Seventh Item on the Agenda:

Discrimination in the Field of Employment and Occupation
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INTRODUCTION

The possibility of placing the subject of discrimination in the field of employment and occupation on the agenda of the International Labour Conference was first considered by the Governing Body of the International Labour Office at its 127th Session (Rome, November 1954). It decided that the study of the subject should be pursued and in coming to this decision it took into account the invitation extended to the Organisation by the United Nations Economic and Social Council to undertake a study in this field (Resolution 545 C (XVIII) adopted at the Council's 820th plenary meeting, 29 July 1954).

The Governing Body reconsidered the matter on the basis of fuller information at its 129th Session (Geneva, May-June 1955) and again at its 130th Session (Geneva, November 1955), when it decided to place the subject of discrimination in the field of employment and occupation on the agenda of the 40th (1957) Session of the International Labour Conference. It expressed the view that the documents submitted to the Conference should deal with discrimination on all the grounds listed in article 2 (1) of the Universal Declaration of Human Rights and this view has been taken into consideration in the preparation of this report.

The report is divided into five chapters, followed by a questionnaire and an appendix. In Chapter I the general background is discussed; Chapter II contains a clarification of concepts and explains the scope of the subject; in Chapter III grounds of distinction and types of discrimination are analysed; Chapter IV refers to national action and international standards directed towards the prevention of discrimination; and in Chapter V the Conclusions arrived at are linked with the individual points on which the governments' views are sought in the questionnaire. The appendix gives extracts from various international labour Conventions and Recommendations containing non-discrimination provisions not referred to elsewhere in the report.

This report will be followed by a second report based on the replies of the governments to the questionnaire and indicating the principal points arising under the item which require consideration by the Conference.

In accordance with the Standing Orders of the Conference the report is being circulated so as to reach governments not less than 12 months before the opening of the 40th Session of the International Labour Conference on 5 June 1957.

The Standing Orders contain the following provision (article 39, paragraph 2) with regard to the replies of the governments:
The replies of the governments should reach the Office as soon as possible and not less than eight months before the opening of the session of the Conference at which the question is to be discussed. In the case of federal countries and countries where it is necessary to translate questionnaires into the national language the period of four months allowed for the preparation of replies shall be extended to five months if the government concerned so requests.

In order, therefore, that the Office may have time to examine the replies and prepare and despatch the second report to reach governments early enough for the proper consideration of the proposals contained therein, it is requested that the replies to the questionnaire (with an indication of the reasons for them) should reach the International Labour Office in Geneva not later than 5 October 1956.
CHAPTER I

GENERAL BACKGROUND

Recognition of the fundamental principle of the equality of rights of all human beings has been basic to the activities of the International Labour Organisation since its creation and has inspired many of the decisions of the International Labour Conference. One of the guiding principles laid down for the Organisation in its 1919 Constitution was that "the standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein". ¹ This principle found specific expression in a number of Conventions and Recommendations adopted between 1919 and 1939 and a considerable contribution to its fulfilment was made by the adoption of the general standards contained in these instruments and the extension of their application over many parts of the world to all workers without distinction.

The events preceding and arising during the Second World War revealed the need for a specific restatement of the principle. Accordingly, in 1944, the Conference, in adopting the Declaration of Philadelphia, affirmed, *inter alia*, that "all human beings irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity". It also recognised the obligation of the Organisation to further among the nations of the world programmes which would achieve, *inter alia*, "the assurance of equality of educational and vocational opportunity".

In the post-war period the Conference has sought to apply this principle in the various fields to which it has turned its attention—for example social policy in non-metropolitan territories, employment organisation and vocational training, freedom of association, minimum standards of social security and protection of migrant workers.

The question of the prevention of discrimination in employment is therefore by no means a new subject to the Conference. However, Conference decisions aimed at the elimination of discrimination have affected specific areas of policy. Other areas have been left untouched.

The time now appears to be appropriate to consider the means by

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which a greater equality of rights might be achieved in the major fields of labour policy with which the Organisation is concerned. Work is proceeding along these lines in other fields. Within the United Nations, the Commission on Human Rights, together with its Sub-Commission on Prevention of Discrimination and Protection of Minorities, is following a programme designed to lead to a fuller implementation of the Universal Declaration of Human Rights. The Sub-Commission has itself undertaken a study of discrimination in education and the Economic and Social Council at its XVIII Session (1954) adopted Resolution 545 C (XVIII), inviting the I.L.O. to undertake a similar study in the field of employment and occupation. Moreover there are factors lending urgency to the question, such as the growing consciousness of human rights in many parts of the world, the rapid evolution of ethnic groups of previously inferior status, and the emergence of new countries, often of heterogeneous population, which have to face particularly difficult problems of inter-group relations. Guidance on the standards which might be applied in the various fields of social policy would undoubtedly help in a more rational approach to the solution of these problems.
CHAPTER II

CLARIFICATION OF CONCEPTS AND SCOPE OF THE SUBJECT

MEANING OF "DISCRIMINATION"

Consideration of the conclusions arrived at by the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities is helpful in clarifying the concept of "discrimination". The word is used by the Sub-Commission not as referring to all distinctions but only to distinctions which operate to the detriment of individuals belonging to particular groups, and "prevention of discrimination" has been taken as meaning "the prevention of any action which denies to individuals or groups of people equality of treatment which they may wish."

In a memorandum on the subject the Secretary-General of the United Nations suggested certain further clarifications of the ideas embraced by the word "discrimination":

...discrimination includes any conduct based on a distinction made on grounds of natural or social categories, which have no relation either to individual capacities or merits, or to the concrete behaviour of the individual person.1

Discrimination might be described as unequal and unfavourable treatment, either by denying rights or social advantage to members of a particular social category; or by imposing special burdens on them; or by granting favours exclusively to the members of another category, creating in this way inequality between those who belong to the privileged category and the others.2

Discrimination might be defined as a detrimental distinction based on grounds which may not be attributed to the individual and which have no justified consequences in social, political or legal relations (colour, race, sex, etc.), or on grounds of membership in social categories (cultural, language, religious, political or other opinion, national circle, social origin, social class, property, birth or other status).3

In the same memorandum, the Secretary-General suggested that the following criteria might be found useful in any attempt to determine whether practices are discriminatory or not:

Discriminatory practices are those detrimental distinctions which do not take account of the particular characteristics of an individual as such, but take account of social, political or legal categories which have no justified consequences in social, political or legal relations (colour, race, sex, etc.), or on grounds of membership in social categories (cultural, language, religious, political or other opinion, national circle, social origin, social class, property, birth or other status).

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2 Ibid., p. 10.
into account only collective qualifications deriving from his membership in a certain social or other group.

Certain distinctions, which do not constitute discrimination, are justified. These include: (1) differences of conduct imputable or attributable to an individual, that is to say, controlled by him (i.e. industriousness, idleness; carefulness, carelessness; decency, indecency; merit, demerit; lawfulness, delinquency); and (2) differences in individual qualities not imputable to the person, but having a social value (physical or mental capacity). ¹

In regard to the types of "natural or social category" which may give rise to discriminatory treatment, it will be remembered that the Declaration of Philadelphia speaks of the rights of all human beings "irrespective of race, creed, or sex". The Universal Declaration of Human Rights goes further and affirms the principle of equal entitlement to rights "without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (article 2 (1)). Certain of the distinctions specifically named may have less relevance in connection with employment than they have in connection with rights in other fields, while, within the expression "or other status", there may be distinctions of special importance in the employment field.

**Points in the Employment Process at Which Distinctions May Occur**

**Access to and Tenure of Employment**

It is necessary to examine not only the position at the stage of engagement for employment itself—though this is of the greatest importance—but also the position at the point of entry to any vocational training which is an essential preparation for such employment, the degree of security with which employment once obtained is held, and the possibilities of advancement from it to better employment. Inequalities can arise at all these points.

It seems helpful to distinguish between access to public employment and access to private employment. Equality of access to the former may be considered to be of greater importance on principle; it may also be easier to put into effect. In regard to private employment, greater difficulty attaches both to the analysis of the situation and the proposal of remedies. It is not so easy to say in any particular instance whether selection is discriminatory or not; there is no unanimity of opinion on the extent to which it is desirable for a State to control discriminatory selection; and where such a control is decided upon, it is not easy to put into force.

The reason behind discriminatory selection may be the employers’ own preference or prejudice, but it may also happen that, though personally disposed to engagement on merit, he adopts another course to comply with government policy or to avoid trouble with workers already in his employ.

Where freedom to engage in employment on one’s own account or to practise in a professional capacity is conditional on possession of a licence or title granted at the discretion of the national authorities or of autonomous professional bodies, there may be complaints that complete objectivity is not observed as regards varying professional qualifications; this may be particularly so in the case of the recognition of professional qualifications acquired in foreign countries.

Over and above these there may be a discriminatory element in the special restrictions which apply to the employment of aliens.

With regard to security of tenure of employment, some groups may be more vulnerable to discharge than others and, where the normal channel of access to higher-paid employment is promotion from below, it may be more difficult for one group than for another to climb from the lower ranks to the higher.

**The Terms under Which Employment Is Carried Out**

Discrimination in remuneration is taken as meaning distinctions between members of different groups performing work of equal value. In considering complaints of discrimination, care must be taken to check whether the work performed by differently remunerated groups is in fact work of equal value. While doubt may remain in many cases, there do exist other cases where differential rates of remuneration are clearly paid for work of equal value.

It is also necessary to consider any divergences in terms of contracts of employment applying to different groups. Even though there may be little *prima facie* evidence of discriminatory terms in regard to hours of work, rest periods, annual holidays with pay, superannuation arrangements, social security provisions connected with employment, etc., the possibility of distinctions arising in such connections must not be overlooked. Nor should health and safety precautions be left out of consideration.

Welfare facilities provided by the employer also require careful examination, particularly those concerned with meals, housing and recreation.

**Freedom of Association and the Right to Organise**

Equality in the right to join or to form trade unions, to engage in lawful trade union activities and to conclude collective agreements with
Denial of any of the advantages of trade union membership may result in handicaps in the defence of the workers' interests vis-à-vis the State, employers and fellow-workers.

Special Difficulties in Applying the Concept of Non-Discrimination to the Field of Employment

Certain special complications arise in dealing with this subject which would not arise in dealing with discrimination in some other fields. According to the suggestions put forward in the United Nations memorandum already referred to, distinctions made on the grounds of a person's merit or ability would be justified. This certainly holds true in relation to access to employment and to remuneration, where merit and ability quite properly affect the individual's position; on the other hand, it would seem to be wrong to take an individual's merit or ability into consideration in safety or health precautions or in welfare provisions. Seniority is another factor which it would be proper to take into consideration in some connections—selection of workers for discharge, promotion, remuneration—but not in others.

Moreover the field of employment is full of other inequalities not due to discriminatory causes but arising from such factors as differences in upbringing, in area of residence, in economic status or in attitude to employment. In certain cases it is by no means easy to determine the extent to which observed differences are caused by these natural factors and the extent to which they are contributed to by artificial and discriminatory factors.
CHAPTER III

ANALYSIS OF GROUNDS OF DISTINCTION AND FORMS OF DISCRIMINATION

This chapter contains an analysis of the grounds on which adverse distinctions are made and the various forms of discrimination that are found to occur with respect to each category. The grounds of distinction are those included in the Universal Declaration of Human Rights, in addition to certain other forms of status which may give rise to adverse distinctions. They are as follows: race and colour; sex; language; religion; political and other opinion; national origin; social origin; property; birth; age, disablement; and trade union affiliation. These grounds are treated separately below in relation to the degree to which they give rise to discrimination in employment, generally, and in relation to the various forms that discrimination may take in the employment process, i.e. access to and tenure of employment, the terms under which employment is carried out and freedom of association.

RACE AND COLOUR

It is suggested that race and colour can be considered together, since colour difference is just one, albeit the most visible, of the ethnic differences occurring in mankind.

The causes of friction between races are deep and their study forms an extensive branch of sociology.\(^1\) Reference is made in the ensuing paragraphs only to certain factors which appear to be of special importance in consideration of discrimination in employment.

It was at one time believed that there might be inherent differences in intellectual capacity between different races, but scientific research has revealed no basis for this belief. That is not to say that in a given situation one ethnic group may not on the whole have employment capacities much inferior to another group. Where such a situation exists, however, the explanation must be sought, not in ethnic differences, but in other factors such as cultural background, opportunity for self-development, unfamiliarity with wage-earning employment or general state of health. Any distinctions which are imposed solely on the basis of race without

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\(^1\) For treatment of certain of the aspects of this subject cf. the pamphlets published by U.N.E.S.C.O. in the three series entitled "The Race Question in Modern Science", "Race and Society" and "The Race Question and Modern Thought".
regard to the extent to which the individual may have overcome these environmental handicaps must be held to be discriminatory.

Where historical circumstances have brought such groups of different racial origins together they have seldom been groups at the same stage of social evolution and this has fundamentally affected relations between them. Thus relations between persons of European stock and African stock in the American Continent have been conditioned by the fact that the former have been mostly the descendants of free migrants with a relatively high standard of social evolution while the latter have been mostly the descendants of the freed slave population. In the African Continent relations between the European and the indigenous African have been conditioned by the gulf in the standard of evolution between the two peoples at the time of their earlier contacts; and the same holds true to a greater or less extent wherever wage-earning employment was introduced among indigenous peoples by different ethnic groups. Distinctions which today follow racial lines may originally have been determined by quite other factors. It would appear logical in situations of this kind for such distinctions to fall away as soon as the gulf in evolution is spanned. That is indeed what happens in certain cases but in others there are forces working for the status quo.

These include prejudices and emotional reactions, and in some cases conflicts of interest, since persons who have enjoyed privileges by reason of their race may be reluctant to surrender them. There is also in some countries the apprehension that economic equality may lead through social and political equality to miscegenation and the submergence of an entire ethnic group.

Where this latter apprehension exists and a policy is pursued of providing as far as possible for the separate development of the races, there may be labour legislation which prescribes or seeks to encourage different treatment of workers according to their race. Instances also still remain in certain non-metropolitan territories of different legislation for indigenous and non-indigenous workers.

In general, however, unequal treatment on racial grounds does not stem from legislation, but from practices often rooted in long established custom. Thus training institutions may have admission practices, written or unwritten, which exclude certain races. Thus also in the engagement of workers there may be a conventional demarcation between the types of employment considered suitable for the respective races, with the result that an individual finds his choice of employment limited to a range of jobs which includes mostly the heavier, more unpleasant and lower-paid work. In particular he may find he cannot obtain jobs in which he would have supervision over workers of another race. Where trade unions are organised on a racial basis a group which benefits from such practices may seek to maintain them. In other areas particular types of employ-
ment may have tended for historical reasons to be concentrated in the hands of members of particular races and there is resistance to a change which would open up occupations to all races.

Within the limits imposed by custom there is naturally a wide variety of practice depending on the outlook of the particular person who is responsible for decisions on the engagement, promotion, or discharge of workers. The attitude of workers in the establishments and their readiness to accept persons of other races as equals may also vary from establishment to establishment, depending to a large degree on whether or not they feel their own economic or social position is threatened by the introduction of other races.

Differential rates of remuneration for equal work according to the race of the worker appear to be far less common today both in public and private employment than they were, say, a quarter of a century ago. The establishment of standard rates of pay, whether by official wage-fixing machinery or by collective bargaining, has made a major contribution to this development, as has also a change in government policy in many areas. In non-metropolitan territories earlier distinctions between the salary scales of indigenous and non-indigenous personnel are gradually disappearing, and the tendency is towards fixing salary scales for each post irrespective of whether it is occupied by an indigenous or non-indigenous person; any special inducements needed to attract qualified personnel from outside to fill posts for which trained indigenous personnel are not available are provided by means of "expatriation" or other allowances.

In areas where segregation of the races is most marked there may be a separate establishment for public officials of the different races, and holders of posts performing not identical but very similar duties may be paid on different scales. Similarly, in industry, workers of different races performing similar but not identical work in segregated establishments may be placed in separate occupational categories carrying different rates of pay. It is not possible to say without a comparative evaluation whether the difference in remuneration is commensurate with the differences in responsibilities or output, or whether the situation does not reflect an artificially high supply of manpower of one race resulting from restriction on its access to employment in other fields. It should, however, be borne in mind that sometimes there is such a wide gap between the average productivity of workers of the different racial groups that provision of separate occupational categories carrying lower remuneration has been the only way of opening up access to employment for the less productive group.

In non-metropolitan territories and other underdeveloped territories there are often divergent provisions governing contracts of employment for indigenous and non-indigenous workers. Many of these divergent
practices evolved as protective measures for the weaker groups and are still justified by the widely differing habits and social and family organisation of the persons to whom they apply; for instance, provisions for deferred pay in the case of migrant workers appear still to be desirable. In the gradual process of integration of the indigenous inhabitants into modern types of wage-earning economies resentment, however, sometimes may be caused by the continuation of differences of treatment in these matters.

Adverse distinctions on grounds of race do not appear to arise in connection with hours of work or the application of safety and health precautions.

In areas where social segregation of the races is the normal practice outside the workplace it may also be followed within the factory, resulting in the provision of separate canteen, toilet or recreational facilities.

In regard to trade union rights, different regulations may exist governing the industrial relations of indigenous and non-indigenous workers, with the result that the former do not enjoy equality of rights in the full processes of industrial negotiation. Independently of any legislative provisions, unions themselves may have developed along racial lines and their constitutions or admission practices may exclude certain races; or members of different races may be admitted to membership subject, however, to being organised in separate branches. In general, however, discriminatory practices of this kind are declining and the tendency is towards full interracial organisation.

**Sex**

In view of the importance which the International Labour Conference has always attached to the protection of women workers, it is necessary to emphasise at the outset that special legislation, determined by the particular needs of women workers and aimed at reducing the various handicaps which affect them in employment, is not discrimination in the sense used in this report.

The employment position of women is closely bound up with their general status in society. Where women enjoy equality or near-equality of status with men, the adverse distinctions to which they are subject in access to employment are few. Where, on the other hand, their status is markedly inferior to that of men, the probability is that women are either barred by custom from many types of employment outside the home or are restricted to the more menial work.

In the latter situation improvement of their employment status would seem to have to await improvement of their status generally. Admittedly in some circumstances advances can be made in the employment field first—in times of manpower shortage (e.g. in certain of the countries involved in the two world wars) women have been given greater employ-
ment opportunity which has, in turn, by proving their equal ability and giving them greater responsibility and financial independence, improved their status generally. But these circumstances seldom apply in countries where the status of women is low; precisely in such countries there are often insufficient employment opportunities to occupy the male population of working age.

There is in every country a range of jobs commonly regarded as exclusive to men, either because the work, although not classified by law as heavy or dangerous work, requires physical effort in excess of that suitable for women, or because women are considered to lack the aptitude required. The extent of preconceived ideas about the aptitudes of women workers varies widely from country to country, but the dependence of modern industry on highly technical devices requiring aptitudes traditionally regarded as “male” bars a large number of skilled jobs to women. The situation in this respect is changing and conditions in the employment market have resulted in the opening of fresh occupations to women, and their acceptance in these occupations.

A special facet of the question is the position of married women. There are several factors which operate to the disadvantage of married women in regard to employment opportunity. One is the view that the protection of family life requires that no encouragement should be given to married women to enter or continue in employment outside the home. Another is the view, in conditions of unemployment, that married women who can be supported by their husbands should not take jobs which could provide support for heads of families and for unmarried persons who are dependent on their own earnings. A third is the belief that married women workers as a group are unstable members of the labour force owing to the conflicting claims on them of their domestic commitments. Clearly particular circumstances may justify distinctions against certain married women as individuals, but such distinctions must be regarded as discriminatory if they are applied solely because of sex and marital status and without regard to the individual married woman’s capacity to perform the employment in question.

Married women are not accepted in the established civil services of certain countries or, if accepted, may be debarred from certain functions, such as posts in the Foreign Service. In private employment the personnel policies of some employers provide that married women will not be engaged, or that the employment contracts of single women will be terminated on marriage.

Limitations on the contractual capacity of married women may restrict their opportunities to enter business or professions on their own account, and in some countries married women require the express or implied authority of their husbands to enter paid employment.

Differences of remuneration on grounds of sex are still common in a
number of countries. In the areas of employment where remuneration is determined by the State, the principle of equal remuneration for men and women is gaining progressively fuller acceptance. Where rates are fixed by collective bargaining this position has not yet been reached, but there is a tendency either for equal remuneration clauses to be included in agreements or for the gap between men's and women's rates to be reduced.¹

**LANGUAGE**

Language difference is a potential source of considerable inter-group hostility. However, in many plurilingual countries it has been found possible to introduce safeguards which ensure scrupulous fairness among the different linguistic groups. An important factor, particularly in relation to public employment, is the recognition of different languages as official languages enjoying parity of status; another is the provision of vocational training facilities in the different languages.

There are practical difficulties in ensuring full equality in training facilities in different languages, particularly in training for the professions and in respect of languages spoken by a small minority only. These may include difficulty in finding qualified teachers capable of teaching through the medium of the language concerned, absence of text books in that language or even the lack in some languages of the essential basic technical vocabulary. Furthermore, it may in certain circumstances be more conducive to equality of opportunity if, following basic education in their own languages, all students receive higher education in a majority or official language; this not only makes them eligible for a wider choice of posts but may equip them better to exchange views with their professional colleagues and to keep abreast of the latest developments. Therefore, although lack of training facilities in certain languages may sometimes be due to lack of concern for the rights of a linguistic minority or to a deliberate policy of extending the use of the majority language, it cannot be regarded in itself as evidence of discrimination.

In regard to access to jobs, fluency in a particular language or combination of languages may be a bona fide occupational requirement for a particular position. The question of discrimination only arises if the worker's language is irrelevant to the employment. Even where an employer gives preference to an applicant of his own language when he is engaging the worker, it can be argued that this applicant is *ipso facto* more suitable for the position owing to the greater ease of communication with the employer. As with individual employers' preferences based

¹ For recent statements regarding the position in a number of member countries see I.L.O.: *Summary of Reports on Unratified Conventions and on Recommendations (Article 19 of the Constitution)*, Report III (Part II), International Labour Conference, 39th Session, Geneva, 1956 (Geneva, 1956).
on applicants’ religious beliefs, the discriminatory effect is largely proportionate to the extent to which such action closes avenues of employment to members of a given group.

**Religion**

Where religious differences occur, unaccentuated by political differences, a spirit of mutual tolerance has in most cases developed, which extends to the field of employment. In fact, it is generally recognised that unless tolerance extends to the economic field there can be no complete freedom of religion.

Where the State attaches particular importance to maintaining the secular nature of public education, there may be a bias against the employment as teachers in state schools of persons who are members of religious orders or who have received their training in confessional institutions. It is suggested, however, that the issues involved in such cases are primarily ones of religious freedom outside the competence of the I.L.O.

Employers may, in certain circumstances, give preference to members of their own faith when they engage workers or accept apprentices; such cases occur more frequently in establishments employing few workers. In principle, this is discriminatory, but the results of such practices by employers of different faiths may tend to even themselves out and in general they do not seem to give rise to much protest.

Discrimination against Jews has special aspects in that it has most frequently been provoked by prejudices, based less on the difference of religion than on false racial ideas or dislike of the different customs of Jewish immigrants. In the past, including quite recent history, there have been severe obstacles hindering the equal access of Jews to many forms of employment and activity; today these are fortunately fewer, and in so far as they continue to exist they are concealed rather than overt.

There may be occasions when there are bona fide reasons for exercising a preference in the engagement of a worker for members of a certain faith; for instance, where private schools are administered by religious authorities it might generally be acceptable for preference to be given to teachers professing the religion concerned. Conversely, applicants of a given religion might be genuinely unsuitable for a given position by reason of their inability to work on a day of the week when such work is essential for the proper execution of the functions of the post.

In countries where trade unions are organised on a confessional basis a worker may be either unable or unwilling because of his religious beliefs to join a particular union; however, in such circumstances there is normally a parallel union giving comparable services which he can join and
as a result he is not subject to any marked disadvantage except where the former union enjoys distinct privileges resulting from a position of monopoly.

**Political or Other Opinion**

Freedom from discrimination in employment on grounds of political opinion has been achieved in many countries where there is no major difference of opinion between the leading political parties on the basic human rights and where the reins of government pass from one party or group of parties to another as a result of democratic processes. The principle has in most democracies been established that adherents of the group in power should not thereby enjoy privileges in public employment. This principle may not always be fully observed in practice; there are, for instance, in many countries allegations from time to time that provincial and local authorities exercise favour in making public appointments.

Also there are instances where governments maintain their right to nominate to key public posts persons whom they consider they can trust to carry out their policies and where in practice this may lead to the appointment of persons not on merit but in accordance with their political affiliation. More particularly where normal democratic processes do not have free play and a change of government takes place by coup d'état, there may well be cases of dismissal of public servants too closely identified with the displaced régime and their replacement by supporters of the coup d'état.

In a country where no political opposition exists, or where little latitude is allowed for differences in political opinion, or where the machine of a single political party has an assigned function to perform in the administration, it can result that a range of executive posts is filled by party members; individuals known to have opinions opposed to those of the party may not be retained in responsible posts or posts may be open only to persons who take an oath of loyalty to the régime. There may be a tendency to take assumptions as to the individual's political reliability into consideration and outspoken criticism may result in dismissal without compensation.

In admission to vocational education the "social attitude" of the applicant may be taken into consideration; while this may relate to extra-academic merit as shown by the applicant's social activities, it may also be interpreted to cover his political reliability. Students may lose their scholarships or be expelled for their hostile attitude to the Government.

In countries where there are parallel trade union movements based on differences of political outlook there may clearly be discrimination in admission to, and participation in the affairs of, a particular union;
but, as with unions organised on a confessional basis, the situation does not appear to lead to practical discrimination at the place of work unless a particular union enjoys exclusive privileges.

**National Origin**

It is necessary to distinguish two elements in the concept of national origin; one is the natural distinction of foreign ancestry, the other is the juridical distinction of nationality. Both affect migrant workers and their descendants, but in different ways.

Foreign ancestry can affect the position of individuals in much the same way as differences of race, language or religion, that is through the operation of prejudice on the part of private individuals. There may also be discrimination as between groups of persons of differing foreign origins.

Distinctions of nationality lead to restrictions prescribed by law affecting access to employment. It is a widespread custom for statutory restrictions to be applied to aliens during the initial period of residence and these are generally regarded as justified. However, continuation of such restrictions for an unreasonable period and after immigrants have established themselves in the country may well be discriminatory.

Nationality is a distinction which widely affects access to almost all forms of employment. There are often provisions laying down that public employment is open only to nationals of the country concerned, or that foreigners may be accepted in official posts only if nationals are not available. Such provisions are normally insisted upon by public opinion in order to ensure the maintenance of the national character of the administration.

In regard to access to private employment, provisions vary widely from country to country, depending on the degree to which full employment has been achieved, the demographic interests of the country in encouraging or discouraging immigration and the extent to which the country is apprehensive of foreign influence. They may be applied differently to persons entering as temporary workers and those entering as prospective settlers. The two main forms of regulation of the employment of foreigners are the permit system and the *numerus clausus* system.

Under the permit system the foreign worker is restricted to a particular post or sector of employment and he may change his employment only with the permission of the competent authorities. One purpose of this system is to enable the authorities to ensure that he does not occupy a post which could be filled by an unemployed citizen or long-resident foreigner; another is to prevent the undercutting of the wage level through the employment of foreigners at less than standard rates of pay. The latter purpose incidentally gives the foreign worker a guarantee against
discrimination in remuneration. This system facilitates manpower movements across frontiers which might otherwise not occur, and does not seem to give rise to serious objection so long as it is confined to the initial period of a foreign worker’s stay.

Under the *numerus clausus* system, which is usually alternative, but may occasionally be additional, to the permit system, there is no personal employment restriction on the foreign worker. The restriction applies to the employer, who is required to employ a certain percentage of nationals or to pay to nationals a stated percentage of the total of wages and salaries. This is prompted to some extent by the desire to avoid the development of any form of foreign monopoly over certain undertakings, trades or occupations. While in principle it is a restriction on the access to work of individual non-nationals, it is doubtful whether in practice it can be said to have an unduly restrictive effect, except where a quota is freshly imposed and certain employers seeking to comply with it have to close engagement to non-nationals over a period.

It is usual to lift restrictions on foreign workers and their families after a certain period of residence and to place them thenceforward on a general footing of equality with citizens in employment matters. The standard set in the Migration for Employment Recommendation (Revised), 1949 (Paragraph 16 (2)), is as follows:

In countries in which the employment of migrants is subject to restrictions, these restrictions should as far as possible—

(a) cease to be applied to migrants who have regularly resided in the country for a period, the length of which should not, as a rule, exceed five years; and

(b) cease to be applied to the wife and children of an age to work who have been authorised to accompany or join the migrant, at the same time as they cease to apply to the migrant.

This is a standard as yet applied by relatively few countries.

Foreign workers may be subject to other disabilities. For instance, they may be more liable to discharge on retrenchment. Although freely admitted to membership of trade unions they may be prevented from holding office.

In Chapter II it was suggested that distinctions were discriminatory only if they were based on characteristics over which individuals have no control. In many countries foreign workers can, after a given period of residence, obtain naturalisation with facility, and it is clear that any employment restrictions on long-term foreign residents have a less rigid discriminatory effect if they can be overcome by the acquisition of the nationality of the reception country.
Social Origin

There appears to be a tendency in all societies to social stratification, which is reflected in the employment field as a tendency for sons to be employed at the same occupational level as their fathers. The opposing tendency—social mobility—that is the extent to which persons move from one class to another, may be measured by the proportion of cases in which sons engage in occupations at a different level from their fathers. While measurement of social mobility is at best approximate, it seems clear that the rate of mobility varies from one country to another. One factor in a low rate of mobility may be preferential selection in access to professional training or employment, but there are many other factors to be considered. For instance, a country developing at a slow rate will present fewer opportunities for mobility than a country in a state of rapid economic development. Moreover, there are natural factors which favour the son or daughter of a professional worker in preparing for a professional career, such as cultural environment, and moral and economic support during study.

In the extreme form of social stratification—caste society—there are rigid traditions which have the effect of confining the lower castes to the more menial jobs and reserving to higher castes those jobs in highest respect. In a class society with less rigid traditions it is not easy to discern any arbitrary distinctions in the employment field which are directly traceable to the class origin of individuals. In the nineteenth century in some European countries class origin was undoubtedly an element taken into consideration in admitting individuals to certain employments. Today there appears to remain little more than an occasional preference determined by subtle factors such as an individual's family name or manner of speech, or the educational establishment which he attended.

In some countries there have been conscious attempts to create a new intelligentsia from persons of worker or peasant origin; these have involved adverse distinctions against persons originating from other classes. However, the tendency appears to be for preference on the basis of social origin to give way to competitive selection.

Property

Ownership of property or family wealth undoubtedly can give an individual certain advantages in access to or success in training or in employment but no evidence has come to light in studying this subject of any arbitrary distinctions whereby access to employment is expressly open only to persons possessing a stated amount of property or a stated private income.
Birth

Disabilities resulting from parentage have been considered primarily under the headings already discussed, such as race, religion and social origin. There is, however, the practice of limiting entry to apprenticeship in certain trades to the children of craftsmen in those trades. The restriction does not usually amount to an absolute ban but preferential treatment for family members is often sufficiently marked to constitute a discrimination against others.

Other Status

Among other forms of status which may give rise to adverse distinctions in employment are differences of age, disablement and trade union affiliation.

Age

In the more industrialised countries there is an increasing volume of complaints from older workers, both men and women, that they are not considered for vacancies on their merit. The markedly higher incidence of long-term unemployment among men and women over 40 or 45 years of age in some countries indicates the seriousness of the problem. Their poorer employment prospects may have some basis in factors of lower suitability for employment and there may be serious difficulties in relation to superannuation schemes and maintenance of an age structure permitting fluid promotion for younger workers. However, the rejection of an applicant on account of his date of birth alone without regard to his working capacity would come within the meaning of “discrimination” suggested in Chapter II. This occurs in many countries and in many types of employment, public and private. It frequently takes the form of setting an upper age limit in the job specification; elsewhere, applications are considered from persons of all ages but preference is given to the younger person.

Young workers may also encounter distinctions determined solely by their age; not generally, however, in access to employment but in remuneration. Differential rates for young workers exist in many countries. These are based on custom or on presumed lack of experience and skill or low level of output, and are sometimes influenced by a relatively higher rate of turnover among juvenile workers. In cases, however, where the wages paid to the young workers are not commensurate with the work performed the risk exists that such workers will be used

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as a reservoir of cheap labour. This may lead to abuses such as the discharge of young workers when they reach the age at which they would qualify for adult rates of pay and their continued replacement by younger workers still within the age group receiving lower wages, a practice which is especially to be found in countries where apprenticeship is not adequately regulated.

**Disablement**

Owing to prejudices on the part of employers and workers disabled workers may have undue difficulty in obtaining employment in types of work which they could do as well as able-bodied workers. This situation has begun to be corrected in recent years, but the process of education of the public in its attitude to disabled workers and the development of rehabilitation facilities still have a long way to go.

**Trade Union Affiliation**

The development of trade unionism as a major factor in the promotion of industrial relations is now recognised in all industrially advanced countries, but earlier prejudices against trade unionism nevertheless persist in a number of places. These may result in discriminatory acts against trade union members.\(^1\) The principle of the protection of workers against such acts is established in the Right to Organise and Collective Bargaining Convention, 1949.

On the other hand, where trade unionism is well established, union members may not only be protected against discriminatory acts; they may be the beneficiaries of exclusive privileges negotiated for them by their unions. They may for instance benefit from a union security clause in a collective agreement signed with an employer by which the employer agrees to engage or retain only persons who are members or are willing to become members of the union concerned; or they may benefit from an agreement whereby certain advantages in remuneration are restricted to members of the union signing the agreement. The view has been advanced that such exclusive agreements are discriminatory in their effect on non-members; such agreements are in fact prohibited by legislation in certain countries. However, this view is by no means generally conceded and in other countries union security agreements are not only permitted but encouraged. The public attitude on this question is largely determined by the national background and the way in which trade unions have developed.

Clearly, if the admission practices of a union which is party to such an

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agreement are themselves discriminatory, or if certain groups are excluded by legislation from union membership, then such arrangements can have a consequential discriminatory effect. To guard against this in countries where union security arrangements are permitted, the law frequently provides that unions may not include in their rules unreasonable discriminatory or oppressive conditions barring persons from membership.¹

The justification of union security arrangements in themselves, that is where there is no complication arising from discrimination in admission, remains a subject on which there is acute difference of opinion.

Their purpose is not discriminatory; it is to strengthen union solidarity vis-à-vis the employer. Generally, too, there is the honest belief that it is unfair for workers either to take advantage of benefits won by a trade union without joining and supporting the union, or to be permitted to work on inferior terms as non-members, so that an employer may be able to avoid engaging union labour on terms provided for in collective agreements. Also agreements normally include certain obligations on the part of the workers, and unions maintain that they can undertake obligations only on behalf of their own members.

On the other hand it is asserted that, whatever the intention of union security agreements, their practical effect can be to make access to certain types of employment contingent upon the worker belonging to an association, with whose policies he may be in disagreement.

There is an evident conflict of freedoms here, and it is doubtful whether there is any prospect of substantial international agreement on the way in which the conflict should be resolved. It was shown during the discussion by the International Labour Conference at its 32nd Session in 1949 leading to the adoption of the Right to Organise and Collective Bargaining Convention that there were two irreconcilable schools of thought on this issue. It is suggested therefore that the Conference, while noting the existence of the problem, might prefer not to attempt to seek an international solution to it in the context of the prevention of discrimination; if the problem is to be discussed it would appear to be essential to discuss it in the context of the whole complex of problems relating to freedom of association and collective bargaining.

CHAPTER IV

NATIONAL ACTION AND INTERNATIONAL STANDARDS DIRECTED TOWARDS PREVENTION OF DISCRIMINATION IN EMPLOYMENT

NATIONAL ACTION

Constitutional Provisions

The Constitutions of most countries contain some safeguards of a general nature against discrimination. These may take various forms, such as a declaration regarding equality of opportunity, prohibition of any distinction between individuals and of any privileges, or prohibition of distinctions or privileges based on certain specified grounds (for instance, race, religion, birth, social status, language, political opinion). In addition certain Constitutions make specific mention of equality in employment, either generally or in public employment only.

Constitutional provisions are valuable in making residents aware of their rights, as a statement of principle to guide the actions of public authorities, non-governmental organisations and individuals (whether as employers or workers) and as provisions which can be invoked in a court of law by an aggrieved person who considers he is being discriminated against.

There are wide differences in the effectiveness of such provisions in ensuring equality of rights to the individual. Where individuals are able to form associations for their group defence which can give members legal aid in bringing actions, particularly in test cases, not only against private persons but also against public authorities, then the degree of protection which such provisions afford to different groups of society may in the long run be considerable. Even so, carrying an action through to a supreme court may take time and may not afford immediate relief to individuals affected by discriminatory practices; also the procedure may be too cumbersome to deal with day-to-day manifestations of discrimination. For this reason a number of countries, in addition to constitutional provisions, have introduced specific measures directed against discrimination in employment, partly legislative and partly administrative.
Specific Government Measures

The commonest form which direct government action against discrimination in employment takes is the inclusion in laws or regulations governing admission to public employment of provisions barring distinctions on one or more of the following grounds: religion, race, sex, political opinion, national origin. Special measures may also be taken to ensure that these regulations are observed by government departments. In Brazil under article 6 of Act No. 1390 of 3 July 1951 the penalty of dismissal after due investigation is prescribed for officials in charge of departments responsible for receiving applications of candidates who deny access to any post in the public service owing to prejudice based on race or colour. In the United States the federal Government has set up administrative machinery to ensure uniformity of practice in its departments and agencies in observance of its policy of equal opportunity for all qualified persons without discrimination because of race, colour, religion or national origin. (The latest rules are contained in Presidential Executive Order 10590 of 18 January 1955.) Within each department special officers independent of their personnel divisions are charged with the observance of the policy, and all complainants have the right to have their cases reviewed by the President's Committee on Government Employment Policy. In India positive administrative measures have been taken not only to see that no disabilities in public employment are applied to members of scheduled castes and scheduled tribes but also to increase the participation of members of these castes and tribes in public employment.

A further step adopted by some countries consists of measures to ensure that the principle of non-discrimination is followed in all employment resulting from the expenditure of public money. In the United States since 1941 private employers executing federal government contracts have been under an obligation not to discriminate against workers or applicants for employment because of race, religion, colour or national origin. Currently all federal contracts of over $10,000 involving the employment of labour contain the following clauses:

In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, colour, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the non-discrimination clause.

The contractor further agrees to insert the foregoing provisions in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.
There is machinery for following up the observance of these conditions and for investigating complaints; if the contractor does not keep to his promise his contract can be terminated. Similarly in Canada an Order in Council No. 4138 (Statutory Orders and Regulations No. 19, 1952) provides that in the hiring and employment of labour for the execution of a government contract the contractor must not refuse to employ or otherwise discriminate against any person because of race, national origin, colour or religion.

Over and above this, measures have been taken in some countries to extend the observance of a non-discriminatory policy to all major areas of private employment. In Brazil under article 7 of Act No. 1390 of 3 July 1951 it has been declared a punishable offence to deny employment or work to anyone in an independent undertaking, mixed undertaking, public service or private enterprise owing to prejudice based on race or colour. In India the Untouchability (Offences) Act, No. 22 of 1955, prescribes penalties for the practice of untouchability in connection, inter alia, with the practice of any profession or the carrying on of any occupation, trade or business, and in Japan the Labour Standard Law, No. 49 of 1947, provides that "no person shall discriminate against or for any worker by reason of nationality, creed or social status in wages, working hours and other working conditions". In the U.S.S.R. managements of undertakings are not permitted to refuse admission to employment on grounds of social origin, past criminal record, the conviction of relatives and similar considerations except in so far as provision is made for this in special laws. (Ordinance of the Soviet Control Committee of the Council of People's Commissars of the U.S.S.R. respecting the examination of workers' grievances (Collection of Laws of the U.S.S.R., 1936, No. 31, article 276).)

In the United States, state and local "fair employment practice" legislation is in force in 15 states and 25 municipalities. Certain of the main provisions of the New York State Law Against Discrimination of 1945 may be given as examples of this type of legislation.

This Law asserts that opportunity to obtain employment without discrimination on the basis of race, creed, colour or national origin is a civic right and declares that any discrimination on these grounds is a matter of state concern. It declares certain types of discrimination, if based on these grounds, to be "unlawful employment practices"; these may be summarised as follows:

(a) refusal by an employer to employ an individual;
(b) discrimination against an employee in pay or terms of employment;

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(c) exclusion of an individual from membership by a labour organisation or discrimination by it against any of its members or against any employer or any individual because he is employed by a given employer;

(d) the issue by an employer or an employment agency of any statement or application form or the making of an inquiry in connection with prospective employment indicating any limitation as to race, creed, colour or national origin unless based on a bona fide occupational qualification.

Establishments with fewer than six workers are excluded, as are certain clubs, charitable, educational and religious associations not organised for private profit.

The Law is administered by an independent commission. Its method of operation is for one of its members to investigate complaints of violation of the Law in the first instance; if he finds that a prima facie unlawful employment practice exists, he attempts to secure its elimination by persuasion. If this fails, the person against whom the allegation is made is summoned to a hearing before the Commission; if, after the hearing, the Commission finds that the Law has been violated, it states its findings of fact and serves on him an order requiring him to "cease and desist from such unlawful employment practice" and to "take such affirmative action, including (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, or restoration to membership in any respondent labour organisation as in the judgment of the Commission, will effectuate the purposes" of the Law. There are provisions for the judicial review of this order and penalties for persons wilfully violating it.

In Canada anti-discrimination legislation has been enacted at both federal and provincial levels. At the federal level the Canadian Fair Employment Practices Act, which is applicable to works and undertakings within the legislative jurisdiction of the Parliament of Canada, prohibits discrimination in employment based on race, colour, religion or national origin, whether practised by employer or trade unions. More specifically it prohibits positive acts of discrimination and the use of discriminatory employment inquiries, application forms, advertisements or agencies. The Industrial Relations Branch of the Department of Labour is responsible for the day-to-day administration of the Act, in which to date it has encountered no serious enforcement problems. Provincial legislation follows lines somewhat similar both to the federal Act and state legislation in the United States.

Public employment services are also used as an instrument in furthering non-discriminatory practice, particularly in regard to access to employment. The principle affirmed in the Employment Service Recom-
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mendation, 1948, that "the employment service should not, in referring workers to employment, itself discriminate against applicants on grounds of race, colour, sex or belief ", is widely applied. In certain countries the service has additional functions in preventing or discouraging discrimination in selection. In Cuba, where in principle the employer is required to engage his workers through either the employment service or the trade unions, the service is prohibited from mentioning an applicant's race or colour in referring his application; failure to employ a suitable worker from those so referred, on grounds of race or colour, by exclusion of one race or by giving preference to another, is declared to be a punishable offence. The United States Employment Service is required to seek to persuade employers to base their hiring specifications exclusively on job performance factors and special officers are appointed to promote the employment of minority groups on the basis of their skills and abilities. In Great Britain, if a vacancy notified to the employment service by an employer discriminates on grounds of race, colour, sex or belief, and suitable workers of the type discriminated against are available, efforts are made to persuade the employer to consider such workers equally with other suitable workers.

In the United States and Canada, federal, state and provincial governments have undertaken considerable educational work among the public both with a view to seeking the voluntary acceptance of the policy of non-discrimination and also with a view to ensuring that the measures used to implement it are widely known. In the United States there is also state legislation prohibiting private educational institutions, including business and trade schools, from exercising discrimination in admission on grounds of race, colour, religion or national origin and setting up machinery to promote the observance of the policy of non-discrimination in education.

In many countries also the authorities take measures aimed at assisting groups which would otherwise be at a disadvantage in relation to equality of opportunity and there are special services for older workers, disabled workers, immigrants, etc.

Non-Governmental Action

The basic philosophy of trade unionism is that workers everywhere have a community of interest which transcends any distinction of race, sex, religion, etc. Although here and there sections of the trade union movement pursue sectional interests which conflict with this philosophy it may be said that the trade union movement as a whole not only gives strong support to state action against discrimination wherever it is taken but plays an active role itself. National federations frequently have machinery to promote a non-discrimination policy among their affiliated
unions; many unions follow strong anti-discrimination policies and non-discrimination clauses are sometimes written into collective agreements.

On the employers' side, too, there is a readiness not only to agree to such clauses but in some instances to take the initiative in instituting a non-discrimination policy in their employment.

Voluntary associations of many different kinds also play an important part. Firstly, there are organisations set up by groups liable to be subject to discrimination—women's organisations, coloured people's associations, religious defence associations, etc.—which can conduct inquiries, help their members with employment advice, intervene with employers or unions and present complaints to the authorities. Secondly, there are reconciliatory bodies—inter-racial associations, inter-religious associations—which aim more at the roots of the problem by lowering inter-group tension, by helping minority groups to overcome some of their social disabilities and by educating the public generally on questions of equality of human rights.

International Standards Already Determined by the Conference

Many of the instruments adopted by the International Labour Conference contain one or more provisions relating to equality of treatment in the particular field with which each is concerned. The Appendix to this report contains extracts of the major provisions of this kind which have not already been mentioned in the text. These have been grouped according to the subject matter or grounds of discrimination dealt with. There are also extensive provisions in a number of instruments which deal with the social security status of non-national workers. The fullest expression of non-discriminatory principles is found in the instruments dealing with social policy in non-metropolitan territories and the protection of migrant workers in underdeveloped countries and territories. In the other instruments provisions are directed chiefly against adverse distinctions on grounds of sex and nationality; disabled workers have received special consideration in the Vocational Rehabilitation (Disabled) Recommendation, 1955. There have been no specific provisions directed against discrimination on grounds of language, political opinion or social origin.
CHAPTER V

CONCLUSIONS

It is possible to discern in the years since 1944 a trend towards a fuller implementation of the principle of equal opportunity for "all human beings irrespective of race, creed or sex". This reflects to a large extent an evolution in public opinion but the process has undoubtedly been facilitated by the more favourable employment situation which has existed in many countries and areas. With more jobs available there has been less feeling of competition between groups and increased demands for manpower have opened up fresh avenues of employment to groups not hitherto fully utilised. Even where discrimination in access to jobs has not been eliminated the line at which it applies has shifted and groups of workers previously confined to unskilled work have found admittance to semi-skilled and skilled occupations. The achievement and maintenance of full employment is therefore one of the greatest contributions which can be made towards equality of employment opportunity.

There is, however, scope for specific and positive measures directed towards eradicating discrimination where it exists and promoting more complete equality of opportunity and treatment in the field of employment generally.

The basic need would appear to be for maximum acceptance by everyone—governments, employers and workers alike—of the fundamental principle that each individual has a right to equality of opportunity and treatment in employment matters and that it is morally wrong to take any action which limits this right because of characteristics affecting the individual which are not relevant to his employment—race, sex, language, political opinion, national origin, social origin, etc. In most countries governments, employers and workers would go a long way towards accepting this principle but reservations of one sort or another frequently remain; if progress is to be made it is precisely these reservations which have to be attacked. Clearly the national situation varies so widely from country to country in respect of the composition of the population and the magnitude and complexity of the problems which this creates, the fundamental political outlook and the stage of social and economic evolution reached, that any international instrument would have to be conceived in the most flexible terms.
In drafting an instrument to deal with the subject it is first necessary to arrive at a definition of "discrimination". A tentative definition for present purposes is put forward in the questionnaire attached to this report. Despite the fact that there has been as yet no national precedent for such action, it is suggested that the instrument should attempt to deal with adverse distinctions made on all the grounds listed in article 2 (1) of the Universal Declaration of Human Rights. The distinctions named and the order in which they are listed may not be those which would have emerged from a study of the needs in the employment field alone, but it seems desirable to adhere to a text which has already been adopted internationally. However, it may be held either that it would be impracticable to deal uniformly with all the distinctions listed, or that the list is incomplete. The views of governments are sought in question 3.

One of the first points raised in any discussion on discrimination relates to distinctions made on the grounds listed, but with a favourable intention. One example of this is special legislation for women workers; another is the granting of temporary privileges to indigenous workers to assist in their integration into the community. In principle, the definition of discrimination suggested should make it clear that beneficial distinctions of this type are not affected; however the point is sufficiently important for governments to be asked whether they consider it desirable to indicate specifically that such special measures would not be affected (question 4).

The first step would appear to be for governments to establish a public policy aimed at the elimination of any existing discrimination and at the promotion of equality of opportunity and treatment in employment matters for all persons. It would seem possible for the instrument to define certain broad common principles applicable to each major area in the employment field on which national policy might be based. Suggestions as to what these principles might be are contained in question 5. These suggestions will not be elaborated here except to mention that in clause (f) the definition of "remuneration" has been taken from the Equal Remuneration Convention, 1951, and that, in regard to the principle applicable in respect of trade union rights (clause (h)), it is realised that there might be complications in countries having unions constituted on a confessional or political basis.

Great importance attaches to the methods which might be used to promote acceptance and observance of the policy. There are certain immediate steps which it appears open to the national authorities to take. One is to ensure that the policy is strictly applied in all spheres of employment and training coming under their direct control, that is primarily in the civil service and in state training establishments; another is to modify any discriminatory legislation which may exist (question 6).
It seems, however, necessary to make exceptions to allow for the continuation of restrictions on the access of non-nationals to employment. As has been seen, it is a common practice for governments to withhold complete equality with nationals in access to employment from alien immigrants for a certain period following their arrival in a country; it is also a widespread practice to exclude from certain posts in public employment persons who, however long their residence in a country, have not become naturalised. It might, however, be considered desirable to include a limit to the period during which the alien immigrant is subject to the former restrictions and it seems logical that the same limit should be set as in the Migration for Employment Recommendation (Revised), 1949, namely a period "the length of which should not as a rule exceed five years" (question 7).

A further step might be to insist that the policy is observed in employment which, though not directly under the national authorities, nevertheless results from the expenditure of public money; this could be done by restricting public contracts to employers prepared to apply the policy (question 8). For similar reasons, subsidies for educational establishments giving vocational training might be restricted to institutions prepared to apply the policy in respect of admission of students (question 9). Where there is control over private employment agencies such control might be used to ensure that the policy is observed by these agencies (question 10).

Encouragement could be given to provincial and local authorities to apply the policy to all spheres of employment coming under their control (question 11).

The support of employers' organisations and trade unions would clearly be essential for the introduction of a policy of non-discrimination in employment, and it is suggested that they should be encouraged to accept and apply the policy in respect of their own activities, to further its acceptance by their members, to have regard to it in matters of industrial relations generally, and to establish the necessary internal machinery to put the policy into effect (question 12).

It would seem necessary to have specific administrative machinery charged with the responsibility for promoting the observance of the policy, as is the case in certain countries; according to national circumstances existing machinery might be used or it might be considered desirable to establish special agencies to deal with the matter on a national, provincial or local basis (question 13). In view of the complexity of the considerations arising, there would appear to be need for advisory machinery to assist in the interpretation and promotion of the policy. A particularly important function would be the defining of those acts (for instance the publication of discriminatory advertisements or the inclusion of discriminatory questions in employment application forms) which are regarded as contrary to the policy (question 14).
The successful application of the policy depends to a very great extent on its being understood and accepted by the general public. It is therefore suggested that one of the main functions of the machinery would be to carry out or to stimulate comprehensive and sustained education programmes designed to make the general public aware of the unfair nature of discriminatory practices and to combat prejudices generally (question 15). In this connection use might well be made of existing voluntary organisations (question 16).

If the policy is to safeguard the rights of groups and individuals effectively, it is essential for the latter to be able to bring any complaints of non-observance to notice. As is the case in certain countries, one of the functions of the administrative machinery should therefore be to receive and examine complaints and to seek to settle by informal negotiation any problems which these complaints may bring to light. One point for consideration here is whether powers of investigation would be necessary to make such steps effective (question 17).

Methods of informal negotiation might, however, not always be successful in settling the problems revealed, and one course might be to arrange for an independent and impartial commission to consider any cases not disposed of by negotiation and to issue findings as to the manner in which it considers any discriminatory practice revealed should be corrected (question 18). Governments are asked in question 19 whether they consider that any other methods of enforcement are necessary.

Finally, it is suggested that the agencies referred to in question 13 should not lose sight of the fact that the prevention of discrimination in employment is linked with the prevention of discrimination in other fields and that they should maintain close and regular collaboration with the authorities concerned with these other fields (question 20).
QUESTIONNAIRE

Governments are requested to send their replies to the following questionnaire, stating their reasons for them, so as to reach the Office in Geneva by 5 October 1956.

I. Form of the International Instrument

1. Do you consider that the International Labour Conference should adopt an international instrument concerning the prevention of discrimination and the promotion of equality of opportunity and treatment in employment?

2. What form do you consider the instrument should take?

II. Definition and Scope

3. (1) Do you consider that for the purposes of the instrument "discrimination" might be defined as any adverse distinction which deprives a person of equality of treatment and which is made solely on the basis of—

(a) race;
(b) colour;
(c) sex;
(d) language;
(e) religion;
(f) political or other opinion;
(g) national origin;
(h) social origin;
(i) property;
(j) birth;
(k) other status.

(2) Do you consider that in addition to referring to "other status" the instrument should enumerate any further bases of distinction (e.g. age or disablement)?

(3) Do you consider that any basis of distinction should be specifically excluded from the definition?
4. Do you consider it desirable to indicate specifically that action against discrimination in employment should not override any special measures designed to meet the particular needs of women or young workers or disabled persons in so far as such measures are in accordance with the appropriate international instruments, and that it should not override any special temporary measures taken in the interest of peoples of less developed social, economic or cultural status pending their integration into the national community?

III. Establishment of Public Policy

5. Do you consider it desirable that the competent authority, after consultation with employers' and workers' organisations, should establish, by procedures appropriate to national conditions, a public policy directed towards the eradication of discrimination of all kinds in the field of employment and towards the promotion of equality of opportunity and treatment therein based on the following principles:

(a) all persons should have equal opportunity of access to employment of their own choice on the basis of their individual fitness for such employment whether in the public service or otherwise and whether under contract of employment or on their own account;

(b) vocational guidance and employment service placement facilities should be open equally to all persons with a view to assisting them in the free choice of suitable training and employment;

(c) in order to ensure equal opportunity of access to types of employment for which preliminary training is necessary, there should be no discriminatory barriers to, or discriminatory selection for, admission to vocational schools, vocational training courses or apprenticeship, or to any other training facilities at all levels;

(d) all workers should have equal opportunity to advance in employment according to their character, ability and diligence;

(e) there should be no discrimination in respect of security of tenure of employment or, in the event of retrenchment, in the selection of workers to be discharged;

(f) remuneration should be established without regard to any of the factors specified in question 3, the term "remuneration" to include the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or kind, by the employer to the worker and arising out of the worker's employment;

(g) there should be equal treatment for all workers in the same employment in matters affecting hours of work, rest periods, annual holidays
with pay, occupational safety and health provisions, welfare facilities and social security provisions connected with such employment;

(h) there should be no discrimination in connection with the right to establish or to join trade unions, to participate in trade union activities, including the holding of office, or to participate in collective bargaining?

IV. Promotion of the Acceptance and Observance of the Policy

6. Do you consider that the competent authorities should ensure that the policy of eradicating discrimination and of promoting equality of opportunity and treatment in the field of employment is strictly applied in all spheres of employment and training coming under their direct control and that they should modify any existing legislation which prescribes or authorises such discrimination?

7. Do you consider, however, that this should not affect—

(a) regulations restricting the choice of employment open to non-nationals during an initial period of residence, the length of which should not as a rule exceed five years; or

(b) restriction to nationals of access to certain posts in public employment?

8. Do you consider that the competent authorities should arrange for the insertion in all contracts which involve the expenditure of public funds of clauses making such contracts dependent upon the observance of the policy by the contractor?

9. Do you consider that, where subsidies are paid to private educational establishments giving vocational training, such subsidies should be made dependent upon observance of the policy in respect of admission practices?

10. Do you consider that, where private employment agencies are subject to supervision by the competent authorities, licences or authorisations should be made dependent upon the observance of the policy by the agency concerned in respect of acceptance of applications for employment and referral of applicants to employment?

11. Do you consider that provincial and local authorities and independent public corporations should be encouraged by all possible means to apply the policy in all spheres of employment coming under their control?

12. Do you consider that employers’ organisations and trade unions should be encouraged by all possible means—

(a) to accept and apply the policy in respect of their own activities;

(b) to further the acceptance of the policy by their members;

(c) to have regard to the policy in all collective agreements and industrial relations at all levels; and
(d) to establish such internal machinery as may be necessary to give effective implementation to the policy?

13. Do you consider that national, provincial or local agencies, either existing or specially established, should be designated to assume responsibility for promoting observance of the policy?

14. (1) Do you consider that these agencies should be assisted where appropriate in the interpretation and promotion of the policy by advisory committees which should include representatives of employers' and workers' organisations and of associations concerned with the prevention of discrimination, particularly those representative of groups most liable to be subject to discriminatory practices?

(2) Do you consider that such advisory committees should assist the agencies, in particular, in specifying those acts which are regarded as discriminatory and contrary to the policy?

15. (1) Do you consider that one of the functions of these agencies should be to carry out or to stimulate comprehensive and sustained public education programmes designed to make the general public aware of the unfair nature of discriminatory practices with a view to securing the maximum possible voluntary adherence to the policy?

(2) Do you consider that such programmes should include study and research and the publication of the results of such study and research with a view to correcting any mistaken impressions as to the relative working capacity of different groups or the ability of different groups to work together harmoniously, and other measures designed to combat prejudices which have the effect of creating distinctions among workers and impeding the achievement of equality of opportunity and treatment in employment?

16. Do you consider that the special role of voluntary organisations in educating public opinion and in otherwise improving inter-group relations should be recognised and that their activities should be encouraged?

17. (1) Do you consider that the agencies referred to in question 13 should be empowered to receive and examine complaints that the policy is not being observed by any national, provincial or local authority, independent public corporation, contractor, private educational establishment, private employer, employers' organisation or trade union, and, if necessary, to attempt, by informal negotiation, to secure the correction of any practices regarded as in conflict with the policy?

(2) Do you consider that the agencies should have powers of investigation?

18. Do you consider that an independent and impartial commission should be appointed to consider any complaints which cannot be effectively
settled by informal negotiation and to issue decisions concerning the manner in which it considers any discriminatory practices revealed should be corrected?

19. Do you consider that any other methods of enforcement should be provided for the implementation of the policy?

V. Collaboration in the Prevention of Discrimination in Other Fields

20. Do you consider that the agencies referred to in question 13 should, in elaborating their programmes of action, have regard to action being taken to prevent discrimination in other fields, and should maintain close and regular collaboration with the authorities concerned in any educational or ameliorative measures taken to reduce the impact of discrimination and to promote equality of opportunity and treatment generally?
APPENDIX

EXCERPTS FROM VARIOUS INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS CONTAINING THE MORE IMPORTANT NON-DISCRIMINATION PROVISIONS

I. Non-Metropolitan Territories

SOCIAL POLICY IN DEPENDENT TERRITORIES RECOMMENDATION, 1944

Annex, Article 41

2. Discrimination directed against workers for reason of race, colour, confession or tribal association, as regards their admission to public or private employment, shall be prohibited.

SOCIAL POLICY IN DEPENDENT TERRITORIES (SUPPLEMENTARY PROVISIONS) RECOMMENDATION, 1945

Annex, Article 6

1. It shall be an aim of policy effectively to establish the principle of equal wages for work of equal value in the same operation and undertaking and to prevent discrimination directed against workers by reason of their race, religion or sex in respect of opportunities for employment and promotion and in respect of wage rates.

2. All practical measures shall be taken to lessen any existing differences in wage rates which are due to discrimination by reason of race, religion or sex by raising the rates applicable to the lower paid workers.

SOCIAL POLICY (NON-METROPOLITAN TERRITORIES) CONVENTION, 1947

Article 18

1. It shall be an aim of policy to abolish all discrimination among workers on grounds of race, colour, sex, belief, tribal association or trade union affiliation in respect of—

(a) labour legislation and agreements which shall afford equitable economic treatment to all those lawfully resident or working in the territory;
(b) admission to public or private employment;
(c) conditions of engagement and promotion;
(d) opportunities for vocational training;
(e) conditions of work;
(f) health, safety and welfare measures;
(g) discipline;

(h) participation in the negotiation of collective agreements;

(i) wage rates, which shall be fixed according to the principle of equal pay for work of equal value in the same operation and undertaking to the extent to which recognition of this principle is accorded in the metropolitan territory.

2. Subject to the provisions of subparagraph (i) of the preceding paragraph, all practicable measures shall be taken to lessen, by raising the rates applicable to the lower paid workers, any existing differences in wage rates due to discrimination by reason of race, colour, sex, belief, tribal association or trade union affiliation.

3. Workers from one territory engaged for employment in another territory may be granted in addition to their wages benefits in cash or in kind to meet any reasonable personal or family expenses resulting from employment away from their homes.

4. The foregoing provisions of this Article shall be without prejudice to such measures as the competent authority may think it necessary or desirable to take for the safeguarding of motherhood and for ensuring the health, safety and welfare of women workers.

II. Protection of Migrant Workers in Underdeveloped Countries and Territories

PROTECTION OF MIGRANT WORKERS (UNDERDEVELOPED COUNTRIES)
RECOMMENDATION, 1955

5. Any discrimination against migrant workers should be eliminated.

37. The principle of equal opportunity for all sections of the population, including migrant workers, should be accepted.

38. Subject to the application of national immigration laws, and of special laws concerning the employment of foreigners in the public service, any barriers preventing or restricting, on account of national origin, race, colour, belief, tribal association or trade union affiliation, access of any section of the population, including migrant workers, to particular types of job or employment should be deemed contrary to public policy and the principle of the abolition of any such barriers should be accepted.

39. Measures should be taken immediately to secure in practice the realisation of the principles set out in Paragraphs 37 and 38 of this Recommendation and to facilitate the performance of an increasing share of skilled work by the least favoured grades of workers.

40. Such measures should specifically include—

(a) in all countries and territories, provision of equal access for all workers to technical and vocational training facilities and equal possibilities of access for all workers to employment opportunities in new industrial enterprises;

(b) in countries or territories where separate classes distinguished by race or origin have already been permanently formed, the introduction of facilities enabling workers of the least favoured class to be admitted to semi-skilled and skilled jobs;

(c) in countries or territories where separate classes distinguished by race or
origin have not been permanently formed, the opening of equal opportunities for all qualified workers to jobs requiring specified skills.

45. The steps to be taken for migrant workers should in any case include in the first instance appropriate arrangements, without discrimination on grounds of nationality, race or religion, for workmen's compensation, medical care for workers and their families, industrial hygiene and prevention of accidents and occupational diseases.

III. Penal Sanctions for Breaches of Contract of Employment

Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955

Article 5

With a view to abolishing discrimination between indigenous and non indigenous workers, penal sanctions for breaches of contracts of employment not covered by Article 1 of this Convention which do not apply to non-indigenous workers shall be abolished for indigenous workers.

IV. Vocational Training

Vocational Training Recommendation, 1939

10. (1) Workers of both sexes should have equal rights of admission to all technical and vocational schools, provided that women and girls are not required to engage continuously on work which on grounds of health they are legally prohibited from performing, a short period on such work for the purpose of training being, however, permissible.

16. (3) Persons of both sexes should have equal rights to obtain the same certificates and diplomas on completion of the same studies.

V. Equal Remuneration

Equal Remuneration Convention, 1951

Article 2

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

1 Special reference is made to this provision of the Convention, but it is pointed out that the Convention and the Equal Remuneration Recommendation, 1951, are relevant in their entirety to the problem under discussion.
VI. Foreign Workers

MIGRATION FOR EMPLOYMENT CONVENTION (REVISED), 1949

Article 6

1. Each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters:

(a) in so far as such matters are regulated by law or regulations, or are subject to the control of administrative authorities—

(i) remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age for employment, apprenticeship and training, women's work and the work of young persons;

(ii) membership of trade unions and enjoyment of the benefits of collective bargaining;

(iii) accommodation.

VII. Freedom of Association

FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE CONVENTION, 1948

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

VIII. Shipowners' Liability

SHIPOWNERS' LIABILITY (SICK AND INJURED SEAMEN) CONVENTION, 1936

Article 11

This Convention and national laws or regulations relating to benefits under this Convention shall be so interpreted and enforced as to ensure equality of treatment to all seamen irrespective of nationality, domicile or race.

IX. Vocational Rehabilitation of the Disabled

VOCATIONAL REHABILITATION (DISABLED) RECOMMENDATION, 1955

25. Disabled persons (including those in receipt of disability pensions) should not as a result of their disability be discriminated against in respect of wages and other conditions of employment if their work is equal to that of non-disabled persons.
28. Measures should be taken, in close co-operation with employers' and workers' organisations, to promote maximum opportunities for disabled persons to secure and retain suitable employment.

29. Such measures should be based on the following principles:

(a) disabled persons should be afforded an equal opportunity with the non-disabled to perform work for which they are qualified;

41. (1) Vocational rehabilitation services should be adapted to the particular needs and circumstances of each country and should be developed progressively in the light of these needs and circumstances and in accordance with the principles laid down in this Recommendation.

(2) The main objectives of this progressive development should be—

(c) to overcome, in respect of training or employment, discrimination against disabled persons on account of their disability.