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FORTY-SECOND SESSION
GENEVA, 1958

Fourth Item on the Agenda:

DISCRIMINATION IN THE FIELD OF EMPLOYMENT AND OCCUPATION

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INTRODUCTION

In accordance with article 39 of the Standing Orders of the International Labour Conference, the International Labour Office prepared and sent to governments of Members a report containing the texts of a proposed Convention and a proposed Recommendation concerning discrimination in respect of employment and occupation. These texts were based on the Conclusions adopted by the International Labour Conference at its 40th Session (Geneva, June 1957).

The governments were requested to send any amendments or comments in time to reach the Office not later than 27 November 1957 or to inform the Office by the same date whether they considered that the proposed texts formed a suitable basis for discussion at the 42nd Session of the Conference. The attention of governments was drawn particularly to two points which had given rise to considerable discussion at the 40th Session: following a request by the Conference Committee on Discrimination, governments were asked to give full consideration to a possible Article relating to Non-Metropolitan Territories which appeared at the end of the proposed Convention; and in view of the doubts which had arisen concerning the significance of the term “occupation” an Appendix was attached to Report IV (1) giving the internationally accepted meanings of certain terms in this connection, in the hope that this might assist governments in their consideration of the matter.

At the time of drafting this report the governments of the following 47 countries had replied to the request for amendments or comments or for acceptance of the proposed texts as a basis for discussion: Afghanistan, Austria, Burma, Byelorussia, Canada, Ceylon, Chile, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, Egypt, Finland, Federal Republic of Germany, Greece, Honduras, India, Indonesia, Iran, Ireland, Israel, Japan, Lebanon, Mexico, Morocco, New Zealand, Nicaragua, Norway, Pakistan, Philippines, Poland, Portugal, Rumania, Spain, Sweden, Switzerland, Syria, Thailand, Tunisia, Turkey, United Kingdom, United States, Uruguay, Viet-Nam, Yugoslavia.

The report summarises and analyses briefly the replies of the governments. It also contains the English and French versions of the proposed texts which, if the Conference so decides, will constitute the basis for the second discussion, at the 42nd Session of the Conference, of the question of discrimination in the field of employment and occupation.

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SUMMARY AND ANALYSIS OF THE REPLIES OF GOVERNMENTS

A summary and a brief analysis are given hereunder of the replies received from governments on the subject of the proposed texts of a Convention and a Recommendation concerning discrimination in respect of employment and occupation.

The following 24 governments merely stated that they had no comments to make or amendments to suggest at this stage, or that, in their opinion, the proposed texts constituted a suitable basis for discussion by the Conference at its 42nd Session: those of Afghanistan, Burma, Chile, Cuba, Dominican Republic, Ecuador, Greece, Honduras, Indonesia, Iran, Japan, Lebanon, Mexico, Morocco, Nicaragua, Philippines, Portugal, Spain, Syria, Thailand, Tunisia, Turkey, Uruguay and Viet-Nam. The Governments of Colombia and Mexico stated that the proposed texts were in harmony with the Constitutions and other legislative provisions of these countries, the former adding that they were also in harmony with the Declaration of Philadelphia and the Universal Declaration of Human Rights.

The Governments of Ecuador, Iran, Spain and Viet-Nam made no observations, but reserved the right to bring forward suggestions for amendments or revision of the proposed texts at the Conference. The Governments of Canada and Switzerland, which made certain observations in their reply, reserved the same right.

The Government of Denmark included in its reply the views of the Danish Employers' Confederation. The Governments of Finland and of the Federal Republic of Germany referred to the observations made respectively by the Finnish Employers' Confederation and by the German workers' organisations.

General Observations

BYELORUSSIA

The Government, in accepting the proposed texts as an adequate basis for discussion by the Conference, considers that they should include provisions concerning their application both in metropolitan and in non-metropolitan territories, as well as provisions for the prohibition of discrimination by legislative measures and for the determination of appropriate penal sanctions in case of any infringement of this prohibition.

MOROCCO

The Government points out that there is no discrimination in Morocco based on any of the grounds listed in the proposed texts. Moroccan legislation is very liberal,
notably with respect to religious holidays for people of different faiths. A certain number of aliens are employed in public posts. The only regulations concerning foreign workers apply to immigrant workers who must have an approved labour contract. However, aliens of any nationality may obtain such contracts for work in any employment or occupation for which local manpower is not available.

**SWITZERLAND**

The Government has certain reservations on points which would need to be altered to enable Switzerland to ratify the Convention. In the first place, the objectives of the Convention, and in particular its scope, should be more clearly defined. Moreover, relationships to other Conventions should be better delineated. Finally the provisions of the Convention and of the Recommendation should be in greater conformity on certain points.

**UNITED KINGDOM**

The Government repeats its previously expressed opinion that discrimination in employment can be effectively eliminated only by the education of public opinion towards eradication of prejudice. It considers, therefore, that in order to ensure the widest possible ratification any Convention which may be adopted should confine itself to broad principles which are generally acceptable. More detailed matters which vary according to the national law and practice in each member State should be dealt with in the Recommendation.

**Observations concerning the Form of the Proposed International Instruments**

The Government of Rumania considers that there should be a Convention on discrimination. The Government of the United Kingdom refers to its earlier view that the subject should be dealt with by a Recommendation only, but does not press it in view of the decision of the Conference that there should be a Convention supplemented by a Recommendation. The Government of the United States stresses the fact that it submits comments on various points of the two instruments in order to express its views on them and that this should not be construed as indicating approval of their form.

All other governments which replied either expressly stated or tacitly agreed that the proposed instruments should take the form of a Convention supplemented by a Recommendation. The Government of Finland, which shares this view, indicates however that, while the Confederation of Finnish Trade Unions is in agreement with the Conference's decision, the Finnish Employers' Confederation still feels that there should be only a Recommendation incorporating in a suitable form also the provisions of the proposed Convention.
Observations on the Proposed Convention

Preamble

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.

Observation on the Preamble.

Rumania. Reference should be made also to the Universal Declaration of Human Rights.

It would seem desirable to leave it to the Conference to decide whether such a reference should be included in the Preamble.

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.

Observations on Article 1.

Some of the governments which have made observations on this Article specify that these observations apply also to Paragraph 1 of the proposed Recommendation (Austria, Costa Rica, Federal Republic of Germany, India, Israel, Norway, Pakistan, Poland, Switzerland, United Kingdom, United States). Others did not expressly say so.

1 The observations on the Preamble and on each Article of the Convention are preceded by the text as it appeared in the proposed Convention in Report IV (1).
**Austria:** The proposed definition of the terms "employment and occupation" in paragraph 2 applies to the terms as a whole, and no quotation marks should be used following the word "employment" and preceding the word "occupation".

**Costa Rica:** The meaning of the words "national extraction" in paragraph 1 (a) (i) should be clarified. The Government assumes that their inclusion was intended to cover cases where adverse distinctions are made against workers of certain nationalities, not cases where it is sought to protect national workers, since this is a fair and logical policy which does not involve discrimination against a particular group of workers by reason of its nationality.

**Federal Republic of Germany:** Although the discussions have amply shown that foreign nationality is not to be covered by the words "national extraction" in paragraph 1 (a) (i), this should be made clear in an appropriate way in the text of the Convention in order to facilitate its later application. The same applies to the corresponding Paragraph of the Recommendation, although the latter instrument includes special reference to "foreign nationality" in Paragraph 6. Moreover, a suggestion was made on the workers' side that discrimination on ground of age should also be covered by the instruments. Although the Government is aware of the difficulties which stand in the way of settling the problem of older workers through standard-setting machinery, it submits this suggestion, which in its view might be dealt with through the inclusion of a special clause in the proposed Recommendation.

Regarding paragraph 1 (b), a slight change in the wording of the German text is suggested so as to bring it into accord with the English text. Further, it might be desirable to use the terms "employment and occupation" here as in other parts of the proposed Convention. Finally, regarding the meaning of the word "occupation" (paragraph 2), the Government has taken note of the explanations given on pages 34 and 35 of Report IV (1), and assumes that there will be further discussion on this point at the Conference. The scope of the Convention should be as clearly defined as possible.

**India:** Paragraph 1 (a) (ii) does not take into account the absence, in certain countries or areas, of employers' and workers' organisations. The text should be amended to provide that where there are no such organisations the government concerned may draw up the list of additional adverse distinctions leading to discrimination.

**Israel:** The decision of the International Conference of Labour Statisticians concerning the meaning of the terms "persons in employment" and "occupation", referred to in the Appendix to Report IV (1), may hold good for purposes of economic statistics but does not correspond to the general terminology used in international labour Conventions and in national legislation. The term "employment" generally connotes a master-and-servant relationship, whereas "occupation" has a wider meaning and includes the self-employed. In order to avoid any doubt, the definition of "discrimination" should clearly indicate that the self-employed
are covered by the Convention and for this purpose the words "whether as an employed or self-employed person" should be added after the words "treatment in employment or occupation" appearing in paragraph 1 (a) (i).

In paragraph 2 the word "particular" should be deleted as limiting the application to occupations; on the other hand it should be made clear that the words "terms and conditions" refer to employed persons and not to the self-employed.

**Norway**: The Government feels that it is doubtful whether the term "national extraction" should be retained in paragraph 1 (a) (i), but will not oppose its retention if it is understood that it does not imply a prohibition against differential treatment on the basis of national or alien citizenship.

**Pakistan**: The following should be inserted as subparagraph (b) (ii) of paragraph 1:

— distinction in respect of giving adequate representation to a particular area or class in the services shall not be deemed to be "discrimination".

**Poland**: The proposal to transfer to the definition of "discrimination" the clause now appearing as paragraph 1 (b) should be accepted. I.L.O. action should aim at eliminating all forms of discrimination, whatever may be the employment status of the persons affected. Although the I.L.O.'s primary objective is to defend the rights and interests of wage earners, its competence undoubtedly extends also to independent workers, e.g. members of the liberal professions, peasants, artisans and migrants for settlement. As in the case of wage earners, all these groups are frequently exposed to discriminatory measures and there would be no justification for excluding them from a Convention aimed at eliminating discrimination against workers in all fields of economic activity. The text of paragraph 2 should therefore be accepted as drafted.

**Sweden**: In paragraph 1 (b), the phrase "inherent requirements" is too vague and can lead to abuse. It should be defined more precisely.

If, by reason of the definition of the terms "employment" and "occupation" in paragraph 2, the Convention were to apply also to workers on own account, this might make ratification difficult for Sweden in view of the existence of special regulations restricting the right of aliens to acquire property, to carry on mining activities, to engage in commerce or other business, to participate in a commercial undertaking, to give public performances, etc.

**Switzerland**: The proposed Convention should not affect the internal structure of a State. In Switzerland the political position of women differs from that of men, and this affects conditions of engagement of female workers in the administration. Moreover, a State cannot be compelled to employ aliens in its service. Like the State, the Church is also subject to special conditions. For example, there are no female priests in the Catholic Church. Consequently, the text of paragraph 1 (b) should be modified as follows:

(b) The following shall not be deemed to be discrimination:

(i) distinctions made in respect of a particular employment based on the inherent requirements thereof;
(ii) distinctions in respect of access to posts in the administration of the State or in the service of the Church.

As regards paragraph 2, the meaning of the word "occupation" should be clearly understood. The Government considers that independent workers in the professions, e.g. doctors and lawyers, should be excluded from the scope of the proposed Convention. Undoubtedly, in its opinion, it would be a deplorable injustice not to admit a particular category of persons in, say, the medical schools. Moreover, in the medical profession as in many others, there are serious obstacles to the employment of aliens. Nevertheless, the Government considers that because of its tripartite structure, the I.L.O. is not competent to deal with the liberal professions in general.

**United Kingdom**: The inclusion of sex as a basis of distinction in paragraph 1 (a) (i) was the subject of much discussion at the Conference and it was then made clear that even with a limited application this would raise difficulties for many countries. The proposal in Article 6 might facilitate wider ratification of the Convention, but would not remove the difficulties for all countries.

In the same clause, it is understood that the phrase "national extraction" is intended to exclude nationality as a basis of discrimination. Such exclusion is obviously right, but the position should be made clear beyond any possibility of doubt.

Paragraph 1 (b) should be modified to accord with Point 3 of the Conclusions adopted by the Conference at its 40th Session. It might read—

(b) distinctions in respect of employment or occupation, based on the inherent requirements thereof, shall not be deemed to be "discrimination".

No specific proposal is made by the United Kingdom Government regarding the word "sex" in the list of grounds of discrimination in paragraph 1 (a) (i), and no change has been introduced in the proposed text.

The Governments of Costa Rica, the Federal Republic of Germany, Norway, Switzerland and the United Kingdom feel that the words "national extraction" in the same paragraph might be taken to cover also foreign nationality. However, it will be recalled that these words had been used in preference to "national origin" in order to make it clear that nationality was not covered. It is therefore obvious that it was not intended in this paragraph to deal with nationality, and it will be for the Conference to decide if there is any ambiguity in the phrase that requires clarification.

The possibility of including "age" amongst the grounds of discrimination as suggested on the workers' side in the Federal Republic of Germany, has already been considered, and a proposal to that effect was rejected by the Conference Committee by 109 votes to 206, with 67 abstentions. It is pointed out that paragraph 1 (a) (ii) would make it possible for any Member to determine that distinc-

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2 Ibid., p. 105.
tions made on the basis of age are "discrimination" and should therefore be eliminated. It would seem necessary for the Conference to decide whether it wishes to reverse its earlier decision and to make specific mention of age amongst the grounds of discrimination, or whether it considers that the problem of older workers should be dealt with in any other manner, e.g. in the Recommendation, as suggested by the Government of the Federal Republic of Germany.

The comment of the Government of India appears well founded and accordingly the words "where such exist" have been added in paragraph 1 (a) (ii) after the words "employers' and workers' organisations".

In paragraph 1 (b) the suggestion of the United Kingdom Government to replace the words "distinction in respect of access to a particular employment" by "distinctions in respect of employment or occupation" would have the effect of widening considerably the scope of this clause (the Government of the Federal Republic of Germany also proposes that reference be made to "occupation" as well as "employment"). It is true that Point 3 of the Conclusions adopted by the Conference did not specifically refer to "access" and was therefore less restrictive than the proposed paragraph 1 (b)\(^1\), and the Conference may wish to give attention to this point. On the other hand the words "employment or occupation" would seem to cover a much wider field than the word "job" used in that Point. The proposal would therefore introduce a new concept which has not been considered in the stages leading up to the second discussion and it would seem appropriate to leave it to the Conference to decide the matter.

The words "inherent requirements" to which the Swedish Government raises an objection appeared in an amendment adopted by the Conference Committee by 207 votes to 157, with 9 abstentions. It would therefore seem to be for the Conference to consider this point and to determine whether a more specific wording should be found to eliminate any possibility of abuse.

Two governments suggest additional clauses to be inserted in paragraph 1 (b). As regards the proposal from the Government of Pakistan concerning the grant of adequate representation in the services to particular areas or classes, it would seem that the clause concerning special measures designed to meet the particular requirements of persons who need special protection or assistance (cf. under Article 5) already covers the cases which the Government has in mind. The Swiss Government's proposal would have the effect of excluding posts in the administration of the State or in the service of the Church from the application of the non-discrimination policy, and would therefore seem to be in contradiction in particular with Article 3 (d). For these reasons no change has been introduced in the proposed text on the basis of either of these observations.

Several governments have observations regarding the definition of the terms "employment" and "occupation" in paragraph 2. That of the Federal Republic of Germany feels that the scope of the Convention should be as clearly defined as possible. Those of Sweden and Switzerland consider that workers on own account

\(^1\) The text as adopted by the Conference read as follows: "...distinctions determined by the inherent requirements of the job are not to be considered as discrimination."
or members of the liberal professions should not be covered by the Convention, and refer to special regulations applying to aliens in these occupations. It would seem that this objection would be largely met by the fact that "nationality" is not intended to be covered by the words "national extraction" in the list of grounds of discrimination. On the other hand, the Governments of Israel and Poland feel that the Convention should apply to all workers, whatever may be their employment status, and, while the latter supports the text as drafted, the former suggests that in order to make the position quite clear the words "whether as an employed or self-employed person" should be added after "occupation" at the end of paragraph 1 (a) (i), and two drafting changes should be made in paragraph 2. No change is proposed in the text either to exclude or to include specifically the self-employed, and it would seem to be for the Conference to decide whether it wishes to follow either course in this matter.

The Austrian Government suggests the deletion of the quotation marks after the word "employment" and preceding the word "occupation". Quotation marks, however, had been used because the words were used sometimes with "and", sometimes with "or", and sometimes in isolation. Further, the Government of Israel proposes the deletion of the word "particular" before "occupations", which in its view is too restrictive. Since these proposals have both been made by one government only, no change has been introduced in the text.

**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.

**Observations on Article 2.**

**Ceylon.** Provision should be made to restrict equality of employment opportunity to nationals of the country who do not have plural nationality. This suggestion applies also to Paragraph 2 of the proposed Recommendation.

**Egypt.** Replace the word "thereof" by "of" and add the following thereafter:

(a) access to training and employment of their own choice on the basis of individual suitability for such training and employment;
(b) access to vocational guidance and placement facilities;
(c) advancement in accordance with their individual character, ability, experience and diligence;
(d) security of tenure of employment, including abolition of compulsory repatriation wherever it exists as regards migrant workers;
(e) conditions of work, including hours of work, remuneration for work of equal value, rest periods, paid holidays, occupational safety, occupational health and social-security measures;
(f) 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.
New Zealand. The words "to declare" appear unnecessary. Ratification of the Convention would in itself be a binding declaration of intention to pursue a national policy designed to promote the equality described in this Article. Since there are many types of declaration, e.g. a statement by a Minister or a statutory enactment, retention of these words would create a loose proviso whose meaning was not clear.

Poland. The policy designed to eliminate discrimination with respect to employment and occupation should be implemented in the first place through legislative measures. Only such measures can effectively ensure the equality of workers before the law and constitute a solid basis for an educational and propaganda action against discrimination. The words "by legislation and" should therefore be added before "by methods".

United Kingdom. The precise nature and extent of the obligations imposed by this Article in the case of countries in which wages and other conditions of employment are normally settled by voluntary collective bargaining require to be clarified. It would not be possible for the United Kingdom Government, for example, to accept any obligation which involved intervention in the process of collective bargaining.

The United Kingdom Government makes a general observation that the obligations imposed on governments by this Article should be defined more clearly. It would seem that the Conference had intentionally left considerable latitude to individual countries to determine the most appropriate methods, under national conditions and practice, to promote equality of opportunity and treatment. The Conference may, however, wish to give further attention to this point.

The Government of Ceylon suggests that both this Article and Paragraph 2 of the proposed Recommendation should restrict equality of employment opportunity to persons who do not have plural nationality. This would, however, introduce a new concept, and since no other similar suggestions were received, no change has been introduced in the text.

The Government of New Zealand suggests deletion of the words "to declare", on the grounds that they are unnecessary and that their meaning is not clear. It would seem appropriate to leave it to the Conference to determine whether these words should be retained.

The Polish Government proposes to insert the words "by legislation and" before the words "by methods". The suggestion that legislation should be adopted to prohibit discrimination was contained in two amendments submitted to the Conference Committee by the Czechoslovak and the Israeli Government members respectively. Although both these amendments were rejected, by 73 votes to 266, with 25 abstentions, and by 181 votes to 211, respectively, it should be pointed out that they were broader in scope than the present proposal. However, no change has been made in the proposed text.

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Finally, the Egyptian Government suggests that Article 2 should list various matters in respect of which equality of opportunity and treatment should be promoted. These matters include those listed in Paragraph 2 (b) (i) to (vi) of the proposed Recommendation, and certain others. In view of the far-reaching nature of this proposal, which is put forward by one government only, the text has not been changed and it has been left for the Conference to decide whether any effect should be given to it.

Proposal for the Insertion of a New Article

Egypt. The following new Article should be inserted after Article 2:

The fulfilment of such a policy as indicated in Article 2 is a matter of public concern, with a view to ensuring that:

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

(b) employers and private agencies should not countenance or practise any methods of engaging, training or advancing which may be considered as contradictory to such policies;

(c) 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;

(d) collective agreements provisions in respect of employment and terms and conditions of work should in all cases be consistent with such policies.

This proposed new Article is broadly based on Point 4 (1), (3), (4), (5) and (6) of the Proposed Conclusions directed towards a Recommendation, adopted by the Conference at its 40th Session, with some slight changes both in substance and in drafting. Since no other proposals of a similar nature were received, no change has been made in the text.

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.

Observations on Article 3.

Denmark. The Government refers to its observation on question 3 (1) (c) of the questionnaire, concerning equal remuneration for men and women workers. In

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1 See Report VII (2), op. cit., p. 19.
view of the fact that the scope of Article 3 (d) is limited to employment under the
direct control of a national authority, this provision can be accepted, it being
understood that it should be interpreted in the light of Article 2 of the proposed
Convention, according to which the principles laid down in the Convention shall
be applied by methods appropriate to national conditions and practice, and provided
it does not imply any legislative or administrative intervention in fields which in
Denmark are left to the decision of the employers and workers themselves.

Israel. Subparagraph (c) should come before subparagraph (a), being of a more
basic character. With respect to subparagraph (d) the word “pursue” should be
replaced by “ensure”, as in Paragraph 3 (a) of the proposed Recommendation.
Moreover, the words “national authority” are too vague; the wording of Point 6
of the Proposed Conclusions directed towards a Convention adopted by the
Conference would be preferable. In any case, the same adjective should precede
the word “authority” in this subparagraph and in Paragraph 3 (a) of the proposed
Recommendation.

Poland. The proposed definition of “discrimination”, which covers distinctions
based on “national extraction”, implicitly authorises discrimination against workers
of foreign nationality. There is no doubt that a large number of discriminatory
measures are aimed at these workers, and that a serious gap would remain in the
Convention if it did not cover their case. It is therefore suggested that a new
subparagraph be added as follows:
— to ensure application of the policy to foreign workers lawfully admitted as workers,
subject to special provisions governing access to certain posts in public employment.

Such a clause would take into account legal provisions governing access of
foreign workers to employment in many countries, as well as certain observations
which were made during the discussion on this question in the Conference
Committee.

Sweden. The proposed Convention does not indicate sufficiently clearly what
would be the obligations of a Government in attempting to eliminate discriminatory
practices such as those referred to in Paragraph 2 (d), (e) and (f) of the proposed
Recommendation, particularly in case of failure of its efforts to obtain the abandon­
ment of such practices through “co-operation with employers’ and workers’ organi­
sations”, as prescribed in Article 3 (a). This question should be clarified in the
new report to be prepared for the Conference.

Switzerland. Although the federal Constitution guarantees the equality of all
citizens before the law, it does so only with respect to relations between the
legislative, administrative or judiciary authorities and the citizens, but not in respect
of relations between private persons. Under those conditions, an employer, for
some reason or other, may engage one worker in preference to another. However
futile the reason, this would under the Convention constitute a discriminatory act.
However, one cannot envisage requesting States to modify their private law or to
adopt new provisions to meet such cases. In Switzerland at least, instances of
discrimination between private persons are as a rule too unimportant to be worthy of special attention, and any abuses could be corrected by the competent authority. Unless the Convention contains only a few essential and clearly worded principles, certain States may be prevented from ratifying it. Accordingly, the Government suggests the following redraft of subparagraph (c):

(c) to repeal any statutory provisions and modify any administrative instructions or practices which justify discrimination.

United Kingdom. The Government repeats its general observation concerning the desirability of confining the Convention to broad principles which are generally acceptable.

United States. The extent to which States would be in a position to implement subparagraph (c) would presumably be a question each would consider in relation to ratification of the Convention. In federal States such as the United States, where legislation and administration in the labour field are the responsibility of state governments as well as of the federal government, this provision would not fit into accepted legal procedure and therefore would not facilitate any adjustments at the state level which might be thought advisable. The Constitution of the United States provides important guarantees of individual rights. The XIVth Amendment of the Constitution forbids states to enact or enforce laws which would result in denial of equal protection of the laws or denial of due process of law.

In view of the variations between States, including federal States, in legislative and judicial procedure, this provision may prove a barrier to ratification and compliance. It will be recalled that the Committee vote was very close and this may be further indication of difficulty in obtaining ratification. In view of the provisions in Article 2, paragraph (c) of Article 3 appears unnecessary and might better be omitted.

The United Kingdom Government's observation applies to the whole of Article 3, but no specific change is suggested. This would seem to be a matter for the Conference to consider.

The Swedish Government requests that the present report should clarify the responsibilities of governments in case of non-compliance with the non-discrimination policy, particularly if the procedure suggested in subparagraph (a) for obtaining acceptance and observance of the policy through co-operation with employers' and workers' organisations should fail. No authoritative view can, of course, be given on this point before the text of the proposed Convention has been finalised and the question might usefully be raised for discussion at the Conference. With the text as it stands at present, this matter would seemingly be left for each Member to settle "by methods appropriate to national conditions and practice", as provided for in the proposed Article 2.

The Government of Israel is of the opinion that subparagraph (c) should precede subparagraph (a). The Conference might well decide the order in which the various subparagraphs should appear. The Swiss Government suggests replacing the words "which are inconsistent with the policy" by "which justify discrimina-
tion". This would have the effect of narrowing the scope of the provisions to which this clause refers. Since no other government makes this suggestion, no change has been introduced in the text. The United States Government suggests deletion of the clause and feels that the close margin by which a similar proposal was rejected by the Conference Committee may be an indication of difficulties which may be experienced in obtaining ratification of the Convention should the clause be maintained. It has been left for the Conference to decide whether it wishes to reconsider this point.

The observation of the Danish Government does not call for any change in subparagraph (d). The point raised is analogous to that of the Swedish Government, discussed above. The Government of Israel feels that the verb "to pursue" should be replaced by "to ensure" (presumably to be followed by "application of"). It would seem appropriate to let the Conference consider whether this change is desirable. This Government adds that the clause as drafted is too vague, that it would be preferable to revert to the wording adopted by the Conference in Point 6 of the Conclusions directed towards a Convention, and that at any rate the same adjective should precede the word "authority" in this clause and in Paragraph 3 (a) of the proposed Recommendation. Regarding the reasons which led to the splitting up of Point 6 into subparagraphs (d) and (e) as well as changes in wording in these two clauses, reference should be made to Report IV (1). Moreover, while Paragraph 3 of the proposed Recommendation distinguishes between the responsibilities of Members as regards "employment under the direct control of a central authority" (subparagraph (a) (i)) and employment under "state, provincial or local government departments or agencies", etc. (subparagraph (b) (i)), it was intended that Article 3 (d) of the proposed Convention should cover "employment under the direct control of a national authority" whatever might be the administrative levels or the agencies over which such an authority might exercise direct control in various countries.

The Polish Government suggests the insertion of a new subparagraph concerning application of the non-discrimination policy to foreign workers. A similar proposal was rejected by the Conference Committee by 162 votes to 180, with 32 abstentions. It would seem to be for the Conference to determine whether it wishes to reconsider its earlier decision.

**Article 4**

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

**Observations on Article 4.**

**Austria.** The present wording goes too far and might nullify the whole Convention. It allows each State to judge for itself whether the provisions of the Convention affect the statutory or administrative regulations applying in matters of security, so that a member State might not regard itself bound in any way to give effect to the Convention.

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Egypt. The words "any statutory provision or administrative regulation" should be replaced by "any national legislation".

Poland. This article should be deleted. Its inclusion would countenance all kinds of legislative, administrative or police measures applied under the pretence of protecting national security, but aimed in fact against freedom of political opinion. It would, it is feared, destroy the effect of Articles 1 and 2, which aim at protecting workers against discrimination based, inter alia, on political opinion.

Rumania. This article should be deleted.

Sweden. While this provision is perhaps justified, it should be more carefully drafted and it would be desirable to refer to an individual's right to have any decision to exclude him from employment examined by a legal procedure, if such decision was based on considerations of national security.

Switzerland. Since Articles 4 and 5 supplement Article 1, they should be merged with it.

Yugoslavia. The present text of this article is somewhat broad. The reference to administrative regulations should be deleted, as such regulations may give rise to abuse.

Six Governments have objections to this article. Those of Poland and Rumania suggest that it should be deleted. Those of Egypt and Yugoslavia are of the opinion that there should be no reference to "administrative regulations", which the Yugoslav Government feels may give rise to abuse. In addition, the Egyptian Government would like the words "statutory provision" to be replaced by "national legislation". The Government of Austria considers that the present wording of the article is too sweeping and the Government of Sweden suggests that it should be more carefully drafted and that the rights of the individual to legal protection against arbitrary decisions should be guaranteed. It will be remembered that the Conference Committee had adopted this point by 228 votes to 114, with 23 abstentions, but that several speakers, both in the Committee and in the plenary sitting of the Conference, had expressed the feeling that the point as drafted was dangerous and might lead to abuse. Although no change has been made in the text, it would seem to be for the Conference to decide whether it wishes to reconsider this article in the light of the observations that have been made.

The Government of Switzerland considers that this article as well as Article 5 should be merged with Article 1. This has been left for the Conference to decide in the final drafting of the instrument.

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.
Observations on Article 5.

Austria. In paragraph (b) "social status" should be added to the other reasons justifying special measures for particular groups.

India. The words "where such exist" should be inserted after "organisations" in the introductory paragraph. Moreover, it is suggested that unless there are special reasons for keeping it in, paragraph (a) might be deleted, since special measures of protection or assistance provided for in other Conventions and Recommendations would not appear to be negatived by the proposed Convention.

Ireland. The following subparagraph should be added:

(c) the reservation, for cogent social and/or economic reasons, of certain occupations or classes of occupations to men, unmarried women and widows.

Sweden. Regarding paragraph (b) it is obviously desirable that measures designed, e.g., to provide suitable employment for disabled persons, should not be regarded as discrimination against other groups. On the other hand, the proposed wording could be misconstrued, leaving room, for example, for an active segregation policy based on the "cultural status" of a given group. This article should therefore be redrafted to prevent any such interpretation.

United Kingdom. While it should be made clear that action against discrimination should not override any special measures which are designed and necessary to meet the needs of particular classes of workers, the procedure suggested here seems unnecessarily cumbersome, e.g. in requiring consultation with employers' and workers' organisations before deciding that the measures in (a) and (b) are not discrimination. It would be preferable to replace this article by some general statement on the lines of Paragraph 5 of the proposed Recommendation.

United States. The definition contained in Article 1 does not specifically include special measures of protection or assistance designed to meet the particular requirements of persons who, because of age, sex, disablement or family responsibilities, require this aid. Article 5, however, requires specific consultation and affirmative action on the part of any Member before such Member may determine that special conditions imposed for these reasons, or special measures provided for in other Conventions or Recommendations adopted by the International Labour Conference, are not discrimination. Thus, in the absence of such consultation, the status of such special conditions where they exist would appear to be open to doubt under the provisions of the proposed Convention. Since special conditions are in many circumstances imposed by legislation—federal and state—the practicability and the advisability of the requirements of Article 5 in the light of the situation as it obtains in the United States is highly questionable. The Government, therefore, favours the deletion of the present Article 5 and the substitution of language similar to that employed in Paragraph 5 of the proposed Recommendation.

Two Governments, those of the United Kingdom and the United States, feel that the procedure outlined in this article to determine that certain measures are
not to be considered as discrimination is not satisfactory, particularly as regards previous consultation with employers' and workers' organisations. The Government of India considers that this procedure is unnecessary with respect to measures provided for in other Conventions and Recommendations. The article has been redrafted to eliminate the need for consultation in respect of the latter measures (paragraph 1). Moreover, the words “where such exist” have been introduced after “employers' and workers' organisations” following a suggestion by the Government of India, and “social status” has been added to the list of reasons justifying special measures for certain categories of persons, as proposed by the Austrian Government (paragraph 2).

The Swedish Government expresses concern lest the wording of (b) be misconstrued, leaving room for an active segregation policy. It would seem to be for the Conference to decide whether this provision (paragraph 2 of the proposed text) might lead to abuse and should be modified.

The Government of Ireland suggests the insertion of a new subparagraph concerning the reservation, for social and for economic reasons, of certain occupations to men, unmarried women and widows. It would seem that such cases are covered in paragraph 2 of the proposed text, which contains the additional safeguard of requiring previous consultation with employers' and workers' organisations. No change is proposed in the text.

**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.

**Observations on Article 6.**

_Austria_. This provision cannot legally be regarded as a standard and should therefore be deleted.

_New Zealand_. The Government understands that this article has the effect of modifying the definition in Article 1, 1 (a) (i) in its reference to “sex”, i.e. Article 1, 1 (a) (i) is understood to mean “sex (but not in respect of equal remuneration)”.

_Poland_. This article should be deleted. Its insertion is not based on any decision of the Conference Committee or of the Conference itself, but is in contradiction with the decisions of both bodies. As indicated in Report IV (1), pages 5-6, the Committee rejected with a strong majority a proposal of the Canadian Government member to delete the word “sex” from the list of grounds of discrimination. This amendment had been justified by its author on the ground that “the subject of distinctions based on sex should be dealt with in special instruments rather than in a general instrument on discrimination”. Although the Committee rejected this amendment and the argument on which it was based, the proposed Convention takes up the same idea and justifies the suggestion to leave aside the question of equal remuneration for men and women workers on the ground that this subject is covered in another international Convention.
Switzerland. Article 1 (1) (a) (i) mentions "national extraction" among the grounds of discrimination. Migrant workers are therefore covered by this provision. However, the question of immigrant workers, which has already been dealt with in another international Convention, should be excluded from the scope of the present Convention, as has been done with respect to equality of remuneration. If this were not done, it might be a serious obstacle to ratification by Switzerland, in view of the special conditions which result in that country from its legislation, bilateral agreements and O.E.E.C. provisions. It is therefore suggested that a second paragraph be added as follows:

2. The question of immigrant workers of foreign nationality and the members of their families is dealt with in the Migration for Employment Convention (Revised), 1949, and is therefore not dealt with in this Convention.

United Kingdom. The Government supports the inclusion of this article.

While one Government, that of the United Kingdom, specifically expresses approval of this article, two oppose it. The Austrian Government considers that it is not a standard and should be eliminated, and the Polish Government feels that it is in contradiction with a decision of the Conference Committee not to delete the word "sex" from the list of grounds of discrimination in Article 1. However, it should be pointed out that such deletion would have had more far-reaching consequences than the introduction of the proposed Article 6. While the former proposal would have had the effect of eliminating any discrimination based on sex from the coverage of the Convention, with the latter proposal discrimination based on sex affecting access to training and employment and conditions of employment other than remuneration would continue to be covered by the proposed Convention, and only equal remuneration, which is dealt with in the Equal Remuneration Convention, 1951, would be excluded from its scope. It would seem to be for the Conference to decide whether it wishes to maintain the exception provided for in this article.

The Swiss Government suggests the insertion of a second paragraph specifically to exclude immigrant workers of foreign nationality from the scope of the Convention, since that question is dealt with in the Migration for Employment Convention (Revised), 1949. It would seem that this point would have to be decided by the Conference in the light of any action it may take concerning the words "national extraction" in Article 1 (1) (a).

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 had 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 doubtfully in
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.

Observations on the Possible Article relating to Non-Metropolitan Territories.

Byelorussia. Reference should be made to the Government's general observation, stating that the proposed texts should include provisions concerning their application in metropolitan and non-metropolitan territories.

Canada. This article should not be included in the proposed Convention. If it is intended that it override the provisions of article 35 of the I.L.O. Constitution, its inclusion is unconstitutional because the basic law of the Organisation cannot be amended in this manner. If it is intended that it be governed by article 35 of the Constitution or that it repeat the provisions of that article, its inclusion serves no useful purpose.

Colombia. Any decision in this matter should be based on the interpretation of article 35 of the I.L.O. Constitution, which should be modified following the procedure outlined in article 36 if the report requested by the Resolutions Committee from the Director-General should indicate that it adversely affects the attainment of the proposed objectives.

Denmark. The Government, which has no observation to make on this provision, refers to the view of the Danish Employers' Confederation that provisions regarding the application of the Convention in dependent territories should be deleted, since their adoption would in its view amount to amending article 35 of the Constitution of the I.L.O. without observing the procedure laid down in article 36 for that purpose.

Egypt. This provision is both valid and constitutional and should appear in the proposed Convention.

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."
India. The Government reserves its position with regard to this article at this stage. Its attitude will be indicated when the matter comes up for discussion before the Conference.

Israel. A final solution of the problem of application of Conventions to non-metropolitan territories should be sought in the light of the action taken by the Governing Body as a result of the resolution passed by the Conference at its 40th Session in connection with article 35 of the Constitution. This problem is of general and vital importance, and should not be solved with regard to one particular Convention only. Since it is at least doubtful whether the proposed article is compatible with the I.L.O. Constitution, no practical results would be achieved by including it in the Convention.

New Zealand. The Government agrees with the comments of the Legal Adviser to the Conference (cf. page 13 of Report IV (1)), and sees no merit in including in the proposed Convention an article which would be redundant. In addition, since the possible article does not repeat all the provisions of article 35 of the Constitution, it would appear to be in conflict with that article and would impose different obligations on member States, and would therefore seem undesirable.

Norway. This article should not be included in the proposed Convention, though it is realised that these questions are of great importance both to metropolitan and non-metropolitan territories. As regards the latter, article 35 of the Constitution lays down the obligations of metropolitan countries with respect to the application of Conventions in those territories. The inclusion in the proposed Convention of the "Possible Article" would not be an effective step towards the application in non-metropolitan territories of the substantive provisions of the Convention, as it might in some cases constitute an obstacle to ratification by metropolitan countries. An alternative and possibly more effective method might consist of the establishment of a special body within the I.L.O. for the examination of complaints relating to discrimination in employment and occupation, both in metropolitan and in non-metropolitan territories. In this way a procedure similar to that which is already in operation in the case of breaches of the principle of freedom of association would be established. The question whether it would be more appropriate to include such a provision in the Convention or in a resolution addressed to the Governing Body could be decided later on.

Poland. This article as drafted does not give full satisfaction to those who demand a complete and unrestricted application of the Convention to non-metropolitan territories. However, it is a compromise solution reached by the Conference Committee after long debates and should be incorporated in the Convention without change.

Rumania. The Convention should include the principle of its strict application in non-metropolitan territories.

Sweden. It is, of course, desirable that member States should apply any Convention on discrimination in the territories which they administer, and nothing
should prevent provisions to that effect being introduced in the Convention. How­ever, such provisions should not differ from the corresponding provisions in the I.L.O. Constitution; on the other hand, if they are identical in wording to these provisions, they are purposeless and might better be left out. In either case, it would seem appropriate to await the result of the examination of the whole question of the application of Conventions in non-metropolitan territories following the resolution adopted by the Conference at its last session.

**United Kingdom.** The proposed article is inconsistent with article 35 of the Constitution and its inclusion in the Convention would be tantamount to an attempt to amend the Constitution by means of a Convention. The Constitution can be amended only by the procedure laid down in article 36. There would be no objection of principle to the inclusion of an article or articles dealing, in a manner consistent with the Constitution, with the action to be taken in making declarations under article 35, as was done, for example, in Articles 14 and 15 of the Holidays with Pay (Agriculture) Convention, 1952, and in other Conventions. But this would appear to be unnecessary.

**United States.** The Government appreciates the considerations giving rise to the proposals resulting in the language of this possible article, but at the same time doubts the need for, or desirability of, including such a provision, and questions its constitutionality in view of article 35 of the Constitution of the I.L.O.

The remarks made by the Conference Committee concerning this provision are reproduced on pages 18 and 19 above.

Of the Governments which express views on the "Possible Article", six (those of Canada, Israel, New Zealand, Norway, the United Kingdom and the United States) consider that it should not appear in the proposed Convention, while four (those of Byelorussia, Egypt, Poland and Rumania) are in favour of its inclusion. The Government of Norway has an alternative proposal, i.e. the establishment of a special body within the I.L.O. for the examination of complaints relating to discrimination in employment and occupation. This proposal, however, is completely new and would have far-reaching implications. In these circumstances, the Conference may wish to consider whether any action should be taken to follow it through.

Two Governments (those of Colombia and Sweden) feel that a decision respecting the proposed article should be deferred until the results of the study requested of the Director-General concerning the influence of article 35 of the Constitution on the application of Conventions in non-metropolitan territories are known. However, this study may not be completed in time to be available to the Conference for its second discussion of the proposed Convention and Recommendation.

The article as drafted differs in several respects from article 35 of the Constitution, a fact which might for some governments constitute an obstacle to ratification, thus limiting the chances of general acceptance of so important a Convention.
Quite apart from any constitutional difficulties which such divergencies may involve, it would seem that they are not such as to promote the effective application of the Convention in non-metropolitan territories. In one respect in particular, the article is less favourable to such application than the procedure outlined in article 35 of the Constitution: under paragraphs 2 and 3 of the proposed article, which describe the procedure to be followed when the subject-matter of a Convention is within the self-governing powers of a non-metropolitan territory, a declaration accepting the obligations of the Convention, established in agreement with and on behalf of the government of that territory, could only be communicated by the Member concerned if that Member had ratified the Convention. On the other hand, paragraph 4 of article 35 of the Constitution makes it possible to communicate such a declaration even if the Member responsible for the international relations of the territory concerned has not ratified the Convention. In view of the fact that the matters dealt with in the proposed Convention fall increasingly within the self-governing powers of non-metropolitan territories, it might therefore be a significant disadvantage to have the provision in the Convention.

It will be remembered that one I.L.O. Convention applying to non-metropolitan territories, the Social Policy (Non-Metropolitan Territories) Convention, 1947, already calls for the abolition of discrimination. Article 18 of that Convention reads as follows:

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

(a) labour legislation and agreements which shall afford equitable economic treatment to all those lawfully resident or working in the territory;

(b) admission to public or private employment;

(c) conditions of engagement and promotion;

(d) opportunities for vocational training;

(e) conditions of work;

(f) health, safety and welfare measures;

(g) discipline;

(h) participation in the negotiation of collective agreements;

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

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

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

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

The countries which have ratified this Convention include Belgium, France and the United Kingdom.
In the circumstances it would appear that the inclusion of the "Possible Article" may not be advisable, even in the interest of securing wider application of the Convention in non-metropolitan territories. Since, however, a number of governments feel strongly that international action is required to promote non-discrimination policies in non-metropolitan territories, it is suggested that a more effective course might be the adoption by the Conference of a resolution urging the governments of the Members concerned to give early consideration to the measures required to promote full application of the Convention in non-metropolitan territories, and requesting the Governing Body to survey the position from time to time and to inform the Conference Committee on the Application of Conventions and Recommendations of progress made.

Observations on the Proposed Recommendation

Preamble

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:

No observations were made on the proposed Preamble.

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.

1 The observations on each paragraph are preceded by the text as it appeared in the proposed Recommendation in Report IV (1).
Observations on Paragraph 1.

Switzerland. Since the Recommendation is intended to supplement the Convention, it would not seem absolutely necessary to repeat the definitions appearing in Article 1 of the Convention. Should there be a special reason for this, then the text should be modified as suggested under Article 1 of the proposed Convention.

Although the Recommendation is to supplement the Convention, it appears desirable that each instrument should stand on its own, and therefore that the definitions should appear in both in identical terms.

Reference should also be made to the observations and commentary appearing under Article 1 of the proposed Convention. Although not all governments specified that their suggestions referred also to Paragraph 1 of the proposed Recommendation, it may be assumed that this was their intention. Consequently it is suggested that this Paragraph be amended in the same way as Article 1 of the proposed Convention.

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 of 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.

**Observations on Paragraph 2.**

**Canada.** The term "industrial organisations" appears to be too general. Inasmuch as the term, unless defined, might be considered to apply to industrial organisations not concerned with employment and occupation, it might be replaced with "industrial organisations concerned with employment and occupation".

**Ceylon.** Provision should be made restricting equality of employment opportunity to nationals of the country who do not have plural nationality.

**Denmark.** The Government conveys the view of the Danish Employers' Confederation that the words "industrial organisations" in Paragraph 2 (f) should be replaced by the words "trade unions", which appear in Point 4 (5) of the proposed Conclusions directed towards a Recommendation, on which this paragraph is based.

**Finland.** With respect to subparagraph (b) (iv), the Government repeats its previous observation that when circumstances make it necessary to give notice to some workers, taking into consideration the duration of employment should not be interpreted as discrimination in the sense of the proposed Recommendation, since it is fair that in those circumstances undertakings should endeavour to keep in employment those workers who have spent the longest time in their service. This is true also of the practice of giving preference in respect of security of tenure of employment to workers who have family responsibilities. It seems, however, that under Paragraph 5 of the Recommendation these practices should be acceptable. With respect to subparagraph (b) (v) the Government feels that since the question of equality of remuneration for men and women workers for work of equal value has been excluded explicitly from the scope of the proposed Convention, the same should be done with respect to the proposed Recommendation, since a separate Recommendation on the subject was adopted in 1951. The Finnish Employers' Confederation has suggested the deletion of the latter part of subparagraph (e), beginning with the words "and should ensure that...".

**Sweden.** Subparagraph (b) (iv) refers to "security of tenure of employment". It must be stated that nothing corresponding to this exists in Sweden. Subparagraph (b) (vi) refers to a number of social benefits which for the most part are dealt with through collective bargaining in Sweden. Such material differences which have arisen in the past or may arise in future for different groups of workers as a result of different treatment under collective bargaining should of course not be regarded as discrimination.

In Sweden the matters dealt with in subparagraphs (d), (e) and (f) are all considered to be the sole business of the parties concerned. Although situations which might be regarded as discriminatory did not arise on the private employment market in the past, and although conditions in Sweden should not make it
impossible to adhere to the proposal, it should be mentioned that the greatest freedom of action exists in the country for industrial organisations to manage their own internal affairs, independently of any government statutory regulations. With special reference to subparagraph (f), it should be stressed that obviously one cannot regard as discrimination the refusal of an organisation to admit to membership a person whose reported behaviour would under the statutes of the organisation cause his expulsion (e.g. the exercise or support of an activity which is incompatible with the objectives of the organisation).

United Kingdom. Many of the matters dealt with in subparagraphs (a) to (f) are, in the United Kingdom, the concern of the parties, and government intervention in them is not appropriate. The Government therefore could not accept any obligations which would or might involve such intervention. While not wishing to make any specific suggestion at this stage for the amendment of the text, the Government takes the view that the form and content of Paragraph 2 should receive further consideration by the Conference with a view to making it as widely acceptable as possible.

The observation of the United Kingdom Government, which relates to the whole of Paragraph 2, does not call for any special change in the text at this point, and is referred to the Conference for consideration. The same applies to the remarks of the Swedish Government concerning subparagraphs (b) (iv) and (vi), (d), (e) and (f), and to those of the Finnish Government concerning subparagraph (b) (iv).

In addition, the Finnish Government suggests the deletion of clause (v) of subparagraph (b), and points out that the question of equality of remuneration for men and women workers has been excluded from the proposed Convention and is covered in a separate Recommendation. However, it should be noted that the clause was intended to cover other forms of discrimination which might affect remuneration (e.g. discrimination based on race, colour, etc.) in addition to differential remuneration for men and women workers. Reference should be made in this connection to the observations of the United Kingdom Government and of the Danish Employers’ Confederation, both of which suggest the inclusion in the Recommendation of an additional paragraph carrying the same exclusion as Article 6 of the proposed Convention. However, the exclusion of equality of remuneration for men and women workers from the scope of the proposed Recommendation would seem to be a matter that might best be referred to the Conference for decision.

The Finnish Employers’ Confederation suggests the deletion of the latter part of subparagraph (e), starting with the words “and should ensure”. Since no other suggestion for such a deletion has been received, the text has not been changed.

The proposal of the Government of Ceylon has been dealt with under Article 2 of the proposed Convention.

1 See below, p. 30.
The observations of the Canadian Government and of the Danish Employers' Confederation show that there is some doubt as to the meaning of the words "industrial organisations" in subparagraph (f). These have consequently been changed to "employers' and workers' organisations".

A small drafting change has been introduced in subparagraphs (d) and (f) to put the words "practise" and "countenance" in a more logical order.

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.

Observations on Paragraph 3.

Israel. See above, the Government's observation under Article 3 (d) of the proposed Convention regarding the use of the same adjective to precede the word "authority" in that article and in Paragraph 3 (a) (i) of the proposed Recommendation.

United Kingdom. While in sympathy with the general objective of Paragraph 3 (b), the Government refers to its objection raised at the 40th Session of the Conference to the inclusion of the examples of suggested action in subparagraphs (i) to (iii), and suggests that the paragraph might be more widely acceptable if the word "such" (line 3) were replaced by the words "all appropriate", and the paragraph ended at the word "methods".

With respect to the observation by the Government of Israel, reference should be made to the explanation submitted under Article 3 of the proposed Convention.

An amendment similar to the proposal of the United Kingdom Government had been submitted by the United Kingdom Government member in the Conference Committee, and rejected by 171 votes to 202, with 15 abstentions. In those circumstances, it would appear to be for the Conference to decide whether it wishes to reconsider its earlier decision.

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

Switzerland. The Government refers to its observation under Article 3 (c) of the proposed Convention.

United Kingdom. The necessity for incorporating in the Recommendation the exclusions of Articles 4 and 6 of the proposed Convention has special relevance to this provision if it is to be widely acceptable.¹

United States. The comment made in relation to subparagraph (c) of Article 3 of the proposed Convention is equally applicable here.

The observations of the Governments of Switzerland and the United States have been considered above, under Article 3 of the proposed Convention. The United Kingdom Government's observation does not involve any change in the text of the present paragraph.

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.

No observation was made on Paragraph 5. As in Article 5 of the proposed Convention, the words "or social" have been introduced between the words "responsibilities" and "or cultural status".

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.

Observation on Paragraph 6.

Switzerland. The same text should appear here as that suggested as paragraph 2 of Article 6 of the proposed Convention. Moreover, considerable confusion might be created by linking the provisions of a Recommendation with those of a Convention which is open to ratification.

The Swiss Government's proposal has been considered in connection with Article 6 of the proposed Convention. It has been left to the Conference to decide whether difficulties might in fact result from the linking of the provisions of the Recommendation to those of the Migration for Employment Convention (Revised), 1949.

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.

Observation on Paragraph 7.

United Kingdom. There is no objection to co-operation between the bodies listed, but the implications in the phrase "further positive measures" are not clear.

¹ See below, under “Proposals for the Insertion of New Paragraphs”, p. 30.
It would seem to be for the Conference to decide whether the terms referred to should be changed.

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.

Observation on Paragraph 8.

United Kingdom. The Government repeats its view that it is not a matter for government intervention or for legislation but a matter of educating public opinion through all the means available.

This observation does not call for any change in the text, which has been left as it stood.

Proposals for the Insertion of New Paragraphs

Denmark. The Government conveys the view of the Danish Employers’ Confederation, which would appreciate the inclusion in the Recommendation of a provision corresponding to Article 6 of the proposed Convention.

Federal Republic of Germany. See observation under Article 1 of the proposed Convention concerning the possibility of dealing with discrimination on grounds of age through the insertion of a special clause in the Recommendation.

United Kingdom. The exclusions in Articles 4 and 6 of the proposed Convention should also be incorporated in the proposed Recommendation, as otherwise the two instruments, which are intended to be complementary, will be based on different premises.

The proposal of the Government of the Federal Republic of Germany has been considered in connection with Article 1 of the proposed Convention. It would seem to be for the Conference to decide whether it wishes to deal with the problem of discrimination on grounds of age in either of the two instruments.

The proposal of the United Kingdom Government to incorporate the exclusion specified in Article 4 of the proposed Convention in the Recommendation introduces a new idea which it appears desirable to refer to the Conference for decision.

Similarly, it would seem to be for the Conference to decide what effect should be given to the proposal put forward by that Government and by the Danish Employers’ Confederation that the Recommendation should include a provision corresponding to Article 6 of the proposed Convention.¹

¹ See also above, under Paragraph 2, p. 27.
PROPOSED TEXTS
The English texts are given below of (A) the proposed Convention and (B) the proposed Recommendation submitted as a basis for the second discussion, at the 42nd Session of the Conference, of the question of discrimination in the field of employment and occupation, and (C) a draft resolution concerning application of the Discrimination (Employment and Occupation) Convention, 1958, in non-metropolitan territories.

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 4 June 1958, and

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

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

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

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:
The French texts are given below of (A) the proposed Convention and (B) the proposed Recommendation submitted as a basis for the second discussion, at the 42nd Session of the Conference, of the question of discrimination in the field of employment and occupation, and (C) a draft resolution concerning application of the Discrimination (Employment and Occupation) Convention, 1958, in non-metropolitan territories.

A. Projet de convention concernant la discrimination en matière d'emploi et de profession

La Conférence générale de l'organisation internationale du Travail,
Convoquée à Genève par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le 4 juin 1958, en sa quarante-deuxième session;
Après avoir décidé d'adopter diverses propositions relatives à la discrimination en matière d'emploi et de profession, question qui constitue le quatrième point à l'ordre du jour de la session;
Après avoir décidé que ces propositions prendraient la forme d'une convention internationale;
Considérant que la Déclaration de Philadelphie affirme que tous les êtres humains, quels que soient leur race, leur croyance ou leur sexe, ont le droit de poursuivre leur progrès matériel et leur développement spirituel dans la liberté et la dignité, dans la sécurité économique et avec des chances égales, adopte, ce jour de juin mil neuf cent cinquante-huit, la convention ci-après, qui sera dénommée Convention sur la discrimination (emploi et profession), 1958.
DISCRIMINATION IN EMPLOYMENT AND OCCUPATION

**Article 1**

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

   (a) 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

   (b) 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 where such exist.

2. Distinctions in respect of access to a particular employment based on the inherent requirements thereof shall not be deemed to be "discrimination".

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

**Article 2**

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

**Article 3**

Each Member for which this Convention is in force undertakes—

(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;
Article 1

1. Aux fins de la présente convention, le terme « discrimination » comprend :
   a) toute distinction fondée sur la race, la couleur, le sexe, la religion, l'opinion politique, l'ascendance nationale ou l'origine sociale, qui s'exerce au détriment d'un individu et lui dénie l'égalité de chances ou de traitement en matière d'emploi ou de profession ;
   b) toute autre distinction s'exerçant au détriment d'un individu en matière d'emploi ou de profession, qui pourra être spécifiée par le Membre intéressé après consultation des organisations représentatives d'employeurs et de travailleurs, là où de telles organisations existent.

2. Les distinctions faites en ce qui concerne l'accès à un emploi déterminé et qui résultent nécessairement des qualifications exigées par l'emploi ne sont pas considérées comme des discriminations.

3. Aux fins de la présente convention, les mots « emploi » et « profession » recouvrent l'accès à la formation professionnelle, l'accès à l'emploi et aux différentes professions, ainsi que les conditions d'emploi.

Article 2

Tout Membre pour lequel la présente convention est en vigueur s'engage à formuler et à appliquer une politique nationale visant à promouvoir, par des méthodes adaptées aux circonstances et aux usages nationaux, l'égalité de chances et de traitement en matière d'emploi et de profession, afin d'éliminer toute discrimination en cette matière.

Article 3

Tout Membre pour lequel la présente convention est en vigueur doit :
   a) s'efforcer d'obtenir la collaboration des organisations d'employeurs et de travailleurs et d'autres organismes appropriés pour favoriser l'acceptation et l'application de cette politique ;
   b) encourager des programmes d'éducation propres à assurer cette acceptation et cette application ;
   c) abroger toute disposition législative et modifier toute disposition ou pratique administrative qui sont incompatibles avec ladite politique ;
(d) to pursue the policy in respect of employment under the direct control of a national authority;

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

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

Article 4

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

Article 5

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

2. Any Member may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination.

Article 6

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.

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
d) suivre ladite politique en ce qui concerne les emplois soumis au contrôle direct d'une autorité nationale ;

e) assurer l'application de ladite politique dans les activités des services d'orientation professionnelle, de formation professionnelle et de placement soumis au contrôle d'une autorité nationale ;

f) indiquer, dans ses rapports annuels sur l'application de la convention, les mesures prises conformément à cette politique et les résultats obtenus.

**Article 4**

Les dispositions de la présente convention n'affectent en rien les dispositions législatives ou réglementations administratives relatives à la sécurité nationale d'un Membre.

**Article 5**

1. Les mesures spéciales de protection ou d'assistance prévues dans d'autres conventions ou recommandations adoptées par la Conférence internationale du Travail ne sont pas considérées comme des discriminations.

2. Tout Membre peut, après consultation, là où elles existent, des organisations représentatives d'employeurs et de travailleurs, décider de ne pas considérer comme des discriminations toutes autres mesures spéciales destinées à tenir compte des besoins particuliers de personnes à l'égard desquelles une protection ou une assistance spéciale est, d'une façon générale, reconnue nécessaire pour des raisons telles que le sexe, l'âge, l'invalidité, les charges de famille ou le niveau social ou culturel.

**Article 6**

La question de l'égalité de rémunération entre la main-d'œuvre masculine et la main-d'œuvre féminine pour un travail de valeur égale fait l'objet de la convention sur l'égalité de rémunération, 1951, et n'est donc pas visée dans la présente convention.

**B. Projet de recommandation concernant la discrimination en matière d'emploi et de profession**

La Conférence générale de l'Organisation internationale du Travail, Convoquée à Genève par le Conseil d'administration du Bureau international
Labour Office, and having met in its Forty-second Session on 4 June 1958, and

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

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

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

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

I. Definitions

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

(a) any 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

(b) 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 where such exist;

(2) Distinctions in respect of access to a particular employment based on the inherent requirements thereof shall not be deemed to be “discrimination”;

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

II. Formulation of Policy

2. Each Member should, by means of legislative measures, collective agreements between representative employers’ and workers’ organisations or in any
du Travail, et s’y étant réunie le 4 juin 1958, en sa quarante-deuxième session ;

Après avoir décidé d’adopter diverses propositions relatives à la discrimination en matière d’emploi et de profession, question qui constitue le quatrième point à l’ordre du jour de la session ;

Après avoir décidé que ces propositions prendraient la forme d’une recommandation complétant la convention sur la discrimination (emploi et profession), 1958,

adopte, ce jour de juin mil neuf cent cinquante-huit, la recommandation ci-après, qui sera dénommée Recommandation sur la discrimination (emploi et profession), 1958 :

La Conférence recommande aux Membres d’appliquer les dispositions suivantes :

I. DÉFINITIONS

1. (1) Aux fins de la présente recommandation, le terme « discrimination » comprend :

   a) toute distinction fondée sur la race, la couleur, le sexe, la religion, l’opinion politique, l’ascendance nationale ou l’origine sociale, qui s’exerce au détriment d’un individu et lui dénie l’égalité de chances ou de traitement en matière d’emploi ou de profession ;

   b) toute autre distinction s’exerçant au détriment d’un individu en matière d’emploi ou de profession qui pourra être spécifiée par le Membre intéressé après consultation des organisations représentatives d’employeurs et de travailleurs, là où de telles organisations existent.

(2) Les distinctions faites en ce qui concerne l’accès à un emploi déterminé et qui résultent nécessairement des qualifications exigées par l’emploi ne sont pas considérées comme des discriminations.

(3) Aux fins de la présente recommandation, les mots « emploi » et « profession » recouvrent l’accès à la formation professionnelle, l’accès à l’emploi et aux différentes professions, ainsi que les conditions d’emploi.

II. POLITIQUE À SUIVRE

2. Tout Membre devrait, par voie de dispositions législatives, de conventions collectives entre organisations représentatives d’employeurs et de travailleurs ou
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 practise or countenance discrimination in engaging or training any person for employment, in advancing or retaining such person in employment, or in fixing terms and conditions of employment;

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

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

III. APPLICATION OF POLICY

3. Each Member should—
de toute autre manière conforme aux circonstances et aux usages nationaux,
formuler une politique visant à empêcher la discrimination en matière d'emploi
et de profession, en tenant pleinement compte des principes suivants :

a) les mesures destinées à promouvoir l'égalité de chances et de traitement en
matière d'emploi et de profession constituent une question d'intérêt public ;

b) tout individu devrait jouir, sans discrimination, de l'égalité de chances et de
traitement en ce qui concerne :
   i) l'accès aux services d'orientation professionnelle et de placement ;
   ii) l'accès à la formation professionnelle et à l'emploi de son choix, selon ses
      aptitudes personnelles pour cette formation ou cet emploi ;
   iii) la promotion, selon ses qualités personnelles, son expérience, ses aptitudes
      et son application au travail ;
   iv) la sécurité de l'emploi ;
   v) la rémunération pour un travail de valeur égale ;
   vi) les conditions de travail, y compris la durée du travail, les périodes de repos,
      les congés annuels payés, les mesures de sécurité et d'hygiène du travail,
      ainsi que les mesures de sécurité sociale et les services sociaux en rapport
      avec l'emploi ;

c) les organismes gouvernementaux devraient eux-mêmes appliquer dans toutes
leurs activités une politique d'emploi équitable et sans aucune discrimination ;

d) les employeurs ne devraient pratiquer ou tolérer aucune discrimination à l'égard
de qui que ce soit en ce qui concerne l'engagement, la formation, la promotion,
le maintien en emploi ou les conditions d'emploi ;

e) dans les négociations collectives et les relations professionnelles, les parties
devraient respecter le principe de l'égalité de chances et de traitement en matière
d'emploi et de profession et veiller à ce que les conventions collectives ne con-
tiennent aucune disposition de nature discriminatoire en ce qui concerne l'accès
à l'emploi, la formation, la promotion, le maintien en emploi ou les conditions
d'emploi ;

f) les organisations d'employeurs et de travailleurs ne devraient pratiquer ou
tolérer aucune discrimination en ce qui concerne l'admission des membres, le
maintien de la qualité de membre ou la participation aux affaires syndicales.

III. MISE EN APPLICATION DE LA POLITIQUE

3. Tout Membre devrait :
(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 social 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 of 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.
a) assurer l’application des principes de non-discrimination :
   i) en ce qui concerne les emplois soumis au contrôle direct d’une autorité centrale ;
   ii) dans les activités des services d’orientation professionnelle, de formation professionnelle et de placement soumis au contrôle d’une autorité centrale ;

b) pour autant que cela est possible et nécessaire, favoriser l’application de ces principes en ce qui concerne les autres emplois et les autres services d’orientation professionnelle, de formation professionnelle et de placement, notamment :
   i) en encourageant l’application desdits principes par les services et organismes des administrations des États constitutants ou des provinces d’un État fédératif, ainsi que des administrations locales, et par les industries et entreprises de propriété publique ou soumises au contrôle d’une autorité publique ;
   ii) en subordonnant l’octroi de contrats entraînant des dépenses publiques à l’application desdits principes ;
   iii) en subordonnant l’octroi de subventions aux établissements d’enseignement professionnel et de licences aux bureaux privés de placement et d’orientation professionnelle à l’application desdits principes.

4. Tout Membre devrait abroger toute disposition législative et modifier toute disposition ou pratique administratives contraires à la politique de non-discrimination.

5. L’application de cette politique ne devrait pas avoir d’effet préjudiciable sur les mesures destinées à tenir compte des besoins particuliers des personnes à l’égard desquelles la nécessité d’une protection ou d’une assistance spéciale est généralement reconnue pour des raisons telles que le sexe, l’âge, l’invalidité, les charges de famille ou le niveau social ou culturel.

6. En ce qui concerne les travailleurs immigrants de nationalité étrangère, ainsi que les membres de leur famille, il y aurait lieu de tenir compte des dispositions de la convention sur les travailleurs migrants (revisée), 1949, qui visent l’égalité de traitement, et de celles de la recommandation sur les travailleurs migrants (revisée), 1949, qui visent la suppression des restrictions à l’emploi.

7. Une collaboration permanente devrait s’instaurer entre les autorités compétentes, les représentants des employeurs et des travailleurs et les organismes intéressés en vue de l’adoption de toute mesure de nature à favoriser l’acceptation et l’observation des principes de non-discrimination par le public et en vue de l’examen des autres mesures positives qui, selon les circonstances nationales, peuvent être nécessaires pour assurer l’application de ces principes.
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.

C. Draft Resolution concerning Application of the Discrimination (Employment and Occupation) Convention, 1958, in Non-Metropolitan Territories

The General Conference of the International Labour Organisation,

Having adopted the Discrimination (Employment and Occupation) Convention, 1958,

Desiring to emphasise the desirability of the Convention being generally applied to non-metropolitan territories,

Noting that the Social Policy (Non-Metropolitan Territories) Convention, 1947, which provides that it shall be an aim of policy to abolish all discrimination among workers, is already in force for Belgian, British and French non-metropolitan territories,

Noting that the subject-matter of the Discrimination (Employment and Occupation) Convention, 1958, falls increasingly within the self-governing powers of non-metropolitan territories and that the acceptance of the obligations of the Convention is therefore primarily a matter for decision by the territories concerned,

Invites the attention of the governments of the Members concerned to the desirability of giving urgent consideration to the measures necessary in accordance with their respective constitutional systems and in agreement with the governments of the territories concerned to secure the full application of the provisions of the Convention in non-metropolitan territories, and

Requests the Governing Body of the International Labour Office to survey the position from time to time and inform the Conference Committee on the Application of Conventions and Recommendations of the progress made.
IV. COORDINATION DES MESURES CONTRE LA DISCRIMINATION DANS TOUS LES DOMAINE

8. Les autorités chargées de lutter contre la discrimination en matière d'emploi et de profession devraient collaborer étroitement et de manière continue avec les autorités qui sont chargées de lutter contre la discrimination dans d'autres domaines, afin d'assurer la coordination de toutes les mesures prises à cet égard.

C. Projet de résolution concernant l'application de la convention sur la discrimination (emploi et profession), 1958, dans les territoires non métropolitains

La Conférence générale de l'Organisation internationale du Travail,
Ayant adopté la convention sur la discrimination (emploi et profession), 1958 ;
Désireuse de souligner qu'il est souhaitable que ladite convention soit généralement appliquée dans les territoires non métropolitains ;
Notant que la convention sur la politique sociale (territoires non métropolitains), 1947, qui prévoit que ce devra être l'un des buts de la politique sociale de supprimer toute discrimination entre les travailleurs, est déjà en vigueur pour les territoires non métropolitains belges, britanniques et français ;
Notant que les questions traitées par la convention sur la discrimination (emploi et profession), 1958, entrent de plus en plus dans le cadre de la compétence propre des autorités des territoires non métropolitains et que l'acceptation des obligations de ladite convention est donc principalement du ressort des territoires intéressés,
Attire l'attention des gouvernements des Membres intéressés sur l'opportunité d'envisager, dès maintenant, les mesures nécessaires, conformément à leurs systèmes constitutionnels respectifs et en accord avec les gouvernements des territoires intéressés, pour assurer la pleine application des dispositions de la convention dans les territoires non métropolitains ;
Prie le Conseil d'administration du Bureau international du Travail d'examiner de temps à autre la situation à cet égard et de tenir la Commission de l'application des conventions et recommandations de la Conférence au courant des progrès accomplis.