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Fourth Item on the Agenda:

DISCRIMINATION IN THE FIELD OF 
EMPLOYMENT AND OCCUPATION

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INTRODUCTION

On 25 June 1957 the International Labour Conference, meeting in its 40th Session at Geneva, adopted the following resolution by 224 votes to 0, with 1 abstention:

The General Conference of the International Labour Organisation,
Having approved the report of the Committee appointed to examine the seventh item on its agenda, and
Having in particular approved as general conclusions, with a view to consultation of governments, proposals for a Convention and a Recommendation relating to discrimination in the field of employment and occupation;
Decides to place the question of discrimination in the field of employment and occupation on the agenda of its next Ordinary Session for a second discussion with a view to final decisions on this question.

In view of this decision the Office is required, under article 39, paragraph 6, of the Standing Orders of the Conference, to prepare, on the basis of the first discussion by the Conference, draft texts of a Convention and a Recommendation and to communicate them to governments so as to reach them not later than two months from the closing of the 40th Session of the Conference, asking them to state within three months whether they have any amendments to suggest or comments to make.

The purpose of the present report is to transmit to governments, for their comments, the texts of (A) a proposed Convention, and (B) a proposed Recommendation, based on the Conclusions adopted by the Conference at its 40th Session. Governments are requested, in accordance with the timetable laid down in the Standing Orders of the Conference, to send any amendments or comments on these texts as soon as possible and in any case so as to reach the Office in Geneva not later than 27 November 1957. Governments which have no amendments or comments to put forward are requested nevertheless to inform the Office by the same date whether they consider that the proposed texts form a suitable basis for discussion at the 42nd Session of the Conference.

The Conference Committee on Discrimination asked in particular that governments concerned should give full consideration to point 7 of its proposed Conclusions directed towards a Convention in the light of article 35 of the Constitution of the I.L.O.

The first discussion also revealed some doubts about the significance of the term "occupation". An Appendix is therefore attached to this report giving the internationally accepted meanings of certain terms in this connection, in the hope that this may assist governments in their consideration of the matter.

\[1\] See below pp. 12-14, 15 and 30-31.
CHAPTER I

THE PROCEEDINGS OF THE 40th SESSION OF THE CONFERENCE RELATING TO DISCRIMINATION IN THE FIELD OF EMPLOYMENT AND OCCUPATION

Extracts from the Report of the Conference Committee

The Committee on Discrimination, as constituted by the Conference at its third sitting on 6 June 1957, consisted of 102 members (48 Government members, 18 Employers’ members and 36 Workers’ members). In order to ensure equal voting strength of the three groups each Government member had three votes, each Employers’ member eight votes and each Workers’ member four votes.

General Discussion

The general discussion showed a wide measure of agreement among the members of the Committee on the need to eliminate discrimination in the field of employment and occupation. Some members, in particular the Workers’ members, considered that, at the international level, the best way of reaching this objective was to adopt a Convention; this should not be limited to a statement of general principles as in the proposed Conclusions directed towards a Convention appearing in Report VII (2) but should include more concrete provisions such as those contained in the proposed Conclusions directed towards a Recommendation, also appearing in Report VII (2). It should also provide for the establishment of conciliation and administrative bodies to ensure that the principles of non-discrimination were put into practice. In addition some members took the view that discrimination should be prohibited by legislative measures, that appropriate sanctions in the event of infringement should be included and that the policy of non-discrimination should be extended to non-metropolitan as well as metropolitan territories.

Other members considered, however, that the elimination of discriminatory practices depended primarily on the disappearance of the prejudices on which they were founded and that the adoption of laws prohibiting discrimination would not be enough to sweep away these prejudices. Educative measures seemed to them more likely to give satisfactory results. In addition, the varied situations within different countries and the essentiality of not encroaching upon the freedom of employers and workers to settle employment questions between themselves militated against the adoption of a rigid instrument such as a Convention. Moreover, the value of a Recommendation which laid down principles and gave general guidance should not be underestimated.
A number of Employers' members favoured the adoption of a resolution incorporating certain of the principles listed in item 5 of the questionnaire contained in Report VII (1). They regretted that the factor of membership or non-membership of a trade union was not included in the list of grounds of discrimination and recalled that, when the Governing Body had decided on the inclusion of this question in the agenda of the Conference, the Employers' members had opposed it owing to the exclusion of this factor.

Some speakers stated that they had reservations on points in the texts appearing in Report VII (2). For some, the definition of the term "discrimination" was not entirely satisfactory; they considered it necessary to make it clear that this term did not apply to objective differentiation based on the genuine needs of different types of employment. Also, the application of a policy of non-discrimination with regard to sex and political opinion raised particular difficulties which had to be taken into account.

Several other members thought that the subject lent itself to the adoption of two instruments—a Convention containing general principles to which all countries could subscribe and a Recommendation dealing with details of application.

**Part A. Proposed Conclusions Directed towards a Convention**

**I. FORM OF THE INTERNATIONAL INSTRUMENT**

**Point 1**

A long debate took place on whether the Conclusions to be adopted by the Committee should take the form of a Recommendation, as suggested by the Employers' members and the Government members of Australia, Canada, the United Kingdom and the United States, with the support of some other Government members, including the Portuguese Government member; of a Convention, as suggested by the Workers' members and certain Government members; or of a Convention supplemented by a Recommendation, as suggested by the Government members of Norway and Sweden.

A number of arguments already touched on in the general discussion were put forward in the course of this debate. Those in favour of a Recommendation stressed the great influence which this could have as a standard-setting instrument. The adoption of a Convention, on the other hand, would raise difficulties; if its terms were very strict it would at the present time receive only a small number of ratifications; if its terms were loose it would debase the value of this type of instrument. Reference was made to official reports which had categorically stated that the number of subjects which could be treated by Conventions was limited.

Those in favour of a Convention insisted on the need to go beyond the declarations of principles contained in the Declaration of Philadelphia and the Universal Declaration of Human Rights. A Convention, even if it was not immediately ratified, would be more effective than a Recommendation, as it was better suited to
mobilise public opinion in favour of the principles of non-discrimination. The adoption of legislative measures to deal with discrimination was not incompatible with educative action designed to eliminate prejudices; it would help to strengthen this action.

The Committee rejected by 172 votes to 230 the proposal to give the Conclusions the form of a Recommendation only, and by 186 votes to 187, with 23 abstentions, the proposal to give the Conclusions the form of a Convention only. It then voted by 356 votes to 13 in favour of the adoption of a Convention supplemented by a Recommendation.

Insertion of New Points before "II. Scope"

The Committee considered a Workers' members' amendment proposing the insertion, in Part A of the Conclusions, of the definitions of the terms "discrimination" and "employment and occupation" which appeared in points 3 and 4 of Part B (proposed Conclusions directed towards a Recommendation) subject to certain slight changes. The Committee agreed to the principle of the transfer of these definitions by 234 votes to 153 and proceeded to consider the different amendments submitted thereto.

Meaning of the Word "Discrimination".

A number of amendments had been submitted with the purpose of adding new grounds to the list of bases of discrimination, or of deleting certain of these grounds, or of amending their wording. A proposal of the Workers' members to give a wider meaning to the definition by replacing the words "national extraction" by "national origin", and a proposal of the U.S.S.R. Government member to insert the word "citizenship" were rejected by 157 votes to 158, with 62 abstentions, and by 158 votes to 198, with 23 abstentions, respectively. The Committee also rejected the addition of the words "language" (by 163 votes to 183, with 42 abstentions) and "age" (by 109 votes to 206, with 67 abstentions) as proposed by the Byelorussian Workers' member. It rejected the addition of the word "disablement" as proposed by the Czechoslovak Government member (by 18 votes to 283, with 37 abstentions) and the addition of the words "membership or non-membership of a trade union" as proposed by the Employers' members (by 156 votes to 184, with 50 abstentions). This latter amendment gave rise to an exchange of views in particular between the Employers' and the Workers' members; the former stated that membership or non-membership of a union was one of the commonest causes of discrimination and should therefore appear in this definition, whereas the Workers' members considered that the purpose of the amendment was to weaken the trade union movement and that it dealt with a subject which had been discussed several times by the I.L.O., in particular in discussions on the Right to Organise and Collective Bargaining Convention, 1949.

The Government member of Canada proposed the deletion of the word "sex" from the list of grounds of discrimination as he considered that the subject of distinc-
tions based on sex should be dealt with in special instruments rather than in a general instrument on discrimination. Several members expressed the contrary view—that there was a need to guarantee women complete equality of opportunity with men in this instrument. This amendment was rejected by 119 votes to 229, with 10 abstentions.

The Byelorussian Government member wished to extend the definition of "discrimination" to include "the granting of direct or indirect privileges or the direct or indirect limitation of rights in respect of certain individuals or groups of the population in relation to others". This amendment was rejected by 59 votes to 289, with 32 abstentions.

A further amendment submitted by the Employers' members proposed that discrimination should be regarded as any adverse distinction made "solely" on the basis of race, colour, etc. This amendment was rejected by 147 votes to 205, with 27 abstentions.

Paragraph (b) of the point which defines discrimination provided that the term "discrimination" would include other distinctions in addition to those described in paragraph (a) "as appropriate in the national circumstances"; the Workers' members proposed the deletion of these words. This proposal was adopted by 187 votes to 162, with 6 abstentions. The new point as amended was then adopted as a whole.

*Meaning of the Words "Employment and Occupation".*

An amendment to delete the words "and occupation" from the proposed Conclusions directed towards a Convention was submitted by the Government members of the Federal Republic of Germany and the Netherlands. The intention of its sponsors was to ensure that the instrument should not apply to independent employment having regard to the difficulties which such application would create. The Representative of the Secretary-General explained that the purpose of the use of the two words "employment" and "occupation" in the description of the subject was to stress that it was not enough to ensure non-discrimination in access to employment but was also necessary to ensure the individual a free choice of occupation; it had been the intention of the Office to include self-employed workers since it would hardly seem right for a Convention to deal solely with the elimination of discrimination in access to wage-earning employment and not to give to workers wishing to be self-employed any protection against laws, regulations or practices arbitrarily preventing them from doing so. The Representative of the Secretary-General said that the discussion had revealed some doubts about the significance of the term "occupation". Before the second discussion took place the Office would try to clarify the issue.

A subamendment submitted by the Government member of the Federal Republic of Germany, to insert a new point in the Convention specifying that the word "occupation" did not apply to independent employments, was rejected by 80 votes to 304, with 10 abstentions; certain members expressed the view that liberal professions
should not be covered by the instrument. The amendment itself was rejected by 171 votes to 211, with 6 abstentions.

The Committee then adopted, by 224 votes to 3, with 153 abstentions, a point identical to point 4 of Part B of the text submitted in Report VII (2).

II. Scope

Point 2

The Workers' members had proposed, in place of point 2, a simplified version consequent upon the Committee's decision to insert definitions of the words "discrimination" and "employment and occupation" at the beginning of the Convention. This version was adopted as a basis for discussion by 221 votes to 0, with 150 abstentions.

The Israeli Government member submitted an amendment by which Members for whom the Convention was in force should agree "to introduce legislation to prohibit discrimination and to repeal any existing legislative provisions which prescribe, authorise or countenance discrimination". Some members supported this amendment, the purpose of which was similar to the first part of the amendment submitted by the Czechoslovak Government member, which is referred to later in this report; in certain cases they stressed the need for legal sanctions in the event of infringements against the legislation; others thought that it was a duplication of article 19 (5)(d) of the Constitution and that it emphasised one aspect of the obligations of governments at the expense of others. The amendment was rejected by 181 votes to 211.

The Government member of Poland submitted an amendment to transfer point 7 of Part B to Part A and to add a phrase providing for sanctions for infringement of the prohibition of discrimination. The principle of this transfer was rejected by the Committee by 167 votes to 207, with 6 abstentions. The Workers' members too had proposed the transfer of point 7 of Part B to Part A but, in view of the rejection of the previous amendment, this was not put to the vote. However, a subamendment to this proposal submitted by the Egyptian Government member, providing for a time limit of 12 months from the date of ratification for the implementation of this provision, was put to the vote and rejected by 158 votes to 204.

Three amendments similar to each other and all having the purpose of making it clear that distinctions determined by the inherent requirements of the job were not to be considered as adverse discrimination had been submitted respectively by the United Kingdom Government member, the Irish Government member and jointly by the Government members of Austria, the Federal Republic of Germany, the Netherlands and Switzerland. Their purpose was to cover cases where, to match the needs of the job, an employer justifiably took into consideration factors such as national extraction, sex or religion. After the rejection by 144 votes to 207, with 18 abstentions, of a subamendment, submitted by the Employers' members, to insert after the words "inherent requirements of the job" the words "or the particular circumstances
under which the job is being performed "), the Committee adopted (by 207 votes to 157, with 9 abstentions) the amendment submitted by the United Kingdom Government member to add a phrase to point 2. The other two amendments were withdrawn.

New Points Following Point 2

Two amendments submitted by the Canadian Government member and by the Employers' members dealt with security measures taken by the State. The first was withdrawn; the second was adopted by 228 votes to 114, with 23 abstentions, in the following terms: "The proposed Convention to provide that nothing therein contained shall apply to any statutory provisions or administrative regulations which relate to the national security of a Member." However, certain members wished to record their opposition to this amendment, including the Egyptian Government member, who considered it inconsistent with the Universal Declaration of Human Rights and the Declaration of Philadelphia.

The Committee also adopted (by 179 votes to 14, with 148 abstentions) an amendment submitted by the Israeli Government member, to insert a new point as follows: "The proposed Convention to provide that each Member for which the Convention is in force agrees to pursue a policy for the prevention of discrimination in employment in government and public agencies or in the work of the public employment service."

The Workers' members had proposed the transfer of point 5 of Part B to Part A, subject to a slight change. The Committee decided to vote on the principle of transfer before examining the substance of the point. It was soon apparent that several Government members were not prepared to see in the Convention all the principles set out in point 5, maintaining that some of these were the exclusive concern of employers and workers and that their application therefore did not come within the competence of governments. The proposal to transfer this point was rejected by 167 votes to 181, with 20 abstentions.

Point 3

The Committee considered an amendment submitted by the Australian Government member to replace the words "co-operate with employers' and workers' organisations ... in promoting educational programmes" by "seek the co-operation of employers' and workers' organisations ... in promoting such educational programmes" and to delete the words "to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy". This amendment was rejected by 177 votes to 177, with 9 abstentions. An Employers' members' amendment proposing the deletion of the same words was also rejected by 166 votes to 177, with 14 abstentions.

The Spanish Government member had submitted an amendment to provide that mention should be made in annual reports of "those cases of objective differential treatment which may have been determined with the express and prior agree-
ment of representative employers' and workers' organisations". This amendment was rejected by 6 votes to 326, with 28 abstentions.

Point 3 as a whole was adopted by 187 votes to 149, with 34 abstentions.

The Committee then considered an amendment submitted by the Polish Government member, dealing with equality of opportunity and treatment for foreign workers subject to special provisions governing access to public office. Various members referred to difficulties to which such a clause might give rise in a number of countries; it was contrary to regulations governing the employment of seasonal workers and to the practice restricting the employment permit of foreign workers during an initial period to a single type of employment. A subamendment submitted by the Israeli Government member, providing for equality of opportunity for foreign workers "otherwise than under a special permit for a special type of job", was rejected by 146 votes to 175, with 49 abstentions. The French Government member, in agreement with the sponsor of the main amendment, submitted a further subamendment providing that equality of opportunity and treatment would be extended to foreign workers "lawfully admitted as workers". The main amendment thus amended was rejected by 162 votes to 180, with 32 abstentions.

Part B. Proposed Conclusions Directed towards a Recommendation

As the question of the form of the international instrument had already been decided during the discussion of Part A the Committee proceeded immediately to study point 2.

Point 2

An amendment was proposed by the Czechoslovak Government member to provide that the policy of non-discrimination should be formulated "by legislation" as well as by methods appropriate to national conditions and practice. This amendment was rejected by 78 votes to 235, with 34 abstentions. An amendment submitted by the Australian Government member to replace the words "promote equality of opportunity and treatment for all persons without discrimination in" by the words "eliminate discrimination in respect of" was adopted by 203 votes to 105, with 35 abstentions. Point 2 so amended was adopted as a whole by 221 votes to 0, with 147 abstentions.

Point 3

The Philippine Government member submitted two amendments, one providing for the insertion of the words "solely or mainly" before the list of grounds of discrimination, the other proposing the addition of "trade union affiliation" to these grounds. Both were rejected, the first by 147 votes to 194, with 3 abstentions, the second by 147 votes to 179, with 16 abstentions. The Committee then decided by 216 votes to 136, with 11 abstentions, to adopt point 3 in the same form as the corresponding point in the proposed Conclusions directed towards a Convention, that is after deletion of the words "as appropriate in the national circumstances".
**Point 4**

The Committee considered an amendment submitted by the U.S.S.R. Employers' deputy member to insert the words "general education" after "access to". It was mentioned, however, that the subject of discrimination in the field of education was already being dealt with by the United Nations Subcommission on the Prevention of Discrimination and the Protection of Minorities and the amendment was rejected by 38 votes to 278, with 47 abstentions. Point 4 as a whole was adopted by 215 votes to 0, with 150 abstentions.

**Point 5**

Introductory Sentence.

The United Kingdom Government member submitted a new text intended to take account of the fact that the subjects listed in the different paragraphs of point 5 were not all within the competence of governments. In his view government action would have to be subject to the agreement of employers' and workers' organisations. However, other members, particularly the Workers' members, felt that the amendment would result in a weakening of the Recommendation by leaving too great discretionary powers with these organisations. To meet these objections the United Kingdom Government member accepted a number of changes to his amendment. It was adopted unanimously in the following form: "Each member to formulate its policy by means of legislative measures, collective agreements between representative employers' and workers' organisations or by other methods in accordance with national conditions and practice and with full regard to the following principles: ".

**Paragraph (1).**

A proposal by the Australian Government member to replace the words "the promotion of equality of opportunity and treatment" by the words "the elimination of discrimination" was rejected by 159 votes to 169, with 24 abstentions.

**Paragraph (2).**

A similar amendment sponsored by the same member was rejected by 159 votes to 179, with 18 abstentions. The Committee decided unanimously to insert in subparagraph (c) the word "experience" between the words "character" and "ability". It then voted against the deletion of subparagraph (d) by 144 votes to 215, with 6 abstentions; against the deletion of subparagraph (e) by 147 votes to 212, with 3 abstentions; and against the deletion of subparagraph (f) by 144 votes to 216, with 9 abstentions. It agreed by 188 votes to 147, with 27 abstentions, to insert the words "and social security" in subparagraph (f) at the suggestion of the Workers' members. An amendment submitted by the Egyptian Government member to deal with welfare facilities in a separate subparagraph in the following terms: "(g) use of restaurants, canteens, rest-rooms and other welfare facilities provided in connection with employment, including means of transport to and from places of work; and abolition of segregation wherever it exists as regards
such facilities and services " was rejected by 166 votes to 166, with 29 abstentions. An amendment submitted by the U.S.S.R. Workers' member to insert a fresh subparagraph as follows: "the right to organise trade unions freely, without interference or control by government authorities or employers, and the right to conclude collective agreements" was rejected by 60 votes to 268, with 34 abstentions.

Paragraph (3).

The Ceylon Workers' member submitted an amendment to insert two new subparagraphs with a view to protecting immigrants who had been permitted or encouraged to enter a country against the imposition of additional disabilities or restrictions and to protecting minority linguistic groups. This amendment was rejected by 144 votes to 175, with 39 abstentions.

Paragraph (4).

The Employers' members had proposed the addition at the end of this paragraph of the following words, which had already been accepted in connection with the proposed Convention: "provided that distinctions determined by the inherent requirements of the job are not to be considered as adverse discrimination." A subamendment submitted by the Netherlands Employers' member, to add after "inherent requirements of the job" the words "or additional remuneration related to particular circumstances in which the job is being performed, such as expatriation allowances" was rejected by 144 votes to 203, with 18 abstentions. The original amendment was adopted by 192 votes to 181, with 3 abstentions.

Paragraph (5).

An amendment submitted by the Employers' members to replace the words "trade unions" by "workers' unions" and to specify that trade unions should not countenance or practise discrimination in apprenticeship programmes was rejected by 147 votes to 161, with 63 abstentions.

Paragraph (6).

The Rumanian Employers' deputy member proposed the addition of "remuneration" to the list of subjects in respect of which collective agreements should contain no discriminatory provisions. This amendment was rejected by 144 votes to 191, with 41 abstentions.

Point 5 as amended was adopted as a whole by 238 votes to 144.

Point 6

The United Kingdom Government member proposed the deletion of all the words following "placement facilities" which he considered too detailed and which, by mentioning certain methods of preventing discrimination, tended to exclude others.
In the discussion on this point it was mentioned that the term "independent public corporations" was intended to apply only to government-owned corporations. The amendment was rejected by 171 votes to 202, with 15 abstentions, and point 6 was adopted by 223 votes to 139, with 26 abstentions.

**Point 7**

An amendment submitted by the Polish Government member to provide for sanctions in the case of infringement of the prohibition of discrimination was rejected by 68 votes to 250, with 44 abstentions. Point 7 was adopted by 212 votes to 84, with 43 abstentions.

*Proposal to Insert a New Point Following Point 7*

The Ukrainian Government member proposed a new point dealing with equality of access to education and the creation of schools and other general education and vocational training establishments where instruction would be given in the languages of the principal ethnic groups. This proposal was rejected by 78 votes to 251, with 22 abstentions.

**Point 8**

An amendment submitted by the Employers' members to replace the words "on account of" by the words "on account of such reasons as" was adopted by 284 votes to 40, with 21 abstentions. Point 8 was adopted unanimously.

**Points 9, 10 and 11**

These points were adopted, in the case of point 9 by 342 votes to 0, with 19 abstentions, in the case of point 10, by 385 votes to 0, with 3 abstentions, and in the case of point 11, unanimously.

**Proposals Dealing with the Application of the Convention to Non-Metropolitan Territories**

When it considered point 2 of the proposed Conclusions directed towards a Convention the Committee had decided to defer to a later sitting its examination of certain proposals dealing with the application of the Convention to non-metropolitan territories since this was a subject which had to be studied in the light of article 35 of the Constitution. These proposals consisted of an amendment to point 2 submitted by the Czechoslovak Government member to provide that discrimination be forbidden by legislation and other measures in metropolitan and non-metropolitan territories in order to secure in practice equality of rights in employment and occupation, and a subamendment to this amendment submitted by the Workers' members with a view to inserting a new point providing for the application of the Convention to
non-metropolitan territories. In the meantime the Workers' members had submitted a fresh subamendment to their subamendment; this reproduced certain provisions concerning the Forced Labour Convention, 1930, which dealt with the application of this Convention in the territories concerned; it also reproduced paragraph 4 of article 35 of the Constitution.

The Legal Adviser was consulted on this point. He explained that, for Members the obligations of a ratified Convention were only additional to the fundamental obligations which followed from the Constitution. As far as non-metropolitan territories were concerned these obligations were laid down in detail in article 35 of the Constitution. It was clear that, if the Committee wished to include in the Convention a provision dealing with these territories, it could only repeat the provisions of article 35, which would be superfluous, or depart from them, which would be incompatible with the obligations undertaken by States when they became Members of the Organisation and accepted its Constitution.

Admittedly, in the past, provisions on the application of Conventions in non-metropolitan territories had been inserted in Conventions. But article 35 had only been in the Constitution since the adoption of the amendment to the Constitution in 1946 and these Conventions were either prior to this adoption or prior to the entry into force of the instrument of amendment.

In addition, the Legal Adviser suggested that the Committee would wish to draft a Convention in such a manner that it would be widely ratified. This would not be the case if they insisted on the introduction of provisions which were not in conformity with article 35.

Finally, he mentioned that the Resolutions Committee had just unanimously adopted a resolution inviting the Governing Body to request the Director-General to prepare, for the consideration of the Governing Body and for transmission to the Conference, a report on the influence of article 35 on the application of Conventions in non-metropolitan territories. It would be unfortunate if a decision of the Committee intervened at this time on a matter which was going to be the object of a comprehensive study on which no pre-judgments should be made.

A motion by the United Kingdom Employers' member to declare the second subamendment submitted by the Workers' members invalid because it was outside the competence of the Committee was rejected by 169 votes to 184, with 27 abstentions. The Committee first voted on the amendment submitted by the Czechoslovak Government member with a view to more formal obligations in respect of non-metropolitan territories; this was rejected by 73 votes to 266, with 25 abstentions. The Committee then adopted the second subamendment submitted by the Workers' members, by a record vote of 204 votes to 153, with 30 abstentions.

This last decision led to some confusion. On the one hand it was clear that, when the subamendment was voted, its intention and wording had been accepted by the majority. On the other it was also clear that there was a doubt as to the validity of the decision owing to the procedure followed at the time. The Committee therefore decided to include the text concerned in the draft instrument, but with a footnote summarising the discussion on this matter. The Byelorussian Government member
stated his view that the footnote should refer to the relevant part of the report, but should not include a summary of the discussion.

The text of the footnote was as follows:

The Committee wishes to indicate that point 7 represents the majority view of the Committee although there is some doubt about the validity of the decision owing to the procedure followed at the time. Because of this, and in view of the advice given to the Committee by the Legal Adviser to the Conference that the point might be doubtfully in accordance with article 35 of the I.L.O. Constitution; in view further of the resolution unanimously adopted by the Resolutions Committee recently, asking the Governing Body to request the Director-General to prepare a report on the influence of article 35 on the application of Conventions in non-metropolitan territories, the Committee asks that before discussion of this question next year full consideration be given to it by the I.L.O. and the governments concerned so that a conclusion may more easily be reached then.

This point having been settled, the Committee voted on the revised text of point 2 of the proposed Conclusions directed towards a Convention which had been the starting point of the amendment considered above. This was adopted by 198 votes to 147, with 3 abstentions.

**Adoption of the Report and the Proposed Conclusions**

The report was adopted unanimously.

The proposed Conclusions directed towards a Convention were adopted by 166 votes to 144, with 21 abstentions.

The proposed Conclusions directed towards a Recommendation were adopted by 178 votes to 0, with 153 abstentions.

**Proposed Conclusions Submitted by the Conference Committee**

**Proposed Form of the International Instruments**

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

**Proposed Conclusions Directed towards a Convention**

I. **Definitions**

1. For the purpose of the Convention, the term "discrimination" to include—

   (a) any adverse distinction which deprives a person of equality of opportunity or treatment in employment and occupation and which is made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin; and

   (b) such other adverse distinctions affecting a person's employment or occupation as may be specified by the Member concerned after consultation with representative employers' and workers' organisations.
2. For the purpose of the Convention the terms "employment and occupation" to include access to vocational training, access to employment and the terms and conditions of employment.

II. Scope

3. The Convention to provide that each Member for which this Convention is in force agrees to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect of such employment or occupation, provided that distinctions determined by the inherent requirements of the job are not to be considered as discrimination.

4. The Convention to provide that each such Member agrees to co-operate with employers’ and workers’ organisations and other appropriate bodies in promoting the acceptance and observance of this policy, to promote such educational programmes as may be calculated to secure the acceptance and observance of this policy, to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy, and to indicate in its annual report on the application of the Convention, the action taken in pursuance of the policy and the results secured by such action.

5. The Convention to provide that nothing therein contained shall affect any statutory provisions or administrative regulations which relate to the national security of a Member.

6. The Convention to provide that each Member for which the Convention is in force agrees to pursue a policy for the prevention of discrimination in employment in government and public agencies or in the work of the public employment service.

7. (1) Each Member which ratifies this Convention undertakes to apply it to the non-metropolitan territories, so far as it has the right to accept obligations affecting matters of internal jurisdiction.

(2) Concerning the territories for which the Member which has ratified the Convention has not the right to accept obligations affecting matters of internal jurisdiction, the Member shall immediately bring the Convention to the notice of the
government of the territory asking it to indicate if it accepts the obligations of the Convention.

(3) Thereafter, the Member shall communicate to the Director-General of the International Labour Office all declarations established in agreement with the government of the concerned territory.

(4) Such Member as may desire to take advantage of the provisions of article 35 of the Constitution of the International Labour Organisation, shall append to its ratification a declaration stating—

(a) the territories to which it intends to apply the provisions of this Convention without modification;

(b) the territories to which it intends to apply the provisions of this Convention with modifications, together with details of the said modifications;

(c) the territories in respect of which it reserves its decision.

Proposed Conclusions Directed towards a Recommendation

I. Definitions

1. For the purpose of the Recommendation, the term "discrimination" to include—

(a) any adverse distinction which deprives a person of equality of opportunity or treatment in employment and occupation and which is made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin; and

(b) such other adverse distinctions affecting a person's employment or occupation as may be specified by the Member concerned after consultation with representative employers' and workers' organisations.

2. For the purpose of the Recommendation the terms "employment and occupation" to include access to vocational training, access to employment and the terms and conditions of employment.

II. Formulation of Policy

3. The Recommendation to provide that each Member should, by methods appropriate to national conditions and practice, formulate and, in so far as is consistent with such methods, ensure the application of a national policy designed to eliminate discrimination in employment and occupation.

4. Each Member to formulate its policy by means of legislative measures, collective agreements between representative employers' and workers' organisations or by other methods in accordance with national conditions and practice and with full regard to the following principles:
(1) The promotion of equality of opportunity and treatment in employment and occupation is a matter of public concern.

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

(a) access to training and employment of their own choice on the basis of individual suitability for such training or employment;
(b) access to vocational guidance and placement facilities;
(c) advancement in accordance with their individual character, experience, ability and diligence;
(d) security of tenure of employment;
(e) remuneration for work of equal value;
(f) conditions of work including hours of work, rest periods, annual holidays with pay, occupational safety, occupational health and social security measures, and welfare facilities provided in connection with employment.

(3) All government and public agencies should apply fair and non-discriminatory employment policies in all phases of their work.

(4) Employers should not countenance or practise discrimination in engaging for or training for or advancing or retaining in employment any person or in fixing his terms and conditions of service, provided that distinctions determined by the inherent requirements of the job are not to be considered as discrimination.

(5) Trade unions should not countenance or practise discrimination in respect of admission to trade unions or retention of trade union membership or participation in union affairs.

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

III. APPLICATION OF POLICY

5. Each Member to ensure application of the principles of non-discrimination in all spheres of training and employment and in vocational guidance and placement facilities coming under the direct control of the public authorities and, where practicable and necessary, to promote their observance in other spheres of training and employment and other vocational guidance and placement facilities by such methods as—

(a) making eligibility for contracts, subsidies or licences dependent on observance of the principles;
(b) encouraging local authorities and independent public corporations to further observance of the principles.

6. Each Member to modify or repeal any legislative provisions which prescribe, authorise or otherwise countenance discrimination in employment and occupation.

7. Application of the non-discrimination policy not to affect adversely special measures designed to meet the particular needs of persons who, for such reasons as sex, age, disablement, family responsibilities or cultural status are generally recognised to require special protection or assistance.

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

9. The Recommendation to provide that there should be continuing co-operation between the competent authorities, representatives of employers and workers and interested bodies in taking all practicable measures to foster public understanding and observance of the principles of non-discrimination and in considering what further positive measures may be necessary in the national circumstances to put the principles into effect.

IV. CO-ORDINATION OF PREVENTION OF DISCRIMINATION IN ALL FIELDS

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

Discussion by the Conference in Plenary Sitting

The report of the Committee on Discrimination and the proposed Conclusions were discussed by the Conference in plenary sitting on 25 June 1957.

Mr. Campbell (Employers' delegate, Canada) said that the Employers agreed generally with Governments and Workers in moving towards the elimination of discrimination in employment but differed as to the best course to follow. They were opposed to a Convention because it might encroach on the functions of employers and workers in settling employment questions among themselves and they considered educative measures more likely to give satisfactory results than laws of prohibition. There were several features in the proposed Conclusions directed towards a Convention which were unsatisfactory, namely the definitions and point 7, which they regarded as illegal. The Employers' members had favoured a resolution but, in order to get general acceptance, had been prepared to consider a Recommendation; the Recom-
mendation arrived at was, however, still unsatisfactory as far as its definitions were concerned.

Mr. Krenn (Government adviser, Austria) said his Government considered that the I.L.O. had a duty to see that discrimination on the ground of race, colour, sex, religion, political opinion, national extraction or social origin was stamped out, and that the best way of doing this was to adopt a Convention containing the fundamental principles which everyone wished to uphold. It would be illusory to think that a Recommendation would have the same value. History had shown that there was discrimination everywhere under the cover of different pretexts but always resulting from an over-estimation of one national culture compared with another, or of one religion or economic system compared with another. The Convention must contain standards, the infringement of which could be stigmatised as social injustice.

Mr. Said Salama (Government adviser, Egypt) referred to the condemnation of racial discrimination by the First Asian-African Conference held in Bandung. His Government had expected the Office to put forward a more radical draft text. They were of the opinion that there should be a Convention only. The proposal for a Convention supplemented by a Recommendation was a compromise and certain amendments which had been adopted introduced loopholes. The instrument should pay special attention to non-metropolitan territories and that is why the Committee had included point 7 in spite of the interpretation of the Legal Adviser that it was not in conformity with article 35 of the Constitution. He did not accept this interpretation. He was sure that governments which opposed point 7 did so for reasons other than constitutional ones. As for point 5, its inclusion in a rather dangerous form showed a disregard for the basic freedoms of the people and gave power to the administrative authorities to block a free man’s way to employment.

Mrs. Srnská (Government adviser, Czechoslovakia) said that the Czechoslovak delegation considered the instrument should have the form of a Convention providing that discrimination be forbidden by legislation and that equal rights of employment and occupation should be ensured in practice. She stressed the importance of strict application in non-metropolitan territories and welcomed the fact that the I.L.O. was to make a study of article 35 of its Constitution. The results of the work of the Committee were a step forward but the texts could have been better and more effective.

Mr. Franco Nogueira (Government adviser, Portugal) said that the Portuguese Government delegation took the view that the instrument should have the form of a Recommendation. They were not opposed to the substance of the provisions proposed for the Convention, which was in accordance with Portuguese policy in this field, except for point 7, which was unacceptable in that it restricted and conditioned the application of the I.L.O. Constitution; some of its provisions could, however, more appropriately be part of a Recommendation. Ratification of a Convention might raise difficulties in some countries which would run counter to the purpose desired by the Conference. It was possible that the Portuguese Government might hold a different opinion at the second discussion if a good case for a Convention had been made out in the meantime.
Mr. Popesco (Workers' adviser, Rumania) said that the results obtained in the Committee only partly solved the problem. In order to obtain as large a number of ratifications as possible the Committee had preferred to propose a Convention with limited scope and hence one which would be less effective. It had even been suggested that grounds of discrimination mentioned in the Universal Declaration of Human Rights should not be included. Racial discrimination was still practised on a wide scale and coloured people were not admitted to higher posts. He hoped that in the course of the second discussion the instruments would be made more effective.

Mr. Rosner (Government adviser, Poland) said that declarations of rights had played an important part in the historic struggle for the liberation of the individual, but today there was a demand for clear recognition that discrimination was a crime against humanity. That was why he considered the instrument should take the form of a Convention containing not only definitions of principles but also formal and precise obligations on ratifying States. He was disappointed that the Committee had not adopted proposals for the prohibition, by means of legislation, of all discriminatory measures. He recognised the importance of education to instil into communities the notion that discrimination was a crime against the individual and against humanity but such measures were insufficient unless they were supported by sound anti-discrimination legislation. He regarded the argument that legislative measures would encroach on the freedom of negotiation between employers and workers as untenable. The inclusion of point 5 was dangerous as it would permit employers to refuse employment to certain workers on purely political grounds, and he supported the amendment to this point put forward by the Egyptian Government adviser. Point 7 of the text directed towards a Convention did not go as far in asking for integral application of the Convention in non-metropolitan territories as he would have wished; it revealed that article 35 of the I.L.O. Constitution was an obstacle to social progress in those parts of the world where it was most needed; point 7 had, however, the merit of submitting to international discussion the problem of the best path to follow in applying anti-discrimination measures to non-metropolitan territories.

Mr. Jockel (Government adviser, Australia) spoke in support of an amendment submitted by the Australian Government delegation to point 4 of the proposed Conclusions directed towards a Convention. The present text appeared to impose a duty of co-operation on one party only, namely the government. The amendment proposed that member States ratifying the Convention would agree "to seek the co-operation of employers' and workers' organisations and other appropriate bodies... in promoting such educational programmes as may be calculated to secure the acceptance and observance of this policy". The amendment also proposed the omission of reference to the repeal of statutory provisions and to the modification of administrative instructions or practices inconsistent with the policy; the principal obligations stated in point 3 assumed that the elimination of discrimination would be a progressive task and such repeals must be expected to come progressively.

Mr. Kaplansky (Workers' adviser, Canada), speaking as Workers' Vice-Chairman of the Committee, expressed his appreciation of the excellent spirit which had
prevailed in the Committee. The Workers' members had fought for a Convention incorporating a number of paragraphs and statements of policy which did not appear in the text now before the Conference, but they were by and large satisfied with most of that text. The problem of discrimination was difficult, but for that very reason it was important that the I.L.O. should face it. When shorn of its legal verbiage the document put forward the propositions that every person applying for employment or eligible for promotion should be judged solely on his ability to perform the required task and not on the basis of the colour of his skin, the place he was born in, the church he worshipped in or on similar grounds; that the ability to perform certain jobs was not the God-given prerogative of favoured groups; and that given the opportunity every healthy and normal human being could learn to compete for his chosen trade or occupation. These propositions were universal in character and could be applied in every country.

It had been said that discrimination was not a definable offence, yet he submitted that the experience of Canada and the United States with anti-discrimination legislation had shown that offences were definable. Machinery had been established to deal with complaints, to sift them, to do something about them, to introduce means of conciliation and to provide for educational efforts. It had opened possibilities of employment for thousands of people who had been denied them in the past. What had been possible in the United States and Canada could be done in most other countries. There had been a great many statements of principle in the past to which mankind had not paid attention and the I.L.O. had been charged with a responsibility to add something new which would set standards to which humanity could listen. That was why the Workers' group was in favour of a Convention and why they believed it should be applied to non-metropolitan territories. The present texts were suitable as a basis for discussion and he appealed to delegates to study them during the course of the year so that they could come to the second discussion with appropriate modifications to make them complete and beneficial for the people for whom they were intended. He appealed for the full co-operation of governments and employers, not only in the letter but also in the spirit of the instruments which were to be adopted.

Mr. Deshmukh (Employers' adviser, India) considered the problem of discrimination in employment a complex one which had to be faced in a realistic manner. India had a heterogeneous population with a history of a spirit of accommodation and tolerance and the peoples who came to India during the centuries had become part and parcel of the population; this deep-rooted sense of tolerance and equality had been reflected in the country's Constitution; even the bane of untouchability had been abolished by law. Social reforms depended, however, on the acceptance and agreement of all parties, and when it came to formulating an international instrument regard must be had to divergent national practices and different political and social ideologies. The objective of eliminating discrimination could best be achieved through education; prejudices on the part of employers or employees against accepting a person not to their liking would disappear only through persuasion by reason and truth. The value of international treaties depended on the spirit in which they were implemented and he hoped that the words spoken from the rostrum would be remem-
bered by delegates when they were actively seeking ratification and implementation of the Convention in their own countries.

Sir Archibald Harrison (Government delegate, United Kingdom) spoke in reference to point 7 of the proposed Conclusions directed towards a Convention. His delegation was opposed to this point, not from any desire to cover up nefarious practices in non-metropolitan territories but simply because it was unconstitutional. Article 35 of the Constitution dealt with the obligations of a ratifying State in respect of its non-metropolitan territories and with the procedure. If the Conference wished to change these provisions it could do so, but only by amending the Constitution in accordance with article 36; they could not be changed in a backdoor way by incorporating an unconstitutional provision in a Convention. Delegates would take a serious view if anyone suggested putting into a Convention a provision which was inconsistent with some other article of the Constitution—article 19, for instance. The Conference must be very careful to keep the Constitution intact as it was only within the firm and rigid framework of the Constitution that the Organisation could work efficiently and properly.

Mr. Popovich (Workers' delegate, Ukraine) regarded the fact that the Committee by a majority vote had been in favour of the adoption of a Convention and a Recommendation on the subject as a step in the right direction. He could not agree with some members who had regarded educational measures as sufficient; it was essential to have also laws and instructions and to ensure that they were put into practice. He had been concerned to hear the view expressed that action should be slow and gradual and he believed this was because the present situation was advantageous to some people. He supported the amendment to point 5 submitted by the Egyptian Government adviser.

Mr. Hauck (Government delegate, France) stated that his Government was one of those which had come out very clearly in favour of a Convention to deal with this subject. To be effective a Convention must, however, receive the largest possible number of ratifications; for this reason he supported the attitude of the United Kingdom Government delegate on point 7. He agreed with the Legal Adviser that if such a provision was in accordance with article 35 of the Constitution it was superfluous and that if it was inconsistent with that article it was unconstitutional. Moreover, the Resolutions Committee had adopted a resolution inviting the Governing Body of the I.L.O. to ask the Director-General to prepare for its consideration and for transmission to an early session of the Conference a report containing an analysis of the influence of article 35 of the Constitution on the application of Conventions in non-metropolitan territories. On the basis of a clear-cut study of all the aspects of article 35 the Conference would then be able to examine whether it should be retained, abolished or amended. It would be a contradictory attitude, in view of this request for a methodical study, to adopt another text which had been too hastily drafted and which corresponded neither to the realities of the situation nor to the constitutional position of the I.L.O.

Mr. Carroll (Government adviser, Canada) considered a good start had been made. His delegation did not, however, entirely agree with the Committee's Con-
elusions and it reserved its position in regard to the inclusion of some of the proposed bases of discrimination, to the form the instrument should take and to a number of other points. The text was not quite in line with the approach which experience in Canada had shown to be the most effective; this experience covered both the administration of positive and prohibitive legislation in the field of discrimination in employment and the carrying out of an active educational programme aimed at diminishing the commission of overt acts caused by prejudice and at reducing prejudice itself.

Mr. Johnson (Government adviser, United States) said that while remarkable advances had been made in the United States during the past decade and a half in eliminating racial discrimination in employment there were still a number of Americans who suffered from attitudes of racial prejudice in their attempt to earn a livelihood. A number of real and positive advances had recently been made through the co-operative efforts of government, trade unions, employers, private organisations and millions of American citizens. He instanced the abolition of discrimination in the armed forces and in all public facilities of the nation’s capital; the beginning of the end of segregation in the public school system; an 800 per cent. increase since 1938 in the number of non-whites in the federal civil service; the work of the President’s Committee on Government Contracts, which was effectively eliminating discrimination in employment in plants doing business with the Government; and the remarkable increase in the number of non-whites obtaining skilled jobs. The United States Government delegation had come to Geneva in part to share experiences with other delegations and it had been brought home to them that the moral force abroad in the world among men of good-will could eliminate the evil of discrimination wherever it existed. The I.L.O. could make a valuable contribution towards hastening the day when people would be judged by their intrinsic worth and not by the colour of their skin, by their religion or by their ancestry. He appealed for extensive comments on the report of this Committee before the next discussion. His Government believed that work in the field of discrimination could be more effectively carried out by the kind of flexible policies appropriate to the Recommendation form of I.L.O. standards; for that reason it was not prepared to support a Convention at this time. The proposed Recommendation prepared was not perfect but his Government hoped to work with others to make it a better instrument at the next session of the Conference.

Mrs. Novikova (Workers’ delegate, Byelorussia) considered it was the task of the I.L.O. to prepare international instruments which would effectively bring about the prohibition of discrimination and its abolition everywhere. It was essential, for instance, that there should be no discrimination against women workers, who in some countries formed from 30 to 40 per cent. of the working population. In many countries women were paid less than men, were the first to be discharged, and when unemployed either received no unemployment benefit or received less than an unemployed man. With regard to point 5 of the proposed Conclusions directed towards a Convention, she felt that it very seriously limited the possibility of anti-discrimination measures. She also opposed the amendment proposed by the Australian
Government delegation. While supporting the Conclusions of the Committee she considered that the inclusion of provisions covering legislative prohibition of discrimination both in metropolitan and non-metropolitan territories would have improved the document.

Mr. Bocobo (Government adviser, Philippines) considered that the amendment submitted by the Australian Government delegation would stifle the heart of the document.

Mr. Thondaman (Workers' delegate, Ceylon) said that he had at first welcomed the placing of the subject on the agenda of the Conference but had been disappointed with the Conclusions arrived at by the Committee which, rather than eliminating discrimination, would retain discriminatory practices. Members of the Committee did not appear to realise the seriousness of the problem in many parts of the world. In the area from which he came there were special problems resulting from the effect of new citizenship laws on the position of national minorities and descendants of immigrants who had been resident in a country for a long time. With the creation of new countries in south-east Asia after the Second World War a number of new nationalities had been established in place of a previous common nationality such as British, Dutch or French. In Ceylon grave difficulties had arisen because the Indian minority had been made stateless through the operation of discriminatory laws. The vast bulk of settlers of Indian origin had been born in the country; they had all been there at least since 1939, from which time there had been a ban on migrants from India. The laws on citizenship had created major social, economic and political difficulties which remained unsolved. The cases of these persons in Asia who had been caught up by arbitrary laws must be kept in mind; they should not be regarded as foreigners; before 1948 they had enjoyed the same nationality on the basis of common residence in a territory for a long period. The Migration for Employment Recommendation (Revised), 1949, provided that a migrant who had resided in a country for more than five years should cease to be treated as a migrant. The spirit of this Recommendation should be incorporated in the texts before they were finalised in 1958. Without this change the texts would not solve the problems of the persons he had mentioned in Asia. As regards point 7 of the proposed Conclusions directed towards a Convention he felt that the only place where it could be challenged was in a court of law, and article 37 of the I.L.O. Constitution clearly stated who was competent to interpret the Constitution.

Mr. Córdova (Employers' delegate, Cuba) said the texts attempted to deal with a complex subject on which political, social, moral and religious factors converged. He considered the most effective way of abolishing discriminatory practices was through educational measures but that legislative action might assist if the first step taken by the Conference was moderate, i.e. if the Conference confined itself to adoption of a Recommendation. To jump from idealistic declarations to an international instrument with binding effect was an unduly bold step to take and he did not think it would produce the positive results which everybody wanted. In addition to the traditional concept of discrimination on racial and religious grounds other ingredients had been included, e.g. sex; while an attempt should be made to eradicate
these other causes of discrimination one had to beware of differing interpretations. What, for instance, was the meaning of the expressions “social origin”, “national extraction” and “political opinion”?

Mr. Jockel (Government adviser, Australia) then stated that his delegation withdrew the amendment which they had submitted.

The discussion being closed, the Conference adopted the Committee’s report without objection.

The Conference then voted on the Conclusions proposed by the Committee. Points 1 to 4 of the proposed Conclusions directed towards a Convention were adopted seriatim. On point 5 the amendment submitted by the Government adviser of Egypt was rejected by 59 votes to 120, with 30 abstentions, and point 5 as originally drafted was adopted by 122 votes to 18, with 43 abstentions.

Points 6 and 7 were adopted seriatim.

A vote was then taken on the proposed Conclusions directed towards a Convention as a whole. They were adopted by 157 votes to 37, with 17 abstentions.

Points 1 to 10 of the proposed Conclusions directed towards a Recommendation were adopted seriatim and the proposed Conclusions directed towards a Recommendation were then adopted as a whole. Since no opposition was expressed, a vote was not considered necessary.

The Conference then adopted by 224 votes to 0, with 1 abstention, a resolution concerning the placing on the agenda of the next Ordinary Session of the Conference of the question of discrimination in the field of employment and occupation.
CHAPTER II

PROPOSED TEXTS

The texts of a proposed Convention and a proposed Recommendation concerning discrimination in respect of employment and occupation are given below. They are based on the Conclusions adopted by the International Labour Conference at its 40th Session. In accordance with paragraph 6 of article 39 of the Standing Orders of the Conference, governments are asked to communicate any amendments or comments so as to reach the International Labour Office in Geneva not later than 27 November 1957.

The preambles to both the proposed Convention and the proposed Recommendation are in the standard form. A reference to the provisions contained in section II (a) of the Declaration of Philadelphia has been included in the preamble to the proposed Convention.

Certain changes have been made in the definitions of the terms "discrimination" and "employment and occupation" adopted by the Conference (Article 1 of the proposed Convention and Paragraph 1 of the proposed Recommendation). The proviso that distinctions based on inherent requirements of a job are not to be considered as discrimination, which appeared in point 3 of the proposed Conclusions directed towards a Convention and in point 4 (4) of those directed towards a Recommendation, and which has a bearing on the definition of "discrimination", has been shifted to the Article and Paragraph containing that definition. When the Conference Committee considered the definition of "employment" and "occupation" there was considerable discussion as to the exact meaning of these words and it was agreed that before the next Ordinary Session of the Conference the Office would try to clarify the matter. The attention of governments is called to a note on this subject which is given as an Appendix to this report. In the proposed texts it is suggested that the definition of these words include not only access to "employment", etc., but also to "particular occupations".

Except for drafting changes, and for the deletion of the proviso which now appears in the definition of "discrimination", Article 2 of the proposed Convention is the same as point 3 of the proposed Conclusions directed towards a Convention.

Article 3 is based on points 4 and 6 of the proposed Conclusions directed towards a Convention, both of which outlined obligations of Members ratifying the Convention. Point 6 resulted from a desire of the Conference Committee to include in the Convention reference to a method of application which had been proposed for the Recommendation in Report VII (2). It would therefore seem in accordance with
the Committee's intention to bring the wording into line with that now put forward in the proposed Recommendation, and this has been done in subparagraphs (d) and (e). Moreover, the words "co-operate with" have been changed to "seek the co-operation of" in Article 3 (a), to meet a valid point made during the discussion of this point: that, while governments can undertake to seek the co-operation of employers' and workers' organisations and other appropriate bodies, they cannot undertake to secure it.

Article 4 is similar in substance to point 5 of the proposed Conclusions directed towards a Convention. However, several speakers both in the Committee and in the plenary sitting of the Conference expressed the feeling that this point as drafted was dangerous in that it gave power to the administrative authorities to block a man's way to employment. Governments may wish to consider whether this Article is drafted in too sweeping a form and whether it should be qualified in any way, e.g. by reference to the right of an individual to have recourse to some appropriate form of fair hearing if he considers himself to have been unfairly deprived of his employment.

Two new provisions are being tentatively suggested for the consideration of governments with a view to their inclusion in the proposed Convention. The proposed Article 5 would make it possible for Members, subject to prior consultation with representative employers' and workers' organisations, to determine that special measures of protection or assistance provided for in other international Conventions or Recommendations, or designed to meet the particular requirements of certain groups generally recognised to need such protection or assistance, shall not be deemed to be "discrimination".

Moreover, having regard to the fact that the question of equal remuneration for men and women workers for work of equal value has been regulated in detail in the Equal Remuneration Convention, 1951, it would appear unnecessary to deal with the subject again in the proposed Convention, and the object of the suggested Article 6 is to make clear that the Convention does not cover this subject.

Finally, the proposed text of the Convention contains a "Possible Article relating to Non-Metropolitan Territories" which is exactly in the form in which the Conference adopted it. As has been seen in Chapter I, this point gave rise to a lengthy discussion in the Conference Committee, and was referred to also by several speakers during the discussion in the plenary sitting of the Conference. In accordance with the wish expressed by the Committee the International Labour Office will give full consideration to this question before the next Ordinary Session of the Conference; it would be grateful if governments in their comments on the proposed Convention would in particular express their views on the desirability of the inclusion of such an Article in the Convention and on its contents.

In the proposed text of the Recommendation, no changes have been made in the definitions (Paragraph 1) other than those mentioned above.

Point 3 of the proposed Conclusions directed towards a Recommendation has been omitted; it was felt that as concerns the formulation of policy it covered the same ground as the introductory clause in point 4, and that as concerns the application
of policy this provision was out of place in a section on "Formulation of Policy" and was implicit in the measures outlined in the next section on "Application of Policy".

Paragraph 2 is based on point 4. The order of the provisions of subparagraphs (a) and (b) in paragraph (2) of point 4, and of paragraphs (5) and (6), has been inverted, as the new order seemed more logical. Moreover, the words "trade unions" in point 4 (5) have been replaced by "industrial organisations" in Paragraph 2 (f), both to ensure greater conformity with the wording of the I.L.O. Constitution and to ensure that the principle of non-discrimination shall apply to employers' as well as workers' organisations.

In Paragraph 3 (point 5), apart from modifications in presentation, attention may be called to the following changes, which it is believed are not inconsistent with the intentions of the Conference Committee when it adopted this point: the words "public authorities" have been replaced by "central authority"; the order of the provisions contained in the original subparagraphs (a) and (b) has been inverted on grounds of order of logic and importance, and the original subparagraph (a), which dealt with two different ideas, has been split into two clauses (these form (ii) and (iii) of the new subparagraph (b)); in view of questions raised as to the exact meaning of the words "local authorities" and "independent public corporations" the former subparagraph (b) has been rephrased (as subparagraph (b) (i)) to use clearer terminology already accepted in other I.L.O. instruments (in particular the Equal Remuneration Recommendation, 1951); finally it appeared necessary, because of the ambiguity of the words "contracts, subsidies or licences" used without qualification, to introduce specific reference to the nature of such contracts, subsidies or licences.

Paragraph 4 is based on point 6 of the proposed Conclusions directed towards a Recommendation. However, point 6 was couched in different and rather less far-reaching terms than those used in a corresponding provision of the proposed Convention (Article 3 (c)), and it has appeared desirable to reword it to ensure greater conformity between the two instruments.

Paragraph 6 is based on point 8 of the proposed Conclusions. In order that regard should be had to all pertinent provisions of the Migration for Employment Convention and Recommendation (Revised), 1949, and not merely to those dealing with training and employment, the words "the training and employment of" have been omitted. Specific reference has been made to the members of the families of immigrant workers, since the Migration for Employment Convention and Recommendation (Revised), 1949, also contain provisions applying to them.

No changes other than drafting changes have been made in points 7, 9 and 10, which become Paragraphs 5, 7 and 8 of the proposed Recommendation.

In addition to the modifications indicated above, some very slight additional drafting changes have been made at various points in the texts.
A. Proposed Convention concerning Discrimination in Respect of Employment and Occupation

The General Conference of the International Labour Organisation,

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

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

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

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

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

Article 1

1. For the purpose of this Convention—

   (a) the term “discrimination” includes—

      (i) any adverse distinction made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin which deprives a person of equality of opportunity or treatment in employment or occupation; and

      (ii) such other adverse distinctions affecting a person’s employment or occupation as may be determined by the Member concerned after consultation with representative employers’ and workers’ organisations;

   (b) distinctions in respect of access to a particular employment based on the inherent requirements thereof shall not be deemed to be “discrimination”.

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

Article 2

Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

Article 3

Each Member for which this Convention is in force undertakes—

   (a) to seek the co-operation of employers’ and workers’ organisations and other appropriate bodies in promoting the acceptance and observance of this policy;
(b) to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;
(c) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;
(d) to pursue the policy in respect of employment under the direct control of a national authority;
(e) to ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority; and
(f) to indicate in its annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action.

Article 4

Nothing in this Convention shall affect any statutory provision or administrative regulation which relates to the national security of a Member.

Article 5

Any Member may, after consultation with representative employers' and workers' organisations, determine that the following shall not be deemed to be discrimination:

(a) special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference;
(b) other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or cultural status, are generally recognised to require special protection or assistance.

Article 6

Equal remuneration for men and women workers for work of equal value is dealt with in the Equal Remuneration Convention, 1951, and is therefore not dealt with in this Convention.

Possible Article relating to Non-Metropolitan Territories

1. Each Member which ratifies this Convention undertakes to apply it to the non-metropolitan territories, so far as it has the right to accept obligations affecting matters of internal jurisdiction.

1 Concerning this provision, the Conference Committee made the following remarks:

"The Committee wish to indicate that [this] point ... represents the majority view of the Committee although there is some doubt about the validity of the decision owing to the procedure followed at the time. Because of this, and in view of the advice given to the Committee by the Legal Adviser to the Conference that the point might be doubtful in accordance with article 35 of the I.L.O. Constitution; in view further of the resolution unanimously adopted by the Resolutions Committee recently asking the Governing Body to request the Director-General to prepare a report on the influence of article 35 on the application of Conventions in non-metropolitan territories, the Committee asks that before discussion of this question next year full consideration be given to it by the I.L.O. and the governments concerned so that a conclusion may more easily be reached then."
2. Concerning the territories for which the Member which has ratified the Convention has not the right to accept obligations affecting matters of internal jurisdiction, the Member shall immediately bring the Convention to the notice of the government of the territory asking it to indicate if it accepts the obligations of the Convention.

3. Thereafter, the Member shall communicate to the Director-General of the International Labour Office all declarations established in agreement with the government of the concerned territory.

4. Such Member which may desire to take advantage of the provisions of article 35 of the Constitution of the International Labour Organisation shall append to its ratification a declaration stating—

(a) the territories to which it intends to apply the provisions of this Convention without modification;

(b) the territories to which it intends to apply the provisions of this Convention with modifications, together with details of the said modifications;

(c) the territories in respect of which it reserves its decision.

B. Proposed Recommendation concerning Discrimination in Respect of Employment and Occupation

The General Conference of the International Labour Organisation,

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

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

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

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

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

I. Definitions

1. (1) For the purpose of this Recommendation—

(a) the term "discrimination" includes—

(i) any adverse distinction made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin which deprives a person of equality of opportunity or treatment in employment or occupation; and
(ii) such other adverse distinctions affecting a person’s employment or occupation as may be determined by the Member concerned after consultation with representative employers’ and workers’ organisations;

(b) distinctions in respect of access to a particular employment based on the inherent requirements thereof shall not be deemed to be “discrimination”.

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

II. FORMULATION OF POLICY

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

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

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

(i) access to vocational guidance and placement services;

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

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

(iv) security of tenure of employment;

(v) remuneration for work of equal value;

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

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

(d) employers should not countenance or practise discrimination in engaging or training any person for employment, in advancing or retaining such person in employment, or in fixing terms and conditions of employment;

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

(f) industrial organisations should not countenance or practise discrimination in respect of admission thereto, retention of membership therein, or participation in their affairs.
III. Application of Policy

3. Each Member should—

(a) ensure application of the principles of non-discrimination—
   (i) in respect of employment under the direct control of a central authority;
   (ii) in the activities of vocational guidance, vocational training and placement services under the direction of a central authority;

(b) promote their observance, where practicable and necessary, in respect of other employment and other vocational guidance, vocational training and placement services by such methods as—
   (i) encouraging state, provincial or local government departments or agencies and industries and undertakings operated under public ownership or control to ensure the application of the principles;
   (ii) making eligibility for contracts involving the expenditure of public funds dependent on observance of the principles;
   (iii) making eligibility for grants to training establishments and for a licence to operate a private employment agency or a private vocational guidance office dependent on observance of the principles.

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

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

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

7. There should be continuing co-operation between the competent authorities, representatives of employers and workers and appropriate bodies in taking all practicable measures to foster public understanding and observance of the principles of non-discrimination and in considering what further positive measures may be necessary in national conditions to put the principles into effect.

IV. Co-ordination of Measures for the Prevention of Discrimination in All Fields

8. The authorities responsible for action against discrimination in employment and occupation should co-operate closely and continuously with the authorities responsible for action against discrimination in other fields in order that measures taken in all fields may be co-ordinated.
NOTE ON THE SIGNIFICANCE OF THE WORDS "EMPLOYMENT AND OCCUPATION"

The title of the subject under discussion—"Discrimination in the Field of Employment and Occupation"—originated with the United Nations Subcommission on the Prevention of Discrimination and the Protection of Minorities, and when the I.L.O. accepted the invitation of the United Nations Economic and Social Council to be responsible for the study of the subject it retained the use of this expression.

It has been argued that there is an overlap in this title in that "occupation" is only a specific aspect of "employment". However, it is clear that the intention of the United Nations Subcommission was to direct special attention to an important aspect of the subject, namely discrimination affecting the individual's free choice of occupation. For this reason there appears to be value in retaining the words "and occupation" and the Conference Committee rejected an amendment to delete these words.

Considerable attention to terminological concepts such as "employment" and "occupation" has been given by successive International Conferences of Labour Statisticians and the summary of their more recent conclusions on these points may be of guidance to governments.

At the Eighth International Conference of Labour Statisticians it was decided that "persons in employment" included all persons above a specified age who were "at work" and that the phrase "at work" included not only persons whose status was that of employee but also those whose status was that of "worker on own account", "employer" or "unpaid family worker".1

The meaning attached by the Seventh International Conference of Labour Statisticians to the word "occupation" was "the trade, profession or type of work performed by the individual, irrespective of the branch of economic activity to which he is attached or of his industrial status".2

It will be seen, therefore, that at the international level both words have a comprehensive meaning and that they apply to all persons at work. It appears in connection with this subject that this would coincide with the original views of the United

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Nations Subcommission when the I.L.O. was invited to deal with the subject. Moreover, it would appear to be in line with the comprehensive affirmation contained in the Declaration of Philadelphia, 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".