Governments, it appears that the principle suggested in question 7 may be retained, but in a more flexible form. In order to meet various national situations and requirements, it might be laid down only that "appropriate action should be taken" to associate the occupational organisations in this work; such a formula would leave each country full freedom on the matter. The term "administration" should, of course, be understood in the widest sense; the intention is that the occupational organisations should be associated in the work of the national institutions in question in a form to be specified by national regulations (representation on the policy-making, administrative, or advisory bodies of the institutions concerned; consultation, etc.). Point 51 of the proposed conclusions has therefore been drafted in this sense.
CHAPTER III

PROPOSED CONCLUSIONS

The following points are considered suitable for inclusion in international regulations. The Office is therefore requested to take the succeeding provisions into account in preparing the draft texts to be submitted to Governments.

A. APPLICATION OF THE PRINCIPLES OF THE RIGHT TO ORGANISE AND TO BARGAIN COLLECTIVELY

I

Proposed Form of the International Regulations

1. International regulations concerning the application of the principles of the right to organise and to bargain collectively to be adopted in the form of a Convention.

II

Proposed Conclusions Relating to a Convention Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively

I. GUARANTEE OF THE WORKERS' RIGHT TO ORGANISE

2. The workers to be accorded adequate protection against all acts of anti-union discrimination in respect of their employment and especially against acts designed to—

(a) make the employment of a worker dependent on the condition that he shall not join a union or shall withdraw from one to which he belongs;

(b) prejudice a worker by reason of his membership of a union or his union activities;

(c) cause the dismissal of a worker by reason of his membership of a union or his union activities.
II. PROTECTION OF WORKERS' ORGANISATIONS

3. (a) Workers' organisations to be accorded adequate protection against all acts of interference, on the part of employers, employers' organisations or their agents, in their establishment, functioning or administration.
   
   (b) Acts also to be deemed to constitute wrongful interference which are designed to—
   
   (i) effect the establishment of workers' organisations under the domination of employers;
   
   (ii) support workers' organisations by financial or other means with the object of placing such organisations under the control of employers.

III. ACTS OF WRONGFUL COERCION

4. Employers and workers to be accorded adequate protection against all acts of wrongful coercion—such as assault and violence—designed to interfere with the free exercise of their right to organise.

IV. UNION SECURITY CLAUSES

5. Provisions in national regulations requiring membership of a union as a previous condition to employment or as a condition to maintenance in employment not to be covered by this Convention.

V. GUARANTEE OF THE PRINCIPLE OF COLLECTIVE BARGAINING

6. Appropriate measures to be taken to bring about negotiations between employers and employers' organisations on the one hand, and workers' organisations on the other, with a view to regulating conditions of employment by means of collective agreements.

VI. SUPERVISORY MEASURES

7. Appropriate machinery to be established, if necessary, for the purpose of ensuring respect for the right to organise and to bargain collectively as defined in Points 2, 3, 4, 5 and 6 above.

B. COLLECTIVE AGREEMENTS

I

Proposed Form of the International Regulations

8. International regulations concerning collective agreements to be adopted in the form of a Recommendation.
II
Proposed Conclusions Relating to a Recommendation Concerning Collective Agreements

I. COLLECTIVE BARGAINING MACHINERY

9. (a) Appropriate machinery corresponding to the particular conditions existing in each country to be established, if necessary, which would be available to assist the parties in the conclusion, revision and renewal of collective agreements.

(b) The organisation, methods of operation and functions of such machinery to be determined by national regulations.

II. DEFINITION OF COLLECTIVE AGREEMENTS

10. For the purpose of applying the international regulations, “collective agreements” to be understood to mean all agreements regarding terms and conditions of employment concluded between an employer, a group of employers or an employers’ organisation on the one hand, and a workers’ organisation on the other.

III. EFFECTS OF COLLECTIVE AGREEMENTS

11. (a) Employers and workers bound by a collective agreement or who are members of the contracting organisations not to be able to agree to include in individual contracts of employment stipulations contrary to those contained in the collective agreement.

(b) Stipulations in individual contracts which are contrary to the collective agreement to be null and void and automatically replaced by the corresponding stipulations of the collective agreement.

(c) However, stipulations in individual contracts which are more favourable to the workers than those prescribed by a collective agreement not to be deemed contrary to the collective agreement.

12. The stipulations of a collective agreement concluded between one or several employers on the one hand, and a workers’ organisation representing the majority of the workers concerned on the other hand, to apply to all the workers in the service of the employer or employers bound by the collective agreement.

IV. EXTENSION OF COLLECTIVE AGREEMENTS

13. National regulations, taking account of the particular conditions existing in each country, to prescribe appropriate measures to enable the benefit of collective agreements concluded by employers’ and workers’ organisations representing respectively a majority of the employers and workers to be extended to all the employers and workers engaged within the industrial and territorial scope of such agreements.
V. Interpretation of Collective Agreements

14. Disputes arising out of the interpretation or application of a collective agreement to be submitted to a procedure for settlement agreed to by the parties and, if this breaks down, to be referred to an appropriate compulsory procedure.

VI. Responsibilities of Employers' and Workers' Organisations Parties to Collective Agreements

15. (a) Employers' and workers' organisations parties to collective agreements to undertake to determine by agreement their respective obligations resulting from the application of such collective agreements.

(b) The legal regulation of such responsibility to be contemplated only in the absence of its regulation by agreement.

(c) National regulations to provide that such movable or immovable assets as are indispensable to the normal functioning of employers' and workers' organisations shall not be liable to distraint.

VII. Supervision of Application of Collective Agreements

16. (a) Employers' and workers' organisations parties to collective agreements to ensure supervision of the application of such collective agreements.

(b) In the absence of adequate supervision by the organisations concerned, labour inspectors or an inspectorate established ad hoc to be empowered to supervise the application of collective agreements.

C. Conciliation and Arbitration

I

Proposed Form of the International Regulations

17. International regulations concerning voluntary conciliation and arbitration to be adopted in the form of a Recommendation.

II

Proposed Conclusions relating to a Recommendation Concerning Voluntary Conciliation and Arbitration

I. Voluntary Conciliation

18. Voluntary conciliation authorities, having regard to the particular conditions existing in each country, to be established on a permanent basis and in sufficient number to enable them to offer their assistance to the parties in the prevention and settlement of collective industrial disputes.
19. (a) Voluntary conciliation authorities of a multilateral character to include equal numbers of representatives of organisations of employers and workers.

(b) The organisations of employers and workers concerned in a dispute to be associated in all stages of the procedure.

20. (a) The procedure to be free of charge and expeditious; the periods prescribed by the national regulations for examination of the dispute to be fixed in advance and kept to a minimum.

(b) Possibility of the procedure being set in motion, either *ex officio* by the voluntary conciliation authority, or on the initiative of any of the parties to the dispute.

21. If a dispute has been submitted to a conciliation authority with the consent of all the parties concerned, the latter to abstain from strikes and lockouts while conciliation is in process.

22. Agreements which the parties may reach either during conciliation procedure, or as a result thereof, to be drawn up in writing and be treated, for all useful purposes, as freely concluded collective agreements.

II. VOLUNTARY ARBITRATION

23. A permanent system of voluntary arbitration to be established to which the parties might have recourse in order to ensure a settlement of collective industrial disputes where the voluntary conciliation procedure has broken down.

24. If a dispute has been submitted to arbitration for final settlement with the consent of all the parties concerned, the latter to be required to accept the arbitration award.

D. CO-OPERATION AT THE LEVEL OF THE UNDERTAKING

I

Proposed Form of the International Regulations

25. International regulations concerning co-operation between employers and workers at the level of the undertaking to be adopted in the form of a Recommendation.

II

Proposed Conclusions Relating to a Recommendation Concerning Co-operation between Employers and Workers at the Level of the Undertaking

I. ESTABLISHMENT OF MACHINERY FOR CO-OPERATION

26. In order to ensure mutual consultation between the employer and his personnel with regard to all social or economic questions of common interest, appropriate measures to be taken to promote
the establishment at the level of the undertaking of works committees, production committees, permanent staff delegations or similar machinery for co-operation.

II. SCOPE OF THE REGULATIONS

27. Machinery for co-operation to be established in all industrial and commercial undertakings, public or private, in which the establishment of such machinery would contribute to the promotion of the objects indicated in Point 26.

III. APPOINTMENT OF REPRESENTATIVES OF THE PERSONNEL

28. (a) The representatives of the personnel on the committees or other bodies for co-operation to be elected by the whole of the workers in the undertaking by direct secret ballot, in accordance with the provisions laid down by national regulations.

(b) Where the machinery for co-operation is established by collective agreements, possibility of the representatives of the personnel being appointed by the workers' organisations concerned.

IV. COMPOSITION OF REPRESENTATIVE BODIES

29. The number of representatives of the personnel on the committees, etc., for co-operation to be determined with due regard to the number of personnel employed in the undertaking.

30. The different categories of persons employed in the undertaking—manual workers, salaried employees, technicians, etc.—to be represented on the committees, etc., for co-operation.

V. WORKING OF THE MACHINERY FOR CO-OPERATION

31. The committees, etc., for co-operation to meet at regular intervals and whenever they have urgent questions to consider.

32. Appropriate action to be taken to secure collaboration between the machinery for co-operation in the undertaking and the occupational organisations of employers and workers concerned.

VI. FUNCTIONS OF THE MACHINERY FOR CO-OPERATION

33. The machinery for co-operation to have more particularly the following functions of a social character:

(a) to secure the application of collective agreements, social legislation and regulations regarding health and safety;

(b) to give an opinion regarding the engagement and discharge of employees;

(c) to promote the vocational training of the different categories of employees;
(d) to participate in the administration of social schemes for the welfare of the employees and their families; and
(e) in general, to promote a good understanding between the management and the personnel.

34. The machinery for co-operation to have more particularly the following functions of an economic character:

(a) to study any suggestion put forward by the management of the undertaking or by the personnel with the object of raising the level of production or improving the efficiency of the undertaking;
(b) to propose to the management of the undertaking the rewards to be granted to employees whose suggestions have been effectively applied;
(c) to study the methods of production used in the undertaking and to make proposals to the management of the undertaking regarding the best utilisation of its material and human resources; and
(d) to inform the personnel regarding the economic and technical situation of the undertaking, subject to the obligations laid down in Point 36.

VII. OBLIGATIONS OF THE MANAGEMENT

35. The management of the undertaking to be required—

(a) to place at the disposal of the committees or other bodies for co-operation the premises, material, and, in appropriate cases, the staff essential to its meetings or indispensable for its secretariat;
(b) to allow to the representatives of the personnel the time required for performance of their functions and to remunerate them for this time as hours of work;
(c) to consult the said committees, etc., on questions concerning the organisation and general conduct of the undertaking;
(d) to inform the said committees, etc., at regular intervals, but at least once a year, regarding the activity of the undertaking and the plans for the coming twelve months.

VIII. OBLIGATIONS OF REPRESENTATIVES OF THE PERSONNEL

36. The representatives of the personnel on the committees or other bodies for co-operation to be required, within the limits laid down by national legislation, not to disclose confidential information which may be communicated to them by the management.

37. The representatives of the personnel to be required to give an account of their activity to the whole personnel at regular intervals.

IX. PROTECTION OF REPRESENTATIVES OF THE PERSONNEL

38. Appropriate action to be taken to ensure that the representatives of the personnel are adequately protected in the performance of their functions.
E. CO-OPERATION AT THE LEVEL OF THE INDUSTRY

I

Proposed Form of the International Regulations

39. International regulations concerning co-operation between public authorities and employers' and workers' organisations at the level of the industry to be adopted in the form of a Recommendation.

II

Proposed Conclusions Relating to a Recommendation concerning Co-operation between Public Authorities and Employers' and Workers' Organisations at the Level of the Industry

I. Establishment of Machinery for Co-operation

40. Agencies for co-operation to be established on a permanent basis in the different branches of industry and commerce, either by agreement between the employers' and workers' organisations concerned or by legislation, for the purpose of examining the social, technical and economic problems of the branch of industry or commerce concerned.

41. Such agencies to be established at the national level or, if the needs of the branch of economy concerned so require, on a regional basis.

42. The employers' and workers' organisations concerned to be represented on an equal basis in the agencies for co-operation.

II. Functions of the Machinery for Co-operation

43. The agencies for co-operation to have more particularly the function of considering and proposing appropriate action—

(a) to raise the standard of life of the workers;

(b) to increase the level of production and efficiency of the branch of economy concerned.

44. The agencies for co-operation to have in addition the power to submit to the competent authorities opinions or recommendations on all questions of an economic or social character concerning the branch of economy in which they are established.

III. Co-operation in Nationalised Industries

45. Where certain branches of economy have been nationalised or established as public services, all appropriate action to be taken to ensure close and permanent co-operation between the authorities responsible for the administration of the nationalised industries and the workers' organisations concerned.
F. CO-OPERATION AT THE NATIONAL LEVEL

I

Proposed Form of the International Regulations

46. International regulations concerning co-operation between public authorities and employers' and workers' organisations at the national level to be adopted in the form of a Recommendation.

II

Proposed Conclusions Relating to a Recommendation concerning Co-operation between Public Authorities and Employers' and Workers' Organisations at the National Level

I. OBJECT OF CO-OPERATION

47. Appropriate action to be taken to associate employers' and workers' organisations in the preparation and implementation of economic and social measures of national scope.

II. METHODS OF CO-OPERATION

48. The co-operation envisaged in Point 47 above to be secured by the following methods:

(a) consultation of the employers' and workers' organisations concerned;

(b) establishment of national advisory councils of a social and economic character such as, for example, national economic councils, national labour councils, etc.

III. PARTICIPATION IN THE NATIONAL ADVISORY COUNCILS

49. The national advisory councils referred to in paragraph (b) of Point 48 above to include among their members equal numbers of employers' and workers' representatives either nominated directly by the employers' and workers' organisations concerned or appointed by the competent authorities on the basis of proposals from or after consultation with such organisations.

IV. FUNCTIONS OF NATIONAL ADVISORY COUNCILS

50. National advisory councils to have more particularly the functions—

(a) of studying social and economic problems falling within their terms of reference;

(b) of submitting their opinions and recommendations to the competent authorities.
V. Participation in Administration of Social Institutions

51. Appropriate action to be taken to associate employers' and workers' organisations in the administration of national institutions, such as those responsible for social security and welfare, organisation of employment, industrial health and safety, labour protection, etc.

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Final Resolution submitted to the Conference

The Conference,

Having approved the report of the Committee appointed to examine Item VIII of its agenda, and

Having in particular approved as general conclusions, with a view to the consultation of Governments, proposals to be retained in the drawing up of a Convention concerning the application of the principles of the right to organise and to bargain collectively, and of several Recommendations concerning collective agreements, voluntary conciliation and arbitration, co-operation between employers and workers at the level of the undertaking, co-operation between public authorities and employers' and workers' organisations at the level of the industry, and co-operation between public authorities and employers' and workers' organisations at the national level,

Decides to place on the agenda of its next general session:

1. The question of the application of the principles of the right to organise and to bargain collectively with a view to final decision on a Convention on the subject;

2. The questions of collective agreements, voluntary conciliation and arbitration, co-operation between employers and workers at the level of the undertaking, co-operation between public authorities and employers' and workers' organisations at the level of the industry, and co-operation between public authorities and employers' and workers' organisations at the national level, with a view to final decision on several Recommendations on those subjects.