Report IV (1)

Promotion of Collective Bargaining

Fourth Item on the Agenda
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INTRODUCTION

On 25 June 1980 the International Labour Conference, meeting in Geneva at its 66th Session, adopted the following resolution:

The General Conference of the International Labour Organisation,
Having adopted the report of the Committee appointed to consider the fifth item on the agenda,
Having in particular approved as general conclusions, with a view to the consultation of governments, proposals for a Recommendation concerning the Promotion of Collective Bargaining;
Decides that an item entitled "Promotion of Collective Bargaining" shall be included in the agenda of its next Ordinary Session for a second discussion with a view to the adoption of a Recommendation.

By virtue of this resolution and in accordance with article 39, paragraph 6, of the Standing Orders of the Conference, the Office is required to prepare, on the basis of the first discussion by the Conference, the text of a proposed Recommendation and to communicate it to governments so as to reach them not later than two months from the closing of the 66th Session of the Conference, asking them to state within three months whether they have any amendments to suggest or comments to make.

The purpose of the present report is to transmit to governments the text of the proposed Recommendation, based on the Conclusions adopted by the Conference at its 66th Session.

Governments are requested, in accordance with the Standing Orders of the Conference, to submit any amendments or comments with regard to the proposed text as soon as possible and in any case so as to reach the Office in Geneva not later than 30 November 1980. Governments which have no amendments or comments to put forward are asked to inform the Office by the same date whether they consider that the proposed text is a satisfactory basis for discussion by the Conference at its 67th Session. Governments are requested to consult, before they finalise their replies, the representative organisations of employers and workers and to indicate which organisations they have consulted. The result of the consultation should be reflected in the governments' replies; under the Standing Orders of the Conference, only the replies of governments are taken into account in the preparation of the final report.
CHAPTER I

THE PROCEEDINGS OF THE 66TH SESSION OF THE CONFERENCE RELATING TO THE PROMOTION OF COLLECTIVE BARGAINING

Extracts from the Report of the Conference Committee

1. The Committee on Collective Bargaining was set up by the Conference at its third sitting on 5 June 1980. It was originally composed of 199 members (82 Government members, 54 Employers' members and 63 Workers' members). In order to ensure equality of voting strength, 189 votes were allotted to each Government member, 287 to each Employers' member and 246 to each Workers' member. The composition of the Committee was subsequently modified 11 times, and the number of votes allotted to each member was modified accordingly.

2. The Committee elected its Officers as follows:
   
   Chairman: Mr. Martini Urdaneta (Government member, Venezuela),
   Vice-Chairmen: Mr. Nasr (Employers' member, Lebanon) and Mr. Ward (Workers' member, United States),
   Reporter: Mr. Noriel (Government member, Philippines).

4. The Committee held 15 sittings.

5. The Committee had before it Reports V (1) and V (2) prepared by the Office on the fifth item of the agenda of the Conference: Promotion of Collective Bargaining. The Proposed Conclusions submitted by the Office were set out at the end of Report V (2). After a general discussion, the essence of which is summarised below, the Committee examined the Proposed Conclusions Point by Point.

General Discussion

6. The Committee was agreed on the importance of collective bargaining as a means of fixing wages and conditions of work, and as a means of regulating the relations between employers and workers and their organisations. In this respect some members stressed that collective bargaining allowed employers and workers to be involved in the taking of decisions that affected them, that it had contributed not only to improving the lot of the worker but also to raising productivity, and that it had permitted adaptation to the numerous economic and social changes that had occurred during the past decades.

7. Numerous Government members indicated that their countries were firmly in favour of collective bargaining, which had expanded considerably since the end

* The notes will be found at the end of the chapter.
of the Second World War, in terms of both persons and subjects covered. A number of Government members, as well as the Employers' and Workers' members, nevertheless also remarked that serious obstacles to the development of collective bargaining still existed in various areas, and that one of the most important of these was the weak character of employers' and workers' organisations. This problem occurred in particular in the informal sector of many developing countries.

8. In these circumstances, it was considered that it would be appropriate to supplement the existing instruments dealing with collective bargaining—the objective of which was essentially to recognise the right to collective bargaining—through new instruments mainly directed towards the promotion of the effective exercise of this right. However, it was also emphasised that it was necessary to define with care the meaning of the concept of "promotion of collective bargaining", as well as the scope of the obligations that the proposed instruments would impose on the public authorities. In this respect, some Government members indicated that, in their opinion, the promotion of collective bargaining should mainly be the concern of the parties to collective bargaining, and that the public authorities should play only a very limited role in this area, notably in establishing conciliation and mediation procedures. Other Government members felt that the proposed instruments should only prescribe that the public authorities should remove obstacles to collective bargaining and facilitate its functioning, but that they should not oblige public authorities to impose regulations on the parties to which the latter were opposed.

9. The Employers' members also expressed the opinion that the proposed instruments should above all aim, on the one hand, to instil and to reinforce in the parties the will to bargaining collectively, and, on the other hand, to create a framework within which collective bargaining might develop freely. These instruments should be compatible with the principle of autonomy of employers' and workers' organisations and should not be of a coercive nature.

10. The Workers' members observed that, in view of the wording of the fifth item on the agenda of the 66th Session of the Conference, the objective of the proposed instruments should be to further collective bargaining. Nevertheless, in their opinion, certain Points of the Proposed Conclusions would certainly not contribute to the development of collective bargaining, if they were retained as they appear in the proposal instruments, but would rather serve to hamper or, indeed, to obstruct negotiations. The new instruments should build on the basic rights established in various ILO standards, especially the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151), and should in no way challenge or reduce their effectiveness.

11. Regarding the relationship between the existing and the proposed instruments, several Government members as well as the Employers' members considered that the proposed instruments should supplement Convention No. 98 and the Collective Agreements Recommendation, 1951 (No. 91), mainly through indicating the means that might be used to contribute to the effective development
of collective bargaining. However, in the opinion of these members, it should also be understood that the proposed instruments would not revise those already in existence, which should remain in force in their present form.

12. A large number of Government and Employers' members insisted on the fact that the proposed instruments should be as flexible as possible, in order that they might be applied by the largest possible number of countries, whatever their prevailing political, economic or social situations. Certain Government members emphasised, in particular, that the proposed instruments should take into account the diversity of economic and social systems in the world, as well as the variety of industrial relations systems adopted by various countries. With respect to the latter, some Government members indicated that, in their view, the Proposed Conclusions did not take sufficient account of the situation in countries where collective bargaining took place within the framework of a conciliation and arbitration system.

13. A number of Government members felt that the proposed instruments could have the necessary flexibility if they assumed the form of a Convention supplemented by a Recommendation. Other Government members stated that these requirements of flexibility could be satisfied even better if the Conference were to adopt only a Recommendation. These latter members added, however, that they could also accept a Convention supplemented by a Recommendation if the Convention were very brief and general. Other Government members stated that they preferred not to take a position on the form of the proposed instruments until their contents were better known.

14. Many Government members, as well as the Employers' and Workers' members, observed that if the proposed instruments were to be made very flexible, this should not be done at the expense of clarity. It rapidly became apparent during the discussion that the most difficult task of the Committee in this respect would be to establish a clear distinction between those measures taken by the public authorities with a view to the promotion of collective bargaining, and those which constituted an interference in this process, on the grounds of the "general interest".

15. The Workers' members stated that trade union organisations were concerned to take account of the general interest during collective bargaining. However they did not think that the concept of general interest could be defined in a sufficiently clear manner. In their opinion, the Proposed Conclusions lacked precision in this regard and did not offer sufficient guarantee against interference by the public authorities in collective bargaining on the grounds of the general interest. The Workers' members pointed out in this regard that a certain number of governments had taken measures, on the grounds of the general interest, that resulted in limitations on freedom of association and the right to collective bargaining and that were unacceptable to workers.

16. The Employers' members asserted that the interests of the parties to collective bargaining should always be seen within the framework of broader interests and that it should be possible to bring the attention of the parties to these broader interests when this appeared to be necessary.
17. Several Government members stated that they were in favour of the promotion of collective bargaining, but were opposed to intervention by the public authorities in this process. One Government member stated that, in order to make this intention clear, the Preamble of the proposed instrument(s) should mention that they limited neither trade union freedoms nor the rights of employers' and workers' organisations, including their right to free collective bargaining. Some Government members felt that the Proposed Conclusions did not offer sufficient guarantees against interference by the public authorities in collective bargaining. Several Government members hoped that the proposed instruments would conform with Convention No. 98, as interpreted by the supervisory bodies of the ILO. Many Government members recalled that public authorities, particularly in developing countries, often found themselves obliged to take certain initiatives to reconcile the results of collective bargaining—especially with respect to wages—with the requirements of national economic and social development, particularly in the struggle against inflation and unemployment. These members felt that the public authorities, particularly in the developing countries, should have the possibility of applying certain restrictions to the right of collective bargaining by employers and workers. Such restrictions should be as limited and temporary as possible, but they should be allowed when there were no other means to ensure the efficient functioning of the economy or indeed the survival of the nation. It was also stated in this context that certain forms of involvement of public authorities in the process of wage fixing could be useful in developing countries, especially to the extent that the presence of the public authorities served to strengthen the position of workers, who were normally the weaker party.

18. During the course of the general discussion, many Government, Employers' and Workers' members provided information on the law and practice concerning collective bargaining in their respective countries. This information, which was very useful for the work of the Committee, is not reproduced in the present report.

Examination of the Proposed Conclusions contained in Report V (2)

FORM OF THE INTERNATIONAL INSTRUMENTS

Points 1 and 2

19. The Committee decided to postpone the discussion of Points 1 and 2 until a later date.

PROPOSED CONCLUSIONS WITH A VIEW TO A CONVENTION

I. PREAMBLE

Point 3

20. The Workers' members submitted an amendment aimed at replacing the words "refer to" by the word "reaffirm". In this way, they emphasised, the
importance of the Declaration of Philadelphia as the basis for the promotion of collective bargaining would be more prominent. The amendment was adopted.

21. Point 3, as amended, was adopted.

Point 4

22. An amendment submitted by the Government member of Uruguay sought the deletion of the reference to the Labour Relations (Public Service) Convention (No. 151) and Recommendation (No. 159), 1978. The Committee decided to examine this amendment after having discussed Point 7 of the Proposed Conclusions, relating to the scope of the proposed instrument(s) (see paragraph 35).

23. The Workers’ members submitted an amendment to add to the end of Point 4 the following text: “These standards should be observed and given greater effect as the basis for the promotion of collective bargaining.” The examination of this amendment was also postponed until after the discussion of Point 7 (see paragraph 36). The reason for this was that the standards referred to in this amendment included, among others, Convention No. 151 and Recommendation No. 159, and the question of deciding whether these two instruments should or should not be mentioned in the Preamble of the proposed instrument(s) had already been postponed until after the examination of Point 7.

24. The Workers’ members introduced an amendment that sought to replace the words “refer to” by the words “have regard to the key importance of”. In the view of the Workers’ members, this reformulation had the advantage of stressing the importance of the existing instruments for the promotion of collective bargaining. The Employers’ members preferred the Office text. Some Government members declared that they were in favour of the amendment, while others were opposed to it. Put to the vote, the amendment was adopted by 30,260 votes to 756, with 18,657 abstentions.

Point 5

25. The Workers’ members submitted an amendment proposing to delete this Point. They pointed out that the Office text identified the lacunae of the existing instruments and could thereby give the false impression that these instruments—to which the Workers’ members attached a very great importance—were revised by the proposed instrument(s). The Employers’ members, as well as one Government member, declared themselves in favour of the amendment. Other Government members expressed the opinion that the Office text did not constitute a criticism of the existing instruments but that it simply retraced their history. The amendment was adopted.

26. The Government member of Portugal submitted an amendment that sought to add a clause to Point 5, with the following wording:

(d) labour relations in the public service are specifically regulated in the Labour Relations (Public Service) Convention (No. 151) and Recommendation (No. 159), 1978, and should therefore be excluded from the scope of the proposed instrument(s).

The Committee decided to examine this amendment during the discussion of Point 7 (see paragraph 38).
27. The Employers' members proposed to replace Points 5 and 6 by the following text:

5. The Preamble should state that the objective of the instrument is to provide appropriate measures to facilitate free and voluntary collective bargaining, thereby giving greater effect to the general principles on the subject set out in Article 4 of Convention No. 98 and in paragraph 1 of Recommendation No. 91.

Following the deletion of Point 5, the Employers' members subamended their amendment so that it no longer sought to replace Points 5 and 6 but only Point 6. The Employers' members explained that the purpose of this amendment was to emphasise that Convention No. 98 and Recommendation No. 91 were still very valid and that the main aim of the proposed instrument(s) should be to give greater effect to the general principles contained in the existing instruments. The Workers' members submitted a subamendment to the Employers' members' amendment, seeking to replace the word "facilitate" by the word "promote". Several Government members expressed the fear that the reference to the concept of "free and voluntary collective bargaining" might imply the possibility for one party to refuse to bargain collectively. The amendment, as subamended, was adopted.

28. The Government member of the Federal Republic of Germany proposed to add the following text to Point 6:

The Preamble should mention that the measures provided for in the instrument with a view to promoting collective bargaining may not be interpreted nor applied in a manner to hamper the freedom of action of the parties to collective bargaining.

After having subamended his own amendment by replacing the words "freedom of action of the parties to collective bargaining" by "freedom of collective bargaining", the Government member of the Federal Republic of Germany explained that if his amendment were adopted, it would be much easier to establish a distinction between the measures of public authorities that promoted collective bargaining, and those which constituted an interference in the latter. The Workers' and the Employers' members, and several Government members, declared themselves in favour of the amendment as subamended. One Government member felt that the problem dealt with in the amendment should be discussed in connection with Point 11. Another Government member expressed certain apprehensions concerning the proposed amendment; he pointed out that one should avoid introducing a provision in the Preamble of the proposed instrument(s) concerning the interpretation of the latter, particularly since this interpretation, in his view, was in contradiction with Point 12, to which he attached great importance. The amendment, as subamended, was adopted. The Drafting Committee decided to introduce the adopted text into Point 11 (now Point 10).

29. Point 6, as amended, was adopted.

II. SCOPE AND DEFINITIONS

Point 7

30. The Government member of India proposed to delete Paragraph 7(1). He explained that his amendment was motivated by the fact that, in certain sectors, the
public authorities could not really promote collective bargaining. This was particularly so in the rural sector in many developing countries, where there were no employers’ or workers’ organisations. All that the public authorities could do under these circumstances was to create favourable conditions for the setting up of such organisations, but the initiative towards this end had to come from the interested parties themselves. If these were to take no initiative in this direction, collective bargaining would be impossible and the public authorities could do nothing about it. The Employers’ members stated that they understood very well the concern of the Government member of India, but that this could better be met by an amendment submitted by the Employers’ members, which proposed to replace Paragraph 7(1) with the following text “(1) The instrument should, as far as practicable and subject to national laws, regulations and practice, apply to all branches of economic activity.” A certain number of Government members also felt that Paragraph 7(1), the aim of which was to fix the scope of application of the proposed instruments, could not be deleted. The Workers’ members were also opposed to the amendment of the Government member of India for the reason that the instrument(s) envisaged should, in their opinion, state explicitly that it (they) covered all branches of economic activity. At the end of the discussion, the Government member of India withdrew his amendment.

31. The Committee then examined the amendment of the Employers’ members, mentioned already in paragraph 30 of the present report. In submitting this amendment, the Employers’ members stressed that if the Conference adopted one or more instruments with a very wide scope of application, these instruments would be inapplicable in most developing countries. The Workers’ members were opposed to the amendment, considering that, as in the Office text, the principle should first be established of the proposed instrument(s) being applicable to all branches of economic activity, and only then, if necessary, should exclusions be provided for. Certain Government members expressed themselves in favour of the amendment while others opposed it. These latter members emphasised that the institution of collective bargaining deserved to be promoted in all sectors of activity. As some Government members raised objections to the words “as far as practicable” appearing in the amendment of the Employers’ members, the latter proposed a subamendment deleting these words. Put to the vote, the amendment, as subamended, was adopted by 26,424 votes to 26,320, with 1,278 abstentions.

32. A Government member asked what effects the adoption of the amendment referred to in Paragraph 31 had on Paragraph 7 (2). In response to this request for clarification, the representative of the Secretary-General pointed out that the expression “all branches of economic activity” mentioned in the relevant amendment—as well as in the Proposed Conclusions of the Office—covered, when used in ILO instruments, all sectors of activity, including the public service. He suggested that the Committee should specify whether, in adopting the relevant amendment, it had wanted to give the same meaning to this expression. If this were so, Paragraph 7 (2) would become superfluous. The goal of this Paragraph was in fact to give member States the possibility of totally or partially excluding certain persons employed by public authorities from the scope of the proposed instrument(s). However, this possibility was already provided for in Paragraph 7 (1), as amended. After a long discussion, the Committee confirmed that, in adopting the
amendment referred to in paragraph 31 of the present report, it had in fact given
the widest possible meaning to the expression “all branches of economic activity”,
so that it incorporated all sectors of activity, including the public service. The
Committee specified that in these circumstances Paragraph 7 (2) had thus become
unnecessary. This being so, the Committee decided to delete Paragraph 7 (2). It
emerged from the debate that all the amendments concerning this paragraph could
be considered withdrawn.

33. Point 7, as amended, was adopted.

Point 4 (cont.)

34. The Committee then examined the three amendments referred to in
paragraphs 22, 23 and 26 above, the discussion of which had been postponed until
after the examination of Point 7.

35. The Committee first examined the amendment to Point 4 submitted by the
Government member of Uruguay and already mentioned in Paragraph 22. The
Government member of Uruguay informed the Committee that he maintained his
amendment because Point 7 of the Proposed Conclusions, as amended, no longer
mentioned the public service, and because Convention No. 151 had, as of today,
been ratified by very few States. The Employers’ members declared themselves in
favour of the amendment. The Workers’ members felt that Convention No. 151
and Recommendation No. 159 were very important instruments for the promotion
of collective bargaining and should consequently be mentioned in the Preamble of
the proposed instrument(s). Some Government members supported the amend­
ment, while others were opposed to it. The latter stressed that, while the public
service might be excluded from the scope of the proposed instrument(s) by national
legislation, it was not necessarily excluded and that therefore it was appropriate to
mention the ILO instruments covering the public service in the Preamble of the
proposed instrument(s). The amendment was rejected by 4,872 votes to 105,183,
with 69,774 abstentions.

36. The Committee then discussed the amendment to Point 4, submitted by
the Workers’ members and already mentioned in paragraph 23. The Workers’
members justified this amendment in recalling that the respect for and the ever
widening application of the existing instruments constituted the basis for the
promotion of collective bargaining. The Employers’ members and some Govern­
ment members stated that they could accept the idea behind the amendment, but
that it would have to be formulated differently, so as to no longer imply that the
existing instruments were not respected. The Employers’ members then submitted
a subamendment to the Workers’ members’ amendment, seeking to replace it with
the following text: “The aims of these standards should be given greater effect as
the basis for the promotion of collective bargaining.” The amendment, as
subamended, was adopted.

37. Point 4, as amended, was adopted.

Point 5 (cont.)

38. The Committee should then have considered the amendment to Point 5,
submitted by the Government member of Portugal and already mentioned in
paragraph 26, but this amendment was withdrawn.
39. The Employers’ members submitted an amendment proposing to replace the Office text by the following:

8. For the purposes of the instrument the term “collective bargaining” should extend to all negotiations for the purpose of determining working conditions and terms of employment and such other matters as are deemed appropriate by national laws, regulations and practice.

In introducing their amendment, the Employers’ members stressed the importance of avoiding controversy over the subjects covered by collective bargaining. As the subjects other than “working conditions and terms of employment” that were covered by collective bargaining varied greatly from country to country, the amendment was intended to permit each country to reach its own decision on this matter. The amendment would also avoid the reference in the Office text to the words “regulating” and “relations”, which were respectively too prescriptive and ambiguous. To make their intent clearer, the Employers’ members subamended their amendment by adding at the end “as take place between employers and workers or their organisations”. The Workers’ members opposed the amendment, with or without the subamendment, on the grounds that it might be interpreted as inviting government intervention and making collective bargaining a tripartite process. A number of Government members stated their preference for the Office text, which they felt more accurately reflected national practice, the continually expanding content of collective bargaining, and its role in establishing rules governing the relations between the parties. The amendment was withdrawn.

40. The Workers’ members submitted an amendment to replace clause 8 (a) by the following: “(a) determining all terms of employment and all conditions of work and life, including social measures of all kinds”. This amendment, they maintained, would help to clarify the meaning of the term “collective bargaining”. In addition, it would be in line with the understanding of the meaning of the words “conditions of work and terms of employment” that had been reached by the relevant Committee of the International Labour Conference in 1951 with regard to Recommendation No. 91. The Employers’ members opposed the amendment as they considered that the notion of “social measures of all kinds” was vague and hence might make it more difficult for governments to accept the proposed instrument if it took the form of a Convention. While recognising the broad scope and continually expanding role of collective bargaining, a number of Government members also opposed the amendment. Some felt that the words “working conditions and terms of employment” were already sufficiently broad to cover what are commonly understood as “fringe benefits” or “social measures”, such as hospital insurance payments, retirement pensions and supplementary unemployment benefits. Other Government members questioned whether it was appropriate for a proposed Convention on collective bargaining to refer to such a broad notion as “conditions of life”. It was also felt by some Government members that the role of the public authorities with respect to “conditions of life” and “social measures” might be jeopardised by the proposed amendment. The Government member of Australia submitted a subamendment seeking to delete the reference to “conditions of life” and “social measures of all kinds” and to add, after the word “work”, the clause “which come within the scope of national laws and practices covering the employee/employer relationship”. This subamendment was not
seconded. In the light of the discussion on the proposed amendment, it was suggested by the Workers’ members that the Committee should reaffirm the view of the Conference, established in the discussion in 1951 of Recommendation No. 91, that the phrase “working conditions and terms of employment” was clearly understood as meaning “all conditions of work and life, including social measures of any kind”.

41. The amendment of the Workers’ members was rejected by 141,086 votes to 163,505, with 11,872 abstentions.

42. An amendment submitted by the Government member of the USSR proposed the replacement of the words “working conditions and terms of employment” by the words “conditions of work and life, including social measures of any kind”. While acknowledging that this amendment was similar to that of the Workers’ members, he stressed the need to clarify the formulation established by the International Labour Conference almost 30 years previously and to recognise the broader scope for collective bargaining which had evolved since then in many countries, including his own. Without a more explicit definition of collective bargaining, there was a danger that the Committee might make no advance on Recommendation No. 91. To meet some of the objections previously raised in the discussion of other amendments, he proposed to delete the words “including social measures of any kind” from his amendment. The Employers’ members opposed the suggested changes for the same reasons as had led them to oppose the Workers’ members’ amendment. The Workers’ members, while appreciating the intent of the amendment, could not support it because of the importance they attached to the words “term of employment”. The amendment was withdrawn.

43. An amendment submitted by the Government member of Belgium proposed to substitute the word “organising” for “regulating”. It appeared from the debate that the main problem was that the words réglementer in French and reglamentar in Spanish might be interpreted as requiring legal constraints on the process of collective bargaining or as suggesting the establishment of a rigid relationship between the parties. It was decided that it should be left to the Drafting Committee to find the French and Spanish terms equivalent to the English word “regulating”.

44. The Government member of Portugal proposed an amendment the main aim of which was to replace the term “workers’ organisations” by “unions”. In reply to a question, the representative of the Secretary-General explained that, while the meaning of “workers’ organisations” was not narrowly defined in ILO usage, it generally was considered to mean organisations of the workers’ choosing in the sense of Convention No. 87. In the light of this explanation, the amendment was withdrawn.

45. The Government member of Australia submitted an amendment seeking to add, after the words “workers’ organisations”, the clause “which, according to national law and practice, are entitled to represent the interests of the employees whom they purport to represent”. He explained that the proposed amendment would enhance the text by ensuring that the organisations party to collective bargaining were entitled to represent the workers concerned, be it at the national, state or local level. The amendment was not seconded.
46. The Government member of Australia submitted another amendment to add the following text to the end of Point 8:

The provisions of this instrument shall not be construed to preclude the operation of an industrial relations system in which failure by the parties to reach agreement in negotiations may be subject to mediation, conciliation and arbitration, by independent and impartial machinery.

His Government considered that the instrument needed to be framed in a way that enabled it to be ratified by countries, such as Australia, that did not have a "pure" collective bargaining system. In its present form, the proposed instrument failed to recognise the different types of industrial relations system that existed. This amendment was supported by several Government members. The Workers' members opposed it; they recognised that compulsory arbitration might work in some countries but were reluctant to see a reference to it in a world-wide document aimed at promoting collective bargaining. The Employers' members indicated that they could support the amendment only if the word "voluntary" was added before "arbitration". The amendment was withdrawn.

47. Subject to the modifications to be made by the Drafting Committee, Point 8 was adopted without change.

Point 9

48. An amendment submitted by the Government member of the Federal Republic of Germany proposed the replacement of the part of the Office text preceding the parenthesis by the following:

9. Where national law or practice recognises the existence of workers' representatives as defined in Article 3 of the Workers' Representatives Convention, 1971 (No. 135), national legislation should determine the extent to which the term "collective bargaining" also embraces, for the purpose of the Convention, negotiations with these representatives....

He explained that the intent of this amendment was to clarify the Office text to ensure that it would be left to national legislation to determine the extent to which workers' representatives other than trade unions could enter into collective negotiations. The changed wording would also serve to give priority to collective bargaining with trade unionists. To increase the flexibility of his amendment, he proposed to replace the word "should" by "may". A subamendment submitted by the Employers' members to suppress the part of the Office text in parentheses was withdrawn. A subamendment proposed by the Government member of Portugal, involving the addition of the words "and practice" after the words "national legislation", was adopted. The amendment, as subamended, was adopted.

49. Point 9, as amended, was adopted.

III. METHODS OF APPLICATION

Point 10

50. As the question dealt with in this Point was related to that of the form of the proposed instruments, the Committee decided to postpone its examination until after having discussed Points 1 and 2.
IV. PROMOTION OF COLLECTIVE BARGAINING

Point 11

51. The Employers' members proposed to insert, in paragraph (1), the word "voluntary" before the words "collective bargaining". The Workers' members stated that while being in favour of "voluntary" collective bargaining, they could not support this amendment because, as drafted, it could be interpreted in certain countries as allowing employers to refuse to negotiate with workers. The Employers' members stated that they were satisfied with the declaration made and therefore withdrew their amendment.

52. The Employers' members submitted an amendment proposing to insert in clause 11(2) (a) the word "made" before "possible". The Committee decided to refer this amendment to the Drafting Committee.

53. The Government member of Austria proposed to add, in clause 11(2) (a), the words "or their organisations" after the words "employers and workers". This amendment was not seconded.

54. The Employers' members submitted an amendment proposing to replace clause 11(2) (b) with the following text:

(b) The possibility of collective bargaining is progressively extended to all negotiations for the purpose of determining working conditions and terms of employment and such other matters as are deemed appropriate by national laws, regulations and practice.

The Workers' members opposed this amendment, considering it superfluous in view of the very flexible formulation of Point 7 as adopted by the Committee. Put to the vote, the amendment was rejected by 110,925 votes to 177,800, with 30,950 abstentions.

55. The Workers' members submitted an amendment proposing to replace clause 11(2) (b) by the following text: "(b) collective bargaining is extended to all matters indicated in Point 8". According to the Workers' members, this formulation would be better suited to contribute to the promotion of collective bargaining. The Employers' members stated that they preferred the Office text. Some Government members opposed the amendment because they feared that it might result in making the extension of collective bargaining obligatory to all matters indicated in Point 8. Other Government members felt that this fear was unjustified, especially since Paragraph (1) specified that all measures to be taken to promote collective bargaining were to be "adapted to national conditions". The government member of Austria then submitted a subamendment to the amendment of the Workers' members, proposing to formulate Point 11(2) (b) in the following manner: "(b) collective bargaining is progressively extended to all matters indicated in Point 8". The amendment, as subamended, was adopted.

56. The Workers' members proposed to replace, in Point 11(2) (b), the words "indicated in Point 8" by the words "and to all groups of workers". A certain number of Government members having stated that a reference to Point 8 should be retained in Point 11(2) (b), the Government member of Italy submitted a subamendment to the Workers' amendment, proposing the following alternative...
text: “(b) collective bargaining is progressively extended to all matters indicated in Point 8 and to all groups of workers”. Several Government members as well as the Employers’ members noted that clause 11(2) (a) already stipulated that collective bargaining should be possible “for all employers and workers in the branches of activity covered by the instrument”, and that it was therefore superfluous to repeat in clause 11(2) (b) that collective bargaining should be progressively extended “to all categories of workers”. The Committee adopted the amendment as sub-amended, but asked the Drafting Committee to examine whether the idea contained in the expression “and to all categories of workers” was better situated in clause 11(2) (a) or clause 11(2) (b).

57. The Government member of Austria proposed an amendment that sought to add, at the end of clause 11(2) (b), the words “in accordance with the national legal system”. The Employers’ members and several Government members considered that the reservation introduced by this amendment was superfluous because such a reservation already appeared in Point 7, as amended. Some Government members objected to this because Point 7 was concerned with the persons covered by the proposed instrument(s), while clause 11(2) (b) dealt with the subjects covered. These members raised the question whether the phrase “subject to national laws and practice” mentioned in Point 7, as amended, was equally valid for the scope of the proposed instrument(s) in terms of subjects covered. The Government member of Austria withdrew his amendment.

58. The Government member of the Federal Republic of Germany proposed to add, at the end of clause 11(2) (b), the following text: “to the extent that the outcome is not in contradiction with a law”. The author of the amendment justified his proposal by stressing that in certain countries the law took precedence over collective agreements in certain matters such as the protection of work or the organisation of the enterprise. The Government members of the EEC countries supported the amendment. The Workers’ members, as well as a certain number of Government members, opposed the amendment, considering that collective agreements should always be able to fix more favourable conditions than the law. The Employers’ members opposed the amendment because, in their opinion, it duplicated the general reservation concerning respect for national legislation contained in Point 7, as amended. The Government member of the Federal Republic of Germany then specified that his amendment did not exclude those collective agreements more favourable than the law, but only those in contradiction with the law. The debate that followed demonstrated that there was broad agreement within the Committee that it should be possible, through collective bargaining, to fix conditions more favourable for workers than those foreseen under the law. The members who had declared themselves against the amendment still maintained their opposition, because the distinction made by the Government member of the Federal Republic of Germany between collective agreements more favourable than the law and collective agreements contrary to the law did not seem acceptable to them. The amendment was withdrawn.

59. Considering clause 11(2) (c), the Committee first examined the three amendments submitted by the Government members of India, Australia and Spain and which sought to replace this clause by the following texts, respectively:
(c) wherever necessary, rules governing the procedures for collective bargaining are evolved and the existing rules, if any, modified to promote collective bargaining;

(c) collective bargaining is facilitated by the promulgation of appropriate and adequate rules governing procedure;

(c) collective bargaining is not rendered impossible because of the absence or the inadequacy of general provisions recognising and regulating it.

The Government member of India explained that, in submitting his amendment, he had a twofold objective. In the first place, he wanted to express in positive terms the idea which had been expressed in negative terms in the Office text. In the second place, he wanted to avoid referring, as did the Office text, to the "inappropriateness" of certain rules of procedure. He feared in fact that this expression might be interpreted as excluding, as "inappropriate", the systems for the adjudication of industrial disputes which existed in certain countries. The Employers' members supported the amendment, but the Workers' members opposed it, feeling that it weakened the Office text. The Government members of Australia and of Spain explained that their amendments differed from the Office text essentially in the sense that they were formulated positively. The amendment of the Government member of Australia, however, was not seconded. When the amendments of the Government members of India and of Spain were voted on against one another, the first received 100,375 votes in favour and the second 7,000 votes in favour. Put to the vote, the amendment of the Government member of India was rejected by 96,175 votes to 176,550, with 19,600 abstentions.

60. The Government member of Hungary proposed to add the word "especially" after the word "hampered" in clause 11 (2) (c). He justified his amendment by emphasising that there might be numerous obstacles to collective bargaining and that the one noted in clause 11 (2) (c) in the Office text was only one of these. The Employers' members having opposed the amendment, and several Government members having remarked that the effect of the amendment would be to render clause 11 (2) (c) so general as to make it a repetition of clause 11 (2) (a), the amendment was withdrawn.

61. The Employers' members proposed to replace, in clause 11 (2) (d), the expression "labour disputes" by "collective labour disputes". In the opinion of the Employers' members, the aim of this amendment was merely to clarify the text since, in their view, collective bargaining could be promoted only in resolving collective labour disputes and not individual disputes. The Workers' members and certain Government members expressed the view that collective bargaining also had had a role in the resolution of individual labour disputes, and particularly in the examination of individual grievances. The amendment was withdrawn.

62. The Employers' members submitted an amendment proposing to replace, in clause 11 (2) (d), the expression "collective bargaining" by the expression "voluntary collective bargaining". The Workers' members and several Government members emphasised that, while being in favour of "voluntary collective bargaining", they were opposed to the amendment because the term "voluntary" could raise certain problems, especially because it could be interpreted as allowing employers to refuse to bargain collectively with workers. The amendment was rejected by 202,993 votes to 294,784, with 76,610 abstentions.
63. The Government member of Spain proposed to add to paragraph (2) a new clause with the following wording: "(e) collective bargaining is legally enforceable for all employers and workers covered by its field of application and during its period of validity". The amendment was not seconded.

64. The Workers' members submitted an amendment which proposed to replace paragraph (3) with the following text:

3. Measures to encourage and promote the full development and utilisation of machinery for collective bargaining should be the subject of consultation and, whenever possible, agreement between public authorities, employers' and workers' organisations.

During the course of the discussion, several subamendments were proposed. In the first place, the Government member of Italy proposed to replace the term "measures" with the expression "measures taken by public authorities". In this connection it was pointed out that the amendment, as proposed by the Workers' members, would have the undesirable effect of rendering measures for promoting collective bargaining taken by employers and workers subject to prior consultation, indeed to an agreement, with the public authorities. It was also stressed by several Government members that the subamendment had the advantage of highlighting the role that the public authorities were to play in the promotion of collective bargaining. In the second place, it was proposed to delete the term "full". Certain members expressed the fear that this term might give rise to very subjective interpretations, in particular on the part of the supervisory bodies of the ILO. In the third place, it was proposed to replace the expression "development and utilisation of machinery for collective bargaining" with the words "development of collective bargaining", certain Government members considering that the amendment of the Workers' members was too narrow, since the term "machinery for collective bargaining" could be interpreted as involving only the creation of negotiation machinery, to the exclusion of all other measures for promoting collective bargaining. In the fourth place, it was proposed to insert the word "prior" before the word "consultation". The amendment, as subamended, was adopted.

65. An amendment submitted by the Government member of Czechoslovakia proposed the addition of the following paragraph to Point 11: "(4) Collective bargaining should not have the effect of establishing conditions less favourable than those prescribed by law." It was noted that the Office had envisaged the possibility of the inclusion of such a paragraph if any doubt on this question was apparent from the discussion at the Conference. In order to clear up possible ambiguity, it was suggested by the Government member of Czechoslovakia that it would be preferable for the principle to be made explicit. A number of Government members and the Workers' members supported the amendment, as in their view it made clear that it was the role of labour law to establish minimum standards and for collective bargaining to establish higher standards if possible. Other Government members and the Employers' members felt that the overriding effect of labour laws was self-evident and that accordingly the proposed Paragraph was superfluous. Put to the vote, the amendment was rejected by 250,040 votes to 275,232, with 42,112 abstentions.

66. The Workers' members proposed the addition of the following paragraph to Point 11: "(4) Any measures taken to promote collective bargaining should not
limit in any way the right to strike.” It was pointed out that a similar statement appeared as Paragraph 7 of the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92). It was indicated that the amendment did not imply any extension of the right to strike. It was directed only towards making it clear that the measures taken to promote collective bargaining did not limit in any way already existing rights. As the dividing line between intervention in and promotion of collective bargaining was very narrow, the Workers’ members thought it important to ensure that existing rights were not restricted in any way. The Employers’ members opposed the amendment. While the reference to the right to strike might have been appropriate in an instrument dealing with the settlement of labour disputes, they considered it out of place in a text dealing with the promotion of collective bargaining. A number of Government members also opposed the amendment for this reason. In addition, several Government members pointed out that temporary limitations on the right to strike, such as those imposed during conciliation and mediation procedures, often formed part of the rules established with a view to promoting collective bargaining. Moreover, in many countries limitations on the right to strike had been imposed for essential services and the public service, including the armed forces and the police. It was feared that these limitations might be brought into question by the proposed amendment, especially in the light of the wording which had been accepted for Point 7. It was also pointed out that no international labour Convention had dealt with the issue of the right to strike and that this question was not on the agenda of the present session of the Conference. The Government member of Italy submitted an amendment, accepted by the Workers’ members, which sought to replace their text with the following: “(4) The right to strike should not be affected by any measure taken by the public authorities with a view to promoting collective bargaining.” The Employers’ members proposed incorporating in the text a reference to the right to lock out. The Employers’ members’ subamendment to the subamendment submitted by the Government member of Italy was rejected by 163,560 votes to 331,632, with 45,308 abstentions. The amendment as subamended by the Government member of Italy was approved by 268,464 votes to 257,419, with 29,234 abstentions. The Employers’ members requested a record vote. The amendment as subamended was rejected by 22,812 votes to 24,056, with 2,220 abstentions.

67. The Government member of India proposed the addition of the following paragraph to Point 11:

(4) The measures envisaged in Point 11 should not preclude the possibility of the public authorities intervening if the public interest so demands, provided the broad guidelines regarding such intervention are evolved after consulting the employers’ and workers’ organisations.

The Committee agreed that this amendment should be considered during the discussion of Point 12.

68. Point 11, as amended, was adopted.

Points 1 and 2 (cont.)

69. The Committee then examined Points 1 and 2.

70. Both the Employers’ members and the Workers’ members had submitted amendments proposing that the Conference should adopt only a Recommendation
and not—as had been suggested in the Proposed Conclusions—a Convention supplemented by a Recommendation.

71. The Workers' members emphasised that they were seriously preoccupied by the fact that the Committee had not succeeded in preparing an adequate draft international instrument on the promotion of collective bargaining. The Proposed Conclusions were based on the answers of governments to an Office questionnaire and as a result were too concerned with governments' preoccupations. With more particular reference to the Proposed Conclusions with a view to a Convention, these were not of a character to promote decisively the interests of the workers but could even endanger these interests in certain respects. The Workers' members had hoped to be able to improve the Proposed Conclusions through their amendments, but they had succeeded in this to only a limited extent because of, on the one hand, the intrinsic difficulty of the questions dealt with and, on the other hand, certain attitudes adopted by the Government members and the Employers' members. The Workers' members had therefore reluctantly reached the conclusion that it would be wrong at present to seek a Convention in this area. A great deal of further work needed to be done both by the workers' organisations of ILO member States and by governments to work out the terms of what normally would be viewed as the most effective instrument: a Convention. The Workers' members said that they would be undertaking this work over the coming year and would of course review the situation next year. The Workers' members' objective remained the adoption and widespread ratification of a Convention that would genuinely promote collective bargaining as a means for all workers to exercise their democratic right to engage in the regulation of all conditions of work and life, including social measures of any kind.

72. The Employers' members explained that they were in favour of the adoption of a Recommendation because this form of instrument was more flexible and was more able to take account of the differences between the economic and social situations of various countries (particularly as concerns their system of industrial relations), their degree of economic development and the degree of development of their employers' and workers' organisations. In the opinion of the Employers' members, a Convention would receive only a few ratifications because of its rigid character, and would therefore not be very useful.

73. The Workers' member of France, speaking on behalf of the French workers, recalled that in principle he was in favour of Conventions because they were more effective than Recommendations. This was particularly so in matters of collective bargaining: on the one hand, collective bargaining was of great importance for the workers; on the other hand, it was already the subject of an international labour Convention—namely Convention No. 98—and could therefore not be promoted if only a Recommendation were adopted. Nevertheless, the workers could declare themselves in favour of a Convention only if its content really promoted collective bargaining, that is to say, if its content constituted an advance on existing instruments, namely the Declaration of Philadelphia and Convention No. 98. However, this was not the case, especially because Point 7 of the Proposed Conclusions, as amended, allowed member States to limit the scope of the instrument as they wished. In these circumstances the question was no longer whether to adopt a Convention or a Recommendation, but whether to adopt an
instrument or not to adopt one at all. The Workers' member of France specified that he opposed the adoption of any instrument in the present state of affairs but that he hoped it would be possible in 1981 to adopt a Convention that would really constitute an advance on the existing instruments.

74. At the end of this discussion, the Committee adopted the proposal which supported the adoption of a single instrument in the form of a Recommendation.

75. Points 1 and 2, as amended, were adopted.

Points 10, 13 and 14

76. The Committee noted that, in view of the decision reported in the preceding paragraph, Points 10, 13 and 14 had become irrelevant.

V. COLLECTIVE BARGAINING AND THE GENERAL INTEREST

Point 12

77. The Committee first examined the amendment to Point 11 submitted by the Government member of India and already mentioned in paragraph 67. In view of the changes that the text of the Proposed Conclusions had undergone after he had prepared this amendment, the Government member of India withdrew it. He also recalled that the questionnaire of the Office, which appeared at the end of Report V (1), included question 23(c) with the following wording: "Should the instrument(s) provide that the measures taken by the public authorities to promote collective bargaining should not entail any interference on their part in collective bargaining itself?". In Report V (2) it was specified that the provision suggested in this question had not been taken up in the Proposed Conclusions "since the number of governments which are not prepared to exclude all forms of interference by the public authorities in collective bargaining is thus fairly high" (pp. 80-81). In these circumstances the Government member of India did not press his amendment.

78. The Workers' members proposed to delete Point 12. While recognising that the problem dealt with in this Point was a real one, they considered the Office text to be dangerous. The concept of general interest could in fact be defined in extremely varied ways. As drafted, Point 12 allowed governments to take measures which were unacceptable to workers. The Workers' members also expressed the opinion that the entire problem of the relationship between collective bargaining and the general interest should be studied in far greater depth than hitherto before it could be dealt with in an international instrument. The Employers' members opposed this amendment. After having recalled that employers' circles were in principle opposed to interference in collective bargaining by the public authorities, they stated that Point 12, as proposed by the Office, was acceptable to them and could be useful in certain critical circumstances. In particular, they drew the attention of the Committee to the drafting of Point 12, which in their opinion was highly prudent and appropriate. The measures envisaged in this Point were in fact uniquely designed to "encourage and facilitate" the reconciliation of the specific interests of the parties to collective bargaining with the general interest. Certain
Government members opposed the amendment of the Workers' members. They emphasised that, while recognising the importance of the principle of the autonomy of the parties to collective bargaining, they could not accept the deletion of Point 12, which recognised the inalienable role of the State as defender of the general interest. These Government members recalled that, not only in developing countries but also in industrialised countries, the public authorities had exercised an influence, of a greater or lesser magnitude according to the country, on wage policy. They also recalled that the supervisory bodies of the ILO had allowed restrictions in the field of collective bargaining on wages provided that certain very strict conditions were fulfilled. Certain Government members who were opposed to the Workers' members' amendment acknowledged that the notion of general interest could be subject to improper interpretations, which could lead to excessive limitations on the autonomy of the parties to collective bargaining. However, they did not consider this a reason for not dealing with this problem in the proposed instrument. Certain Government members declared themselves in favour of the Workers' members' amendment. They emphasised that if Point 12 were deleted, this did not mean that the parties to collective bargaining should not take account of the general interest. The problem dealt with in Point 12 was, however, so delicate and raised so many problems, especially with respect to definitions, that in their opinion the best solution was not to deal with it in the proposed instrument. Some Government members also emphasised that the prior consultation with the parties provided for in paragraph (2) might be impossible in certain circumstances, particularly when the government wished to take certain measures in connection with a labour dispute in essential services. Put to the vote, the amendment was adopted by 23,368 votes to 2,704, with 17,808 abstentions. It transpired from the debate that all the other amendments relating to Point 12 could be considered to be withdrawn. The Government member of Uruguay indicated the reservation of his Government with respect to the deletion of Point 12.

PROPOSED CONCLUSIONS WITH A VIEW TO A RECOMMENDATION

II. METHODS OF APPLICATION

Point 15

79. Point 15 was adopted without change.

III. MEANS OF PROMOTING COLLECTIVE BARGAINING

Point 16

80. The Government member of Portugal proposed the deletion of this Point. She stated that the establishment and development of employers' and workers' organisations should be the sole responsibility of the employers and of the workers themselves. In her opinion, Point 16 could lead to undue interference by the public authorities in the affairs of employers' and workers' organisations. The amendment was not seconded.
81. The Employers' members submitted an amendment proposing to replace the words “employers' and workers' organisations” with the words “free, independent and representative employers' and workers' organisations”. The Workers' members declared themselves in favour of this amendment. The amendment was adopted.

82. The Employers' members proposed to delete the words “that are sufficiently strong and representative to be able to negotiate effectively”, considering that they would give rise to evaluations that were too subjective. The Workers' members supported the amendment. They emphasised that if employers' and workers' organisations were really representative, they would automatically be sufficiently strong to negotiate effectively. In these circumstances the part of the sentence that the amendment sought to delete was unnecessary. The Government member of India opposed the amendment. He referred to situations of trade union multiplicity that existed in a certain number of countries and considered that, in view of these, it might be useful to specify in the proposed instrument that the workers' organisations should be sufficiently strong and representative to be able to negotiate effectively. The amendment was adopted.

83. Point 16, as amended, was adopted.

**Point 17**

84. The Government member of Portugal proposed the deletion of the word “representative” from clause 17 (a). Her Government believed that all workers' organisations, no matter what their number and size, should be entitled to recognition for the purposes of collective bargaining. In her view the problem of determining the most representative organisation for countries applying this principle was adequately dealt with in clause 17 (b). The amendment was not seconded.

85. The Government member of Egypt proposed the deletion of clause 17 (b) from the Office text. He argued that the reference to “measures adapted to national conditions” in the first line of the Point made the text sufficiently flexible to enable countries operating procedures for recognition to apply them. In his view clause 17 (b) was therefore unnecessary. The amendment was not seconded.

86. The Employers' members proposed to replace clause 17 (b) with the following:

(b) in countries in which the competent authorities apply procedures for recognition with a view to determining the organisation to be granted the right to bargain collectively, such determination is based on objective and pre-established criteria with regard to the organisations' representative character.

The Employers' members indicated that their amendment was not intended to change the basic principle underlying the Office text but rather to clarify it by making it explicit that the procedures being considered were to be applied by the competent authorities and to broaden its scope somewhat by deleting the reference to “on a preferential or exclusive basis”. The Workers' members indicated that they would be able to accept the proposed text if instead of the words “pre-established criteria” the words “criteria agreed in advance” were used. The
Employers' members accepted this subamendment. A number of Government members indicated that they disagreed with the proposed subamendment because it left unclear whose agreement had to be obtained before the criteria were applied. If it meant the agreement of the parties directly concerned, this would be contrary to the practices in many countries and could seriously reduce the practical application of the clause, since in a situation of trade union multiplicity a workers' organisation would certainly not agree to the fixing of criteria which might lead to a decision refusing its recognition. The amendment, as subamended, was adopted.

87. Point 17, as amended, was adopted.

88. The Workers' members proposed the replacement of paragraph (1) with the following text:

(1) Measures should be taken by the parties to collective bargaining so that their negotiators, at all levels, have the opportunity to obtain training. Public authorities should provide assistance to workers' organisations for industrial relations training. The content and supervision of such programmes should be determined by the workers' organisations concerned. Such training should be without prejudice to the right of workers' organisations to choose their own representatives for the purpose of collective bargaining. The principle of paid educational leave (as established by Convention No. 140) for industrial relations training should be promoted.

The authors of the amendment explained that its intent was to strengthen the Office text, especially by ensuring that the required training was provided and by defining the respective roles of public authorities and workers' organisations. The Employers' members indicated that they could accept the new text provided that references to employers' organisations were also included therein and that the last sentence, referring to the principle of paid educational leave, was deleted. The subamendment aimed at bringing employers' organisations within the scope of the paragraph was adopted by the Workers' members. In the vote on the subamendment to maintain the last sentence in the amendment, there were 19,344 votes in favour, 416 against and 25,368 abstentions. The quorum of 21,715 not having been reached, the motion was not adopted. A number of Government members expressed reservations regarding the proposed amendment. Some felt the Office text was preferable because it placed an obligation on all the parties, and not just on the public authorities. It was also pointed out that the placing of an obligation on public authorities to provide industrial relations training might well be dangerous to trade unions in some countries. Because of this concern, a subamendment was proposed by the Government member of Italy to replace "should" by "may, on request". In view of the opposition of the Workers' and Employers' members, this subamendment was withdrawn. The Government member of Italy expressed his concern that the Committee was in the process of establishing an instrument that would be considered impractical in many countries. The Government member of Spain proposed the deletion of the penultimate sentence of the Workers' members' amendment, as he considered the choice of representatives for collective bargaining to be a separate problem that should not be considered in a paragraph dealing with training. The Workers' and Employers' members opposed this subamendment as they considered that it would remove an
essential protection from the text. The subamendment was withdrawn. Point 18 (1), as subamended, was adopted.

89. An amendment submitted by the Employers' members proposed to replace paragraph (2) with the following: "(2) Parties to negotiations should provide their negotiators with the necessary authority to conduct negotiations." The authors of the amendment explained that the word "mandate" in the Office text was not completely appropriate as it had the connotation of individuals operating under specific instructions and being obliged to adhere to them. Such arrangements were not conducive to the process of collective bargaining. Hence, the Employers' members proposed that the text should refer to the necessary "authority" to conduct negotiations. The Workers' members indicated that they could accept the amendment if three changes were made: first, to avoid any possible ambiguity, they proposed that the word "respective" be added before "negotiators"; second, to deal with the possibility of a narrow interpretation of the word "mandate", they suggested the phrase "the necessary mandate to conduct and conclude negotiations"; and, third, in order that the text should correspond with normal bargaining practices, they proposed to add at the end of the amendment the words "subject to any provision for consultations within their respective organisations". The amendment, as subamended, was adopted.

90. Point 18, as amended, was adopted.

Point 19

91. The Workers' members proposed to delete, in paragraph (1), the words "adapted to national conditions". In their opinion, this deletion would result in strengthening the Office text. The Employers' members opposed this suggestion. The amendment was rejected by 203,476 votes to 251,808, with 23,865 abstentions.

92. The Employers' members submitted an amendment proposing to replace, in paragraph (1), the words "so that the parties have access to the information required" with the words "to facilitate the flow of information required". In introducing this amendment, the Employers' members emphasised that information should be provided not only by one of the parties to collective bargaining but by both of them. They also considered that their amendment would help to clarify the Office text. The Workers' members, as well as certain Government members, expressed the view that the Employers' members' amendment was too vague and that it would in any case weaken the Office text. Put to the vote, the amendment was rejected by 165,335 votes to 298,893, with 20,124 abstentions.

93. The Committee then examined two amendments, one of which had been submitted by the Workers' members and the other by the Employers' members, which respectively proposed to replace clause 19 (2) (a) with the following texts:

(a) Reliable information should be made available by employers, both public and private, as requested by workers' organisations, on the economic and social situation of the negotiation unit and the organisation as a whole. In circumstances where full disclosure of information may be prejudicial to the undertaking, agreement should be reached with the workers' organisations concerned on the extent of the information to be made available.
Such existing information as is meaningful to the bargaining should be made available by the party which holds it, provided that account is taken of the cost involved and that such communication is not prejudicial to the undertakings or to national interest.

The Workers' members explained that the essential aim of their amendment was to specify that, when the communication of certain information could be prejudicial to the undertaking, the extent of the information to be furnished should be fixed through agreement with the workers' organisations concerned. The Employers' members noted that their amendment was distinct from the Workers' amendment in four respects: first, it stressed the fact that information should be made available by both parties; second, it specified that only information which was available and the communication of which did not entail an unreasonable cost was to be made available; third, it limited the obligation of the parties to the communication of information that was relevant to collective bargaining; and fourth, it provided for withholding information the communication of which would be prejudicial to the undertaking or to the national interest. Put to the vote against one another, the Workers' members' amendment received 207,948 votes in favour and the Employers' members' amendment received 200,380 votes in favour. The Government member of Italy proposed to subamend the Workers' members' amendment, first, by replacing the words "reliable information" by the words "necessary information"; and, second, by replacing the second sentence of the Workers' members' amendment with the following text: "The content of this information should not be prejudicial to the undertaking and could be determined by an agreement reached between the employers' and workers' organisations." The Workers' members agreed with these two subamendments. The Employers' members proposed to subamend the subamendment of the Government member of Italy by replacing the words "necessary information" with "necessary and available information". In the face of opposition from the Workers' members, this subamendment was withdrawn. The Government member of Spain submitted a subamendment proposing that the information should be made available not only to workers' organisations but also to the workers' representatives referred to in Point 9. This subamendment was not seconded. The Government member of India introduced a subamendment proposing to add at the end of the Workers' members' amendment, as subamended by the Government member of Italy, the following sentence: "Information the disclosure of which would be prejudicial to the national interest should also not be made available." This subamendment was supported by the Employers' members but opposed by the Workers' members. Put to the vote, the subamendment obtained 204,809 votes in favour, 11,180 votes against and 275,071 abstentions. The quorum of 233,438 not having been reached, the subamendment was not adopted. The Workers' members' amendment, as subamended by the Government member of Italy, was then adopted.

94. The Government member of the Federal Republic of Germany proposed to add, at the end of clause 19 (2) (a), the words "and/or". He stated that in certain countries the amount of information made available by the public authorities was so great that it was no longer necessary to impose on employers the obligation to communicate certain information to the workers. As the Workers' members refused to support it, this amendment was withdrawn.

95. The Government member of Portugal proposed to replace, in clause 19 (2) (b), the words "make available such" by "as far as it is available provide". The
amendment was withdrawn because it did not receive the support of the Workers' members.

96. The Committee then examined an amendment by the Employers' members which sought to insert in clause 19 (2) (b) the words "branch and" before the words "over-all economic", and an amendment by the Workers' members which sought to add after the word "country", the words "and industry concerned". The Committee noted that these two amendments had the same meaning, and agreed in principle with the idea expressed in them. It asked the Drafting Committee to formulate this idea in an appropriate manner.

97. The Workers' members proposed to delete, in clause 19 (2) (b), the words "in so far as the communication of this information is not prejudicial to the national interest". The Employers' members, as well as some Government members, opposed this amendment, emphasising that obviously there was certain information, especially of an economic character, the disclosure of which would be against the national interest. The Workers' members considered that, in this context, reference should be made to national security and not to the much wider concept of national interest. Several Government members stated that they did not share this view of the Workers' members. Put to the vote, the amendment was rejected by 207,948 votes to 261,526, with 24,596 abstentions.

98. The Employers' members proposed to invert the order of the clauses comprising paragraph (2). The Committee referred the examination of this amendment to the Drafting Committee.

99. The Government member of Kenya submitted an amendment proposing to add after clause 19 (2) (b) a clause with the following wording: "(c) any party granted such information shall treat it with the required confidentiality". This amendment was supported by the Employers' members and by certain Government members, but it was opposed by the Workers' members who considered that the problem of confidentiality has already been dealt with in Point 19, as amended. The Government member of Kenya drew attention to the fact that Point 19, as amended, provided that certain information should not be communicated, whereas his amendment sought to provide that information which had been communicated should be treated with the required confidentiality by those who had received it. The Government member of Algeria proposed to subamend the amendment of the Government member of Kenya by replacing it with the following text: "(c) any party which has been granted such information shall treat it with the required confidentiality, when such information may be prejudicial to the national interest or to the undertaking". This subamendment was not seconded. Put to a vote by show of hands, the amendment was adopted by 230,222 votes to 11,180, with 259,419 abstentions. In a record vote, requested by the Workers' members, the amendment obtained 230,222 votes in favour, 2,236 votes against and 270,599 abstentions. The quorum of 233,438 not having been reached, the amendment was not adopted.

100. Point 19, as amended, was adopted.

Point 20

101. The Workers' members proposed that this Point be deleted as they felt that it went without saying that the parties to collective bargaining should negotiate
in "good faith". In addition, they argued that the concept of "good faith" was difficult to define and that any attempt to do so might give rise to a great deal of misunderstanding. In any case, it was up to the parties themselves to determine their own approach to bargaining. The Employers' members and some Government members supported the Office text, believing that the duty of bargaining in good faith was of basic importance and recalling that it figured in many labour laws and in numerous codes of industrial relations practice. Put to the vote, the amendment was adopted by 214,656 votes to 73,057, with 187,695 abstentions.

Point 21

102. The Workers' members proposed the deletion of the words "if necessary" from paragraph (1), as they considered that it was always important to adopt measures to enable collective bargaining to take place at any level whatsoever. The Employers' members thought that the existing wording in the Office text was sufficiently clear and simple, and in addition they feared that the removal of the words "if necessary" might invite unwarranted government intervention. The amendment was withdrawn.

103. The Workers' members proposed to replace the word "region" by "regionally" in paragraph (1), because they considered that, although it was possible for collective bargaining to take place for one industry in a region it was not possible for all industries or branches in a region. It was agreed to refer the issue to the Drafting Committee.

104. A Workers' members' proposal to replace, for similar reasons, the words "the national economy as a whole" by "nationally" was also referred to the Drafting Committee.

105. The Workers' members proposed the deletion of paragraph (2), which they considered unnecessary. As the problem of co-ordination among different levels of collective bargaining was best left to the parties themselves, it was not an appropriate subject for an international instrument. On the other hand, many Government members and the Employers' members supported the Office text, arguing that when collective bargaining took place at several levels a need for co-ordination would inevitably arise. It was pointed out that more effective co-ordination among levels of negotiation could make an important contribution to the promotion of collective bargaining and that such co-ordination did not necessarily imply the establishment of a hierarchy among these levels. Put to the vote, the amendment obtained 160,472 votes in favour, 33,540 against and 168,173 abstentions. The quorum of 233,438 not having been reached, the amendment was not adopted.

106. Subject to the modifications to be made by the Drafting Committee, Point 21 was adopted without change.

Proposed New Point

107. The Workers' members proposed to add the following Point after Point 21:

22. Measures to facilitate, where appropriate, the development and co-ordination of collective bargaining within enterprises operating in more than one country should be taken.
On collective bargaining and other issues of mutual interest, trade union negotiators should have access to the appropriate level of decision-making within such enterprises, up to and including the highest level of management.

The Workers' members stated that the need for such a Point was largely self-evident as it tended to bring collective bargaining with multinational enterprises within the scope of the proposed instrument. When enterprises operated in more than one country, the need to co-ordinate collective bargaining and to have access to the highest levels of decision-making was of the greatest importance. The Employers' members opposed the amendment as it raised issues of intense controversy that were being examined in other ILO bodies. They referred in particular to the fact that the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted after lengthy discussions by the Governing Body in 1977, contained a whole section on collective bargaining. A number of Government members also opposed the Workers' members' amendment because they felt that it was incompatible with their national laws and practices and because they considered it inapplicable. With respect to access to the appropriate level of decision-making, it was suggested that this was already covered by Point 18 (2). The Workers' members subamended their amendment by deleting the first sentence and making the necessary drafting changes in the second. Put to the vote, the amendment, as subamended, obtained 158,288 votes in favour, 2,236 against and 209,926 abstentions. The quorum of 233,438 not having been reached, the amendment was not adopted. A statement was made by the Workers' members expressing their deep disappointment over the results of the vote. They pointed out that many workers' organisations and governments in developing countries had great difficulty in dealing with powerful multinational enterprises, which sometimes took advantage of their position to frustrate collective bargaining. It was to be hoped that more progress would be made when the application of the Declaration came up for discussion in the Governing Body again. The Employers' members indicated that the role of multinational enterprises could not be evaluated until more facts were known. They recalled that their opposition to the amendment was based on their view that the present Committee was not the appropriate forum to discuss matters relating to multinational enterprises, and that, in their opinion, collective bargaining was impossible at the international level.

Point 22

108. The Workers' members proposed the replacement of the words "begins by efforts to help" by "assists", in order to shorten the text and to strengthen it. After having been supported by the Employers' members, the amendment was adopted.

109. The Workers' members then proposed the addition of the following sentence to Point 22: "Such measures should reflect the principles of the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92)." This addition, they maintained, did not introduce anything new but simply served to make it clear that the measures to be taken with respect to labour disputes should be consistent with the ILO instrument on the subject. The Employers' members and a number of Government members opposed the amendment, as they felt that a
Reference to Recommendation No. 92 was out of place in this Point, which did not deal with the choice between various procedures for the settlement of labour disputes but rather with the principle that such procedures should begin by efforts to help the parties to find a solution to their dispute themselves. Moreover, a reference to Recommendation No. 92 already appeared in the Preamble and the issue of disputes settlement procedures was also dealt with elsewhere in the Proposed Conclusions. In the light of this debate the amendment was withdrawn.

110. Point 22, as amended, was adopted.

IV. FINAL PROVISION

Point 23

111. The Workers’ members proposed adding the following words at the end of Point 23: “but should be regarded as complementary to them and positively aiding the promotion of collective bargaining.” The amendment, supported also by the Employers’ members, was adopted and referred to the Drafting Committee.

112. Point 23, as amended, was adopted.

Adoption of the Report, the Proposed Conclusions and the Resolution

113. At its fifteenth sitting the Committee adopted its report, subject to some changes requested by various members.

114. The Committee adopted, at the same sitting, the Proposed Conclusions as appended to this report. The Government member of Portugal proposed that Point 6 of the Proposed Conclusions of the Committee be replaced by the original Point 7 as proposed by the Office. After consultations with the Vice-Chairmen, in accordance with article 67 of the Standing Orders of the Conference, the Chairman decided that this amendment was not receivable.

115. The Committee discussed the draft resolution to place on the agenda of the next ordinary session of the Conference an item entitled “Promotion of Collective Bargaining”. The Government member of Italy, seconded by the Government members of Austria, France and the USSR, proposed that the reference to a Recommendation in the last sentence of the resolution be replaced by “instrument or instruments in accordance with customary procedures of the ILO”. After some debate, the Committee adopted the resolution on the agreed understanding that the reference in the last paragraph to “Recommendation” would in no way prejudge the decision that the Conference would take in 1981 on the form of the instrument or instruments on this matter.
Proposed Conclusions, Submitted by the Committee

I. FORM OF THE INTERNATIONAL INSTRUMENT

1. The International Labour Conference should adopt an international instrument concerning the promotion of collective bargaining.

2. The instrument should be in the form of a Recommendation.

II. PREAMBLE

3. The Preamble should reaffirm the provision of the Declaration of Philadelphia recognising “the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve ... the effective recognition of the right of collective bargaining”.

4. The Preamble should have regard to the key importance of existing international standards contained in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Collective Agreements Recommendation, 1951 (No. 91), the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), and the Labour Relations (Public Service) Convention (No. 151) and Recommendation (No. 159), 1978. Greater effect should be given to the objectives of these standards as the basis for the promotion of collective bargaining.

5. The Preamble should state that the objective of the Recommendation is to provide appropriate measures to promote free and voluntary collective bargaining, thereby giving greater effect to the general principles on the subject set out in Article 4 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and in Paragraph 1 of the Collective Agreements Recommendation, 1951 (No. 91).

III. SCOPE AND DEFINITIONS

6. The Recommendation should, subject to national laws, regulations and practice, apply to all branches of economic activity.

7. For the purposes of the Recommendation, the term “collective bargaining” should extend to all negotiations for the purpose of—
   (a) determining working conditions and terms of employment, and/or
   (b) regulating relations between employers and workers or their organisations, which take place between an employer, group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other.
8. Where national law or practice recognises the existence of workers' representatives as defined in Article 3 of the Workers' Representatives Convention, 1971 (No. 135), national law or practice may determine the extent to which the term "collective bargaining" also embraces, for the purpose of the Recommendation, negotiations with these representatives (measures appropriate to national conditions being taken to ensure that the existence of these representatives is not used to undermine the position of the workers' organisations concerned).

IV. METHODS OF APPLICATION

9. The provisions of the Recommendation may be applied by national laws or regulations, collective agreements, arbitration awards or in any other manner consistent with national practice.

V. PROMOTION OF COLLECTIVE BARGAINING

10. (1) Measures adapted to national conditions should be taken to promote collective bargaining.

(2) The aims of the measures referred to in the preceding Paragraph should be that—

(a) collective bargaining be made possible for all employers and all groups of workers in the branches of activity covered by the Recommendation;

(b) collective bargaining be progressively extended to all matters indicated in Point 7;

(c) collective bargaining not be hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules;

(d) bodies and procedures for the settlement of labour disputes be so conceived as to contribute to the promotion of collective bargaining.

(3) Measures taken by public authorities to encourage and promote the development of collective bargaining should be the subject of prior consultation and, whenever possible, agreement between public authorities, and employers' and workers' organisations.

(4) The measures taken with a view to promoting collective bargaining may not be so interpreted or applied as to hamper the freedom of collective bargaining.

VI. MEANS OF PROMOTING COLLECTIVE BARGAINING

11. In so far as necessary, measures adapted to national conditions should be taken to facilitate the establishment and growth, on a voluntary basis, of free, independent and representative employers' and workers' organisations.

12. As appropriate and necessary, measures adapted to national conditions should be taken so that—

(a) representative employers' and workers' organisations be recognised for the purposes of collective bargaining;
in countries in which the competent authorities apply procedures for recognition with a view to determining the organisations to be granted the right to bargain collectively, such determination be based on objective criteria agreed in advance with regard to the organisations' representative character.

13. (1) Measures should be taken by the parties to collective bargaining so that their negotiators, at all levels, have the opportunity to obtain appropriate training.

(2) Public authorities should provide assistance to workers' and employers' organisations for such training.

(3) The content and supervision of the programmes of such training should be determined by the workers' and employers' organisations concerned.

(4) Such training should be without prejudice to the right of workers' and employers' organisations to choose their own representatives for the purpose of collective bargaining.

14. Parties to collective bargaining should provide their respective negotiators with the necessary mandate to conduct and conclude negotiations, subject to any provisions for consultations within their respective organisations.

15. (1) Measures adapted to national conditions should be taken, if necessary, so that the parties have access to the information required for meaningful negotiations.

(2) For this purpose—

(a) at the request of workers' organisations, public and private employers should make available necessary information on the economic and social situation of the negotiating unit and the undertaking as a whole. The contents of information to be made available should not be prejudicial to the undertaking and may be agreed upon between the employers' and workers' organisations concerned;

(b) the public authorities should make available such information as is necessary on the over-all economic and social situation of the country and industry concerned, in so far as the communication of this information is not prejudicial to the national interest.

16. (1) Measures adapted to national conditions should be taken, if necessary, so that collective bargaining is possible at any level whatsoever, including that of the establishment, the undertaking or the branch of activity or the regional or national levels.

(2) In countries where collective bargaining takes place at several levels, the parties to negotiations should seek to ensure that there is co-ordination among these levels.

17. Measures adapted to national conditions should be taken, if necessary, so that the procedures for the settlement of labour disputes assist the parties to find a solution to the dispute themselves, whether the dispute is one which arose during the negotiation of agreements, one which arose in connection with the interpretation and application of agreements or one covered by the Examination of Grievances Recommendation, 1967 (No. 130).
VII. Final Provision

18. The Recommendation should not be considered as revising any existing Recommendations, but should be regarded as complementary to them and positively aiding the promotion of collective bargaining.

Discussion by the Conference in Plenary Sitting

The report of the Committee on Collective Bargaining and the Conclusions proposed therein were discussed by the Conference in plenary sitting on 25 June 1980.

In submitting the report, Mr. Noriel (Government delegate, Philippines; Reporter of the Committee on Collective Bargaining) emphasised that the Committee's task had been no easy one. While there had been general agreement on the value and importance of the collective bargaining process, the question of the appropriate and effective approach towards its promotion had evoked diverse responses owing primarily to the differences, not only in the form and substance of collective bargaining as practised in many countries, but also in the over-all social, economic and political situations, often requiring the reconciling of the process with the general interest.

The growth and development of collective bargaining as the centrepiece of industrial relations policy during the last three decades, and the need to complement existing ILO instruments in order to promote and strengthen the process, had been recognised. Collective bargaining had been growing in scope, coverage and meaning over many years. In a number of countries the process had expanded from its traditional standard-setting function in relation to terms and conditions of employment to more democratic participation in decision-making as well as in the resolution of labour disputes. The Committee's work, as a whole, had been a tribute to the collective bargaining process itself.

The Committee reaffirmed in the Preamble to the proposed instrument the provision in the Declaration of Philadelphia recognising "the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve ... the effective recognition of the right of collective bargaining". The Preamble also emphasised the key importance of the existing international standards contained in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Collective Agreements Recommendation, 1951 (No. 91), the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), and the Labour Relations (Public Service) Convention (No. 151), and Recommendation (No. 159) of 1978.

The proposed instrument was aimed at giving greater effect to the objectives of the standards as the basis for the promotion of free and voluntary collective bargaining.

A very significant advance in achieving the objectives of the Committee had been the recognition given to the broadening scope and function of collective bargaining. Thus, it had been agreed that the proposed Recommendation should,
subject to national laws, regulations and practice, apply to all branches of economic activity. Despite this qualification on the application of the Recommendation, it had been clearly understood that the term “all branches of economic activity” should be given the widest possible meaning so as to incorporate all sectors of activity including the public service.

The question of scope, however, represented one of the most difficult, controversial and far-reaching subjects taken up by the Committee. It had a crucial effect not only on the form and substance of the instrument or instruments to be adopted, but also on the attitudes of the parties to collective bargaining. This was a matter that the Conference could seriously consider next year. It would also be helpful if the ILO could look at it more closely in preparing for the second discussion on this subject in 1981.

The Proposed Conclusions defined collective bargaining as extending to all negotiations for the purpose of: (1) determining working conditions and terms of employment, and (2) regulating relations between employers and workers or their organisations. This was a very positive step, which took into account the expanding role of collective bargaining in the development of industrial relations themselves.

Another highlight of the Conclusions was the provision concerning the means of promoting collective bargaining. Point 11 stated that “In so far as necessary, measures adapted to national conditions should be taken to facilitate the establishment and growth, on a voluntary basis, of free, independent and representative employers' and workers' organisations.” This was significant in that it touched on a prerequisite of collective bargaining and very appropriate, particularly in countries where such organisations, and industrial relations policy itself, were at an early stage of development.

An important provision relating to a vital area for the promotion of collective bargaining covered measures to be taken so that the negotiators, at all levels, might have the opportunity to obtain appropriate training, with the public authorities providing assistance for such training.

Another Point in the Proposed Conclusions dealt with measures to facilitate the collective bargaining process by providing and equipping the parties with the information required for meaningful negotiations. The contents of such information might relate to the economic and social situation of the negotiating unit and of the undertaking as a whole, as well as to the over-all economic and social situation of the country and of the industry concerned, provided that they took into account the protection of the interests of the undertaking and the national interest. With this information the parties should be in a better position to negotiate advisedly and to avoid certain arguments about points of fact during negotiations.

The Proposed Conclusions also called for measures adapted to national conditions to be taken if necessary so that the procedures for the settlement of labour disputes might assist the parties to find a solution to the disputes themselves. This was consistent with the principle of autonomy and voluntarism and the need to develop the self-reliance and self-determination of the parties.

The Committee had decided to delete Point 12 of the original text of the Proposed Conclusions concerning the matter of reconciling the specific interests of the parties to collective bargaining with the general interest. In urging the deletion of this Point, the Workers' members, while recognising the problem dealt with, had considered the text proposed by the Office to be dangerous in that it allowed
governments to take measures which were unacceptable to the workers. They had opined, however, that the entire problem should be studied in far greater depth before it could be dealt with in an international instrument. The Employers' members had supported the original text, stating that, while they were opposed to interference in collective bargaining by public authorities, Point 12 was acceptable and could be useful in certain critical circumstances. Certain Government members had also opposed the deletion of Point 12, which recognised the inalienable role of the State as defender of the general interest. But it had been acknowledged that the notion of the general interest could be subject to misinterpretations, leading to excessive limitations of the autonomy of the parties. Other Government members, however, had supported the deletion of Point 12, emphasising that this need not mean that the parties to collective bargaining should not take account of the general interest. But the problem dealt with was so delicate, and raised so many problems, especially with respect to definition, that in their opinion the best solution was not to deal with it in the proposed instrument. This had apparently been heeded by the Committee when it decided to delete this Point.

As regards the form of the international instrument, both Employers' members and Workers' members had submitted amendments suggesting that the Conference should adopt only a Recommendation and not a Convention supplemented by a Recommendation. The Workers' members had doubted that a Convention, under the present circumstances, could be of a character to promote decisively the interests of the Workers and had feared that it might even endanger these interests in certain respects. They had added that a great deal of work needed to be done by all concerned to be able to work out a Convention, which was the most effective instrument, but had thought they would review the situation in 1981. The Employers' members had favoured a Recommendation as it could provide greater flexibility and was able to take into account the differences between the economic and social situations of various countries, their degree of economic development and the degree of development of their employers' and workers' organisations. They had concluded that a Convention might receive only few ratifications because of its rigid character and that it would therefore not be useful. Finally, the Committee had approved the proposal for the adoption of a single instrument in the form of a Recommendation. However, during the consideration of the resolution (annexed to the Committee's report) to place an item entitled "Promotion of Collective Bargaining" on the agenda of the next Ordinary Session of the Conference, the Government member of Italy, seconded by the Government members of Austria, France and the USSR, had proposed the replacement of the reference to a Recommendation in the last sentence of the resolution by the words "instrument or instruments in accordance with customary procedures of the ILO". After some discussion, the Committee had adopted the original text of the resolution on the clear understanding that the use of the word "Recommendation" would in no way prejudice or prejudge the decision the Conference would take in 1981 on the form of the instrument or instruments.

The report reflected the agreement in the Committee on what was possible, acceptable and reasonable for the moment under present circumstances. Hopes had been expressed that a more dynamic instrument might be decided on at the next session of the Conference. This was only proper and what collective bargaining was all about. There was no disagreement in the Committee that one
could and should aspire to new heights in the effective promotion of collective bargaining, not only in 1981, but for many years to come, for what had certainly emerged in the Committee’s deliberations was the acceptability, desirability and vitality of collective bargaining as well as the guiding faith, commitment and respect accorded to it by peoples everywhere.

Mr. Sherman (Employers’ adviser, United States), speaking on behalf of Mr. Nasr (Employers’ delegate, Lebanon; Vice-Chairman of the Committee on Collective Bargaining), pointed out that the discussions in the Committee had started with strong differences over the actual title of the fifth item on the agenda of the Conference. What did “promote” mean, what did it include, what obligations did it impose on governments and what powers did it give to governments? While some questions still remained, some degree of consensus had developed in the Committee with the clear agreement that “promote” did mean “facilitate”, but not to the extent of intervention.

On the question of the form of the proposed instrument there had been agreement, but this agreement had been reached for what appeared to be quite different reasons. It had been clear at the end of the Committee’s work that there was no meeting of minds on this issue.

Many important Points had been carried by narrow margins, leaving considerable dissatisfaction afterwards and, undoubtedly, a determination to return to these Points in the 1981 discussions.

There were both good and bad points in the Proposed Conclusions. It was not opportune to enumerate them all on that occasion but it was significant that the Committee had not been able even to agree to include in the proposed instrument a forthright statement that the parties to collective bargaining should negotiate in good faith and not engage in unfair practices. This had been, and was still, difficult for the Employers to understand.

The Proposed Conclusions were an imperfect document as they stood. Only in part did they represent the assignment of the Committee, which was to provide measures to promote collective bargaining in those countries where workers’ organisations were not able, for whatever reasons, to represent their members in collective bargaining. In large measure, the Proposed Conclusions represented efforts to increase the power of well-established trade union movements which already had the ability to engage effectively in collective bargaining, and to remove—in the name of freedom—the rules established by governments that were designed to facilitate orderly collective bargaining.

The Employers did not want government intervention in the collective bargaining process itself; but they did need rules to go by, and these rules could not be left to the parties themselves. The self-interest of the parties could not be allowed to violate the rights of society as a whole, which they would surely do if left to themselves. While the Employers did not desire excessive government regulation, a reasonable framework had to be provided in which such an important activity as collective bargaining could then function without further interference.

If efforts in 1981 followed the same line as in 1980 and produced an instrument that sought to introduce novel and far-reaching concepts for collective bargaining that were not already accepted in most developed countries, there would be a great many conflicts with existing national laws, regulations and practices. This would ignore the needs of those workers who most needed the assistance and support of
collective bargaining to obtain reasonable treatment and fair compensation for their labour. The laws, regulations and practices in developed countries were the results of years of experience and evolution. They varied widely from country to country, and they could not be readily reconciled. They were useful models, but they could not be adopted without reference to national needs and culture. The Employers did not feel that it was the primary mission of the ILO to seek to impose uniform collective bargaining regulations throughout the world. In their view, it was, in all likelihood, impossible to do so.

In conclusion, the Employers hoped that next year's discussions would enable the necessary progress to be made and thus really facilitate free collective bargaining, especially for those who needed it most.

Mr. Pollydore (Workers' delegate, Guyana), speaking on behalf of Mr. Ward (Workers' adviser, United States; Vice-Chairman of the Committee on Collective Bargaining), observed that the task given to the Committee by the Conference was of fundamental importance. The promotion of collective bargaining was a subject which went to the very core of the ILO's existence. As could be seen from the report and its Proposed Conclusions, the objective was the creation of a legislative and administrative framework which did not just allow the parties to bargain but also positively encouraged them to do so.

The definition of the rights and duties of governments in relation to collective bargaining had therefore been the central problem facing the Committee. Some progress had been made, but a great deal remained to be done. In far too many ILO member States, governments were hindering the development of collective bargaining by unjustified and short-sighted policies interfering with the process, ostensibly with the object of promoting the national interest. As had been said many times in the Committee, in collective bargaining there was a thin line between promotion and interference. The Workers believed that at the next Session of the Conference efforts would have to be made to crystallise the position in order to come up with recommendations that would be acceptable to all. The Workers hoped that in 1981 a document would emerge from the Conference which would achieve this objective.

For the moment, the Workers' group of the Committee believed that not enough progress had been made on this difficult task to warrant the adoption of a Convention. In the light of the work of the Committee on Collective Bargaining this year, the Workers' view was that a Recommendation would be more appropriate. Paragraph 71 of the report summarised the position they took and this should be noted by the Conference. The Workers would review their position in 1981.

The Workers would view with grave alarm any ILO instrument on this subject which included the words currently in Point 6 of the Proposed Conclusions. The Conference would be abdicating its responsibility to define international standards if it failed to recommend to States how national laws, regulations and practice should define the scope of collective bargaining. The Workers trusted that Governments and Employers would realise that it was a mistake to phrase Point 6 in its current form and that they would help the Workers to amend it next year.

The Workers wished to draw the attention of the Conference to the importance of existing ILO instruments, such as the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and
Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151). Collective bargaining could not be promoted if the basic rights to freedom of association and collective bargaining were not respected. Not only was the development of collective bargaining the very fabric of sound industrial relations but it offered unlimited possibilities for meaningful co-operation between the social partners to work with dedication towards the economic and social progress of the people and the nation.

The Workers' group recognised that the report before the Conference was not entirely satisfactory. Many questions still remained to be answered but the Workers hoped that the Conference would adopt the report and build upon it in the future.

The Workers also wished to draw the attention of the Conference to the fact that certain reservations were included in paragraph 115 of the report which they hoped would be pursued vigorously next year, with the co-operation of the Workers, Employers and Governments.

Mr. Kheder (Workers' adviser, Egypt) expressed the full support of the Egyptian Trade Union Federation for the report of the Committee on Collective Bargaining. The trade union movement in Egypt attached increasing importance to collective bargaining as a peaceful and effective means of ensuring that workers exercised the rights to which they were entitled and obtained better working conditions. There was no doubt whatever that the Conclusions proposed by the Committee with a view to the adoption of a Recommendation, and particularly Parts V and VI of the Conclusions, would have a very important effect on the development of collective bargaining systems in a number of countries, and above all in Egypt.

Mr. Kanaiev (Workers' adviser, USSR) wished to state the position of the trade union representatives of a number of countries, including the USSR.

In many countries with different social and economic systems collective bargaining was an important instrument for protecting the chief interests of the workers and thereby implementing the principles of the Declaration of Philadelphia and the Constitution of the ILO. This meant promoting the well-being of workers and their families.

In this regard, he wished to welcome the initiative taken by the Governing Body in placing this item on the agenda of the Conference under the double-discussion procedure in 1980 and 1981 with a view to the adoption of one or more ILO instruments on the subject.

In the course of the discussion in the Committee, it had emerged that collective bargaining encountered a number of difficulties when negotiations were carried out in difficult socio-economic conditions characterised by unemployment, inflation and a deterioration in the workers' conditions of life and work.

In order to provide better protection of workers' rights, a Convention supplemented by a Recommendation should be adopted rather than a mere Recommendation as had been proposed after the first discussion. During the second discussion, in 1981, the Conference should therefore re-examine this question.

The proposed instrument should be strengthened, particularly in Point 7 concerning the definition of collective bargaining. As it now stood it was based on the definition in the Right to Organise and Collective Bargaining Convention,
1949 (No. 98), namely, that collective bargaining covered terms and conditions of employment. This definition was not sufficient since it did not cover a large number of social problems which were the subject of collective bargaining in many countries.

Collective bargaining should be the subject of a broader instrument defining relations between employers and workers and from which the workers would derive real advantages. In the socialist countries collective bargaining covered not only the terms and conditions of employment but many other social aspects as well, including social consumption funds, housing, rest periods, medical care for workers and their families, social services, child-care facilities, etc.

Many trade unions in countries with different social and economic systems had been demanding that all these matters should be the subject of collective bargaining. This is why the Conference should give further thought to this matter in 1981.

It also had to be noted that the Proposed Conclusions made no mention of measures regarding collective bargaining with multinational enterprises. During the discussion in the Committee it had been emphasised that a concentration of production within the framework of multinational monopolies had thrown doubt on the effectiveness of collective bargaining at the level of industrial undertakings and it was greatly to be regretted that the proposal made by the Workers' group in this connection should have met with the opposition of the Employers' and of a number of Government members. In 1981 they should endeavour to show a greater understanding of the need to resolve the problem of developing the system of collective bargaining in this area as well.

* * *

There being no further speakers in the discussion, and no objection having been raised, the Conference adopted the report and the Proposed Conclusions.

The Conference also adopted the resolution to place on the agenda of the next Ordinary Session of the Conference an item entitled "Promotion of Collective Bargaining".

Notes

The modifications were as follows:
(a) 6 June: 207 members (84 Government members with 134 votes each; 56 Employers' members with 201 votes each; 67 Workers' members with 168 votes each);
(b) 9 June: 209 members (85 Government members with 56 votes each; 56 Employers' members with 85 votes each; 68 Workers' members with 70 votes each);
(c) 10 June: 205 members (86 Government members with 252 votes each; 56 Employers' members with 387 votes each; 63 Workers' members with 344 votes each);
(d) 12 June: 200 members (86 Government members with 812 votes each; 56 Employers' members with 1,247 votes each; 58 Workers' members with 1,204 votes each);
(e) 13 June: 195 members (86 Government members with 1,484 votes each; 56 Employers' members with 2,279 votes each; 53 Workers' members with 2,408 votes each);
(f) 14 June: 193 members (87 Government members with 1,400 votes each; 56 Employers' members with 2,175 votes each; 50 Workers' members with 2,436 votes each);
(g) 17 June: 190 members (87 Government members with 2,632 votes each; 56 Employers' members with 4,089 votes each; 47 Workers' members with 4,872 votes each);

(h) 18 June: 187 members (87 Government members with 208 votes each; 52 Employers' members with 348 votes each; 48 Workers' members with 377 votes each);

(i) 19 June: 182 members (87 Government members with 2,236 votes each; 52 Employers' members with 3,741 votes each; 43 Workers' members with 4,524 votes each);

(j) 20 June: 180 members (87 Government members with 2,120 votes each; 53 Employers' members with 3,480 votes each; 40 Workers' members with 4,611 votes each);

(k) 21 June: 181 members (87 Government members with 364 votes each; 52 Employers' members with 609 votes each; 42 Workers' members with 754 votes each).

2 The numbering of the Points reproduces that of the Proposed Conclusions in Report V (2). It does not necessarily correspond in every case to the numbering of the Points in the Proposed Conclusions reproduced at the end of the Committee's report, which are based on the decisions of the Committee and, in some cases, of the Drafting Committee.
CHAPTER II

PROPOSED TEXT

The text of the proposed Recommendation given at the end of this chapter is based on the Conclusions adopted by the International Labour Conference at its 66th Session. These Conclusions have undergone a number of modifications of a formal nature which are commented on below. The commentary also refers to certain problems of substance raised by the proposed text.

From the point of view of form, the last sentence of Point 4, Point 5, and the final clause of Point 18 of the Conclusions have been recast to constitute the fifth and sixth preambular paragraphs of the proposed Recommendation since the Office considered, on the one hand, that the final clause of Point 18 of the Conclusions was better placed in the Preamble than in a provision designed to specify the future legal status of existing instruments and, on the other hand, that the three passages concerned were so closely related that it seemed appropriate to group them together.

Point 8 of the Conclusions contained a reference to Article 3 of the Workers' Representatives Convention, 1971 (No. 135). Paragraph 3 (1) of the proposed Recommendation now refers only to Article 3 (b) of that Convention. The purpose of this change is to clarify the text and not to alter its substance. In the light of the discussions held at the 66th Session of the Conference it is in fact clear that the workers' representatives referred to in Paragraph 3 (1) of the proposed Recommendation can only mean those mentioned in Article 3 (b) of Convention No. 135 (namely, elected representatives belonging to a works council or some such body) exclusive of those mentioned in Article 3 (a) of that Convention (namely, trade union representatives) since bargaining with the latter is already referred to in Paragraph 2 of the proposed Recommendation.

The differences in the drafting of Paragraph 3 (2) of the proposed Recommendation and the text contained in parentheses in Point 8 of the Conclusions are explained by the fact that the Office has reproduced as far as possible the wording of Article 5 of Convention No. 135, which deals with the same question.

All the other differences of drafting between the proposed Recommendation and the proposed Conclusions are designed to clarify the text of the latter, to adapt the wording to the language generally used in ILO instruments and to bring the various languages into line with one another.

From the point of view of substance, four major changes were made to the Conclusions proposed by the Office during the discussion at the 66th Session of the Conference.

The first change concerns the form of the instrument. There was wide agreement within the Committee that it should only propose the adoption of a Recommendation whereas the Office had suggested the adoption of a Convention supplemented by a Recommendation. The respective reasons put forward by the Employers and the Workers in favour of this solution differed considerably
however. These arguments are summarised in paragraphs 71 to 73 of the Committee’s Report, reproduced in the preceding chapter. It will be recalled in this connection that the resolution adopted by the 66th Session of the Conference, which is reproduced in the Introduction to this report, provides that “The General Conference of the International Labour Organisation… Decides that an item entitled ‘Promotion of Collective Bargaining’ shall be included in the agenda of its next Ordinary Session for a second discussion, with a view to the adoption of a Recommendation”. Paragraph 115 of the Committee’s Report makes it clear that the reference to the word “Recommendation” in the said resolution “would in no way prejudge the decision that the Conference would take in 1981 on the form of the instrument or instruments on this matter”.

The second change concerns the scope of the proposed Recommendation. Paragraph 1 of the proposed Recommendation, which restates Point 6 of the Conclusions, provides that “This Recommendation applies to all branches of economic activity subject to national laws and regulations and national practice”. This text, which was adopted by a very small majority during the discussion in Committee, enables member States to determine the scope of the Recommendation as they see fit, whereas the text proposed by the Office would permit them only to exclude from its scope certain persons employed by the public authorities. During the discussions in the Committee and in the plenary sitting of the Conference, appeals were launched from various sides—and in particular by the Reporter of the Committee—for this provision to be seriously reconsidered during the second discussion in 1981. When preparing their comments on the proposed Recommendation, governments may perhaps wish to devote special attention to this question.

The third and fourth changes concern the deletion of Points 12 and 20 of the Conclusions proposed by the Office, which dealt, on the one hand, with reconciling the specific interests of the parties to collective bargaining with the general interest and, on the other hand, with the obligation to negotiate in good faith and to refrain from any practices liable to hamper the collective bargaining process. The deletion of Point 12 is mainly due to the fact that the Workers’ members of the Committee and certain Government members—while recognising that the question of the general interest was a real problem—considered that this raised so many difficulties, particularly in the field of definitions, that it was better not to deal with it in an international instrument (for further details, see paragraphs 77 and 78 of the Committee’s Report). The deletion of Point 20 of the Conclusions proposed by the Office is mainly due to the fact that the Workers’ members of the Committee and certain Government members considered that the concepts employed therein could not be defined in a sufficiently precise manner. (For further details, see paragraph 101 of the Committee’s Report.)

Proposed Recommendation concerning the Promotion of Collective Bargaining

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 Sixty-seventh Session on 3 June 1981, and
Reaffirming the provision of the Declaration of Philadelphia recognising “the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve…the effective recognition of the right of collective bargaining”, and

Having regard to the key importance of existing international standards contained in the Freedom of Association and Protection of the Right to Organise Convention, 1948, the Right to Organise and Collective Bargaining Convention, 1949, the Collective Agreements Recommendation, 1951, the Voluntary Conciliation and Arbitration Recommendation, 1951, and the Labour Relations (Public Service) Convention and Recommendation, 1978, and

Considering that it is desirable to give greater effect to the objectives of these standards and, particularly, to the general principles set out in Article 4 of the Right to Organise and Collective Bargaining Convention, 1949, and in Paragraph 1 of the Collective Agreements Recommendation, 1951, and

Considering accordingly that these standards should be supplemented by appropriate measures based on them and aimed at promoting free and voluntary collective bargaining, and

Having decided upon the adoption of certain proposals with regard to the promotion of collective bargaining, which is the fourth item on the agenda of the Session, and

Having determined that these proposals shall take the form of a Recommendation,

adopts this day of June of the year one thousand nine hundred and eighty-one the following Recommendation, which may be cited as the Collective Bargaining Recommendation, 1981.

I. SCOPE AND DEFINITIONS

1. This Recommendation applies to all branches of economic activity, subject to national laws and regulations and national practice.

2. For the purpose of this Recommendation, the term “collective bargaining” extends to all negotiations for—
   (a) determining working conditions and terms of employment, and/or
   (b) regulating relations between employers and workers or their organisations, which take place between an employer, a group of employers or one or more employers’ organisations, on the one hand, and one or more workers’ organisations, on the other.

3. (1) Where national law or practice recognises the existence of workers’ representatives as defined in Article 3, subparagraph (b), of the Workers’ Representatives Convention, 1971, national law or practice may determine the extent to which the term “collective bargaining” also embraces, for the purpose of this Recommendation, negotiations with these representatives.

   (2) Where, in pursuance of subparagraph (1) of this Paragraph, the term “collective bargaining” also embraces negotiations with the workers’ representatives referred to in that subparagraph, appropriate measures should be taken,
wherever necessary, to ensure that the existence of these representatives is not used to undermine the position of the workers' organisations concerned.

II. METHODS OF APPLICATION

4. The provisions of this Recommendation may be applied by national laws or regulations, collective agreements, arbitration awards or in any other manner consistent with national practice.

III. PROMOTION OF COLLECTIVE BARGAINING

5. (1) Measures adapted to national conditions should be taken to promote collective bargaining.

(2) The aims of the measures referred to in subparagraph (1) of this Paragraph should be the following:

(a) collective bargaining should be made possible for all employers and all groups of workers in the branches of activity covered by this Recommendation;

(b) collective bargaining should be progressively extended to all matters indicated in Paragraph 2 of this Recommendation;

(c) collective bargaining should not be hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules;

(d) bodies and procedures for the settlement of labour disputes should be so conceived as to contribute to the promotion of collective bargaining.

6. Measures taken by public authorities to encourage and promote the development of collective bargaining should be the subject of prior consultation and, whenever possible, agreement between public authorities, and employers' and workers' organisations.

7. The measures taken with a view to promoting collective bargaining should not be so conceived or applied as to hamper the freedom of collective bargaining.

IV. MEANS OF PROMOTING COLLECTIVE BARGAINING

8. In so far as necessary, measures adapted to national conditions should be taken to facilitate the establishment and growth, on a voluntary basis, of free, independent and representative employers' and workers' organisations.

9. As appropriate and necessary, measures adapted to national conditions should be taken so that—

(a) representative employers' and workers' organisations are recognised for the purposes of collective bargaining;

(b) in countries in which the competent authorities apply procedures for recognition with a view to determining the organisations to be granted the right to bargain collectively, such determination is based on objective criteria agreed in advance with regard to the organisations' representative character.
10. (1) Measures should be taken by the parties to collective bargaining so that their negotiators, at all levels, have the opportunity to obtain appropriate training.

(2) Public authorities should provide assistance to workers’ and employers’ organisations for such training.

(3) The content and supervision of the programmes of such training should be determined by the workers’ and employers’ organisations concerned.

(4) Such training should be without prejudice to the right of workers’ and employers’ organisations to choose their own representatives for the purpose of collective bargaining.

11. Parties to collective bargaining should provide their respective negotiators with the necessary mandate to conduct and conclude negotiations, subject to any provisions for consultations within their respective organisations.

12. (1) Measures adapted to national conditions should be taken, if necessary, so that the parties have access to the information required for meaningful negotiations.

(2) For this purpose—

(a) public and private employers should, at the request of workers’ organisations, make available necessary information on the economic and social situation of the negotiating unit and the undertaking as a whole, to the extent to which its content is not prejudicial to the undertaking; the information to be made available may be agreed upon between the employers’ and workers’ organisations concerned;

(b) the public authorities should make available such information as is necessary on the over-all economic and social situation of the country and industry concerned, in so far as the communication of this information is not prejudicial to the national interest.

13. (1) Measures adapted to national conditions should be taken, if necessary, so that collective bargaining is possible at any level whatsoever, including that of the establishment, the undertaking or the branch of activity, or the regional or national levels.

(2) In countries where collective bargaining takes place at several levels, the parties to negotiations should seek to ensure that there is co-ordination among these levels.

14. Measures adapted to national conditions should be taken, if necessary, so that the procedures for the settlement of labour disputes assist the parties to find a solution to the dispute themselves, whether the dispute is one which arose during the negotiation of agreements, one which arose in connection with the interpretation and application of agreements or one covered by the Examination of Grievances Recommendation, 1967.

V. FINAL PROVISION

15. This Recommendation does not revise any existing Recommendation.