Report IV (2)

Promotion of Collective Bargaining

Fourth Item on the Agenda

International Labour Office  Geneva
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INTRODUCTION

The first discussion of the question of the promotion of collective bargaining took place at the 66th (1980) Session of the International Labour Conference. Following that discussion, and in accordance with article 39 of the Standing Orders of the Conference, the International Labour Office prepared and communicated to the governments of member States a report containing a proposed Recommendation based on the Conclusions adopted by the Conference at its 66th Session.

Governments were invited to send any amendments or observations so as to reach the Office by 30 November 1980 at the latest, or to inform it, by the same date, whether they considered that the proposed text constituted a satisfactory basis for discussion by the Conference at its 67th (1981) Session.

At the time the present report was prepared, the Office had received replies from the governments of the following 54 member States: Algeria, Austria, Bahrain, Bangladesh, Belgium, Botswana, United Republic of Cameroon, Canada, Colombia, Cuba, Cyprus, Czechoslovakia, Denmark, Egypt, Fiji, France, Federal Republic of Germany, Greece, Guyana, Honduras, India, Jamaica, Japan, Kenya, Kuwait, Liberia, Luxembourg, Mauritius, Mexico, Morocco, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Romania, Sierra Leone, Somalia, Spain, Sri Lanka, Sudan, Suriname, Switzerland, Trinidad and Tobago, Tunisia, Turkey, USSR, United Arab Emirates, United Kingdom, United States, Uruguay, Yugoslavia and Zambia.

The first part of this report, which has been drawn up on the basis of the replies from the governments, contains the essential points of their observations, whether of a general nature or relating directly to the provisions of the text submitted in Report IV (1); it also contains commentaries on these observations.

The second part contains the English and French versions of the proposed Recommendation, amended in the light of the observations made by the governments. Some minor drafting changes which appeared desirable have also been made. If the Conference so decides, this text will serve as a basis for the second discussion, at the 67th Session, of the question of the promotion of collective bargaining.

The substance of the replies received from the governments of member States with regard to the proposed Recommendation concerning the promotion of collective bargaining is given below. The replies are followed, where appropriate, by brief Office commentaries.

The Governments of the following 28 member States stated that for the moment they had no observations to put forward or that they considered the proposed text to constitute a satisfactory basis for discussion at the 67th Session of the Conference: Algeria, Bahrain, Bangladesh, Botswana, United Republic of Cameroon, Egypt, Fiji, Guyana, Honduras, Jamaica, Kuwait, Liberia, Luxembourg, Morocco, Nicaragua, Nigeria, Romania, Sierra Leone, Somalia, Sri Lanka, Sudan, Suriname, Trinidad and Tobago, Turkey, United Arab Emirates, United States, Yugoslavia and Zambia.

The Governments of the remaining 26 member States (Austria, Belgium, Canada, Colombia, Cuba, Cyprus, Czechoslovakia, Denmark, France, Federal Republic of Germany, Greece, India, Japan, Kenya, Mauritius, Mexico, Netherlands, New Zealand, Norway, Pakistan, Spain, Switzerland, Tunisia, USSR, United Kingdom and Uruguay) made observations the substance of which is reproduced in the present report. As a rule, however, most of these Governments clearly stated their view that the proposed text constituted a satisfactory basis for discussion. Some Governments, in their replies, included information on the law and practice in their country. This information, which is very useful for the work of the Office, has been reproduced only where essential to an understanding of the observations.

The Governments of the following member States informed the Office that employers' and workers' organisations had been consulted: Austria, Belgium, Colombia, Cyprus, Czechoslovakia, Denmark, Egypt, France, Federal Republic of Germany, Greece, Guyana, India, Japan, Netherlands, New Zealand, Norway, Romania, Somalia, Spain, Switzerland, Trinidad and Tobago, Tunisia, Turkey, USSR, United Arab Emirates and United Kingdom.

The Governments of Belgium, France, the Federal Republic of Germany, Japan, New Zealand, Spain, Switzerland and the United Kingdom transmitted with their replies the observations of employers' or workers' organisations on the proposed text or on some of its provisions. These observations have not been reproduced in the present report. The Governments of Austria, Cyprus, Denmark and Norway have incorporated the observations of employers' and workers' organisations in their own replies. These opinions have been reproduced where appropriate.

General Observations

AUSTRIA

During the first discussion the Government expressed its preference for a Convention supplemented by a Recommendation. However, it appreciates the
arguments which led the Conference Committee to propose a Recommendation only, which arguments no doubt include the fact that the text originally proposed by the Office regarding the scope of the proposed standards was modified to the point where each member State could decide freely to whom the standards would apply (see also the observations of Austria on Paragraph 1).

The central organisations of employers consider that an instrument on the promotion of collective bargaining is not indispensable. However, they make no objections of principle to the proposed text since, on the whole, it corresponds to Austrian law and practice.

The central organisations of workers consider it desirable for an important subject such as the promotion of collective bargaining to be dealt with also in a Convention.

**Belgium**

In view of the discussions during the 66th (1980) Session of the Conference, the Government expects the question of the form of the instrument to be dealt with once again in 1981. A Convention is definitely more effective and, if one were adopted, Convention No. 98 would thereby be strengthened. The proposed provisions on the scope of the instrument, the right to training and the right to information, would alone be sufficient to justify the adoption of a Convention, because they are likely to be really effective in promoting collective bargaining. If the principles accepted on these matters were incorporated, with flexible wording, in a Convention they could be adapted to the economic and social systems of most countries, however different. In conclusion, the Government feels that a Convention supplemented by a Recommendation should be aimed at. However, Belgian law and practice are such that the Government could accept any other form of instrument. Nevertheless, it hopes that the text finally adopted will be conducive to the genuine promotion of collective bargaining.

The Government recalls that some of the questions raised in Report V(2), submitted to the 66th (1980) Session of the Conference, became irrelevant when the Conference Committee proposed to adopt a Recommendation only. If, during the second discussion, the trend of opinion turned to the adoption of a Convention, these questions would have to be re-examined.

**Canada**

The Government reiterates its preference for a Convention. It feels that the adoption of a Recommendation only would be a far less effective way of promoting collective bargaining.

**Cyprus**

The Cyprus Employers' Federation points out that important differences during the first discussion still remain unresolved and that its stand will depend on the satisfactory settlement of the outstanding differences and on the form of the instrument. On the latter point, it would prefer a Recommendation.

The Pancyprian Federation of Labour prefers a Convention.
CZECHOSLOVAKIA

The Government considers that to ensure a better protection of workers' rights the Conference should adopt a Convention, supplemented by a Recommendation if necessary.

DENMARK

The Government is in favour of a Convention supplemented by a Recommendation.

The Danish Employers' Confederation would like a Recommendation only.

FRANCE

As regards the form of the instrument, the Government considers that the same procedure should be followed as during the first discussion: the question should be left to the end of the deliberations so that it could be examined in the light of the provisions agreed upon. The Government also emphasises, however, that Paragraphs 8-14 of the proposed text should in any case be included in a Recommendation.

INDIA

The Government considers that the proposed Recommendation represents the best that could be achieved in the 1980 Conference discussion. The subject is a complicated one and industrial relations systems and collective bargaining procedures vary considerably from country to country so that any international instrument on the subject has to be very flexible. The proposed Recommendation should be used as the basis for discussion in 1981, rather than reopen discussions on the form of the instrument.

JAPAN

The Government favours a Recommendation since a Convention would impose obligations on member States, whereas measures to promote collective bargaining should be taken in the first place by the parties themselves. Moreover, a Convention must be formulated very clearly since it entails legal obligations and, in the field of collective bargaining, situations vary so much from one country to another that it is impossible to draw up a very precise international instrument. For example, some of the measures laid down in the proposed instrument are not needed in certain countries. Likewise, the content of the measures that would be adopted at the national level to apply some of the provisions of the proposed instrument will vary considerably according to the country.

NORWAY

The Government considers that both a Convention and a Recommendation should be adopted. However, a precondition would be a change in Paragraph 1 of the proposed text along the lines suggested by the Government (see below the Government's observations on this Paragraph). As regards the distribution of the various provisions between a Convention and a Recommendation, the Proposed Conclusions submitted by the Office in Report V (2), submitted to the 66th (1980) Session of the Conference, might serve as a basis for discussion.
The Norwegian Employers' Confederation considers it desirable to adopt only a Recommendation, since this is more flexible and better able to take account of differences in the levels of economic and social development of member States. In the view of the Confederation, a Convention would be ratified by only a few countries and would therefore not be a useful instrument in promoting collective bargaining.

Spain

The Government proposes the adoption of a Convention supplemented, if necessary, by a Recommendation. Since the general principle of the promotion of collective bargaining is already embodied in a Convention—No. 98—to define the application of this principle in a Recommendation would be a step backwards. Furthermore, collective bargaining is so widespread nowadays that the adoption of a Recommendation only would not be justified.

Switzerland

The Government favours the adoption of a Recommendation, which would be more flexible and better adapted to the very liberal nature of Swiss laws and regulations regarding the right of association and collective bargaining.

Tunisia

The Government agrees that the Conference should confine itself to adopting a Recommendation, which would facilitate the implementation of Conventions Nos. 87 and 98, indicating the means to be used for this purpose.

USSR

In view of the importance of the matter being dealt with, the Government would like the Conference to adopt a Convention supplemented by a Recommendation. The instrument would thus be able to give greater effect, in accordance with the fifth preambular paragraph of the proposed text, to the objectives of existing standards. The Government refers also to paragraph 115 of the report of the relevant Committee at the 66th Session of the Conference.

United Kingdom

The Government could support an instrument in the form of a Recommendation, but would find a Convention on the lines of the current proposed Recommendation unacceptable, for although successive United Kingdom governments have supported the principle of collective bargaining and encouraged the extension of responsible collective bargaining arrangements, the promotion of such arrangements has been regarded as primarily the responsibility of the parties directly concerned and not of government. Since Conventions are instruments addressed to States, which, if they are not made effective otherwise, must apply them by means of national laws or regulations, a Convention on this subject is likely to be at variance with United Kingdom practice and unacceptable to the Government.
URUGUAY

The Government considers that the proposed text constitutes a suitable basis for discussion provided the instrument takes the form of a Recommendation which, being more flexible, makes it easier to take account of differences between the political and social situations prevailing in member States.

OFFICE COMMENTARY

All the general observations summarised above relate to the form of the instrument or instruments. It will be recalled that in Report IV (1), the Office had suggested the adoption of a Recommendation, thereby complying with a proposal on which there had been very wide agreement in the relevant Committee at the 66th Session of the Conference (although the reasons given by the Employers' members and Workers' members of the Committee were not the same). In their observations, a number of governments have expressed their preference for a Convention, possibly supplemented by a Recommendation. The great majority of governments, however, want the Conference to adopt a Recommendation only, and in some cases have stressed this very firmly. Consequently, the Office has felt that it should not depart from the proposal to adopt a Recommendation.

Observations on the 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 recognizing "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,

1 The observations are preceded by the text of the relevant provision as given in the proposed Recommendation set forth in Report IV (1). Provisions on which no observations have been made are not reproduced.
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:

Observation on the Preamble

United Kingdom (Sixth paragraph) (concerns only the English version of the text). The Government had understood, during the discussion in 1980 (see Report IV (1), submitted to the 67th (1981) Session of the Conference, paragraph 36, page 10), that the main intention of the proposed instrument was to give greater effect to the principles of existing instruments but not to go beyond them. The phrase “supplemented by appropriate measures based on them” could be interpreted as taking the proposed Recommendation beyond existing measures. The Government would like to be assured that this was not the intention.

Office Commentary

With regard to the observation made by the Government of the United Kingdom concerning the word “supplemented” in the sixth preambular paragraph of the English version of the proposed text, the Office recalls that the fifth and sixth preambular paragraphs are based on the last sentence of Point 4, on Point 5 and on the last phrase of Point 18 of the Conclusions adopted by the 66th Session of the Conference. In response to the Government’s observation, the Office has replaced the word “supplemented” by the word “complemented”, which is nearer to the word “complementary” in Point 18 of the Conclusions adopted by the 66th Session of the Conference.

I. SCOPE AND DEFINITIONS

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

Observations on Paragraph 1

Austria. The Government suggests that the basis for discussion should once again be the text originally put forward by the Office—that is to say Point 7 of the Proposed Conclusions at the end of Report V (2), submitted to the 66th (1980) Session of the Conference. Account should, however, be taken of the concerns which motivated the numerous proposed amendments submitted during the first discussion on paragraph (2) of this Point.

Belgium. The Government recalls that during the first discussion the Committee had taken the words “all branches of economic activity” as incorporating all sectors of activity, including the public service. Nevertheless, the Government considers that in view of the reservation at the end of Paragraph 1 of the proposed text, in the light of Paragraph 3 of this text, and in order to avoid further discussion, the principle of the right to bargain collectively in the public sector might be mentioned.

1 The observations on the form of the instrument have been reproduced under “General Observations”.
Cyprus. The Pancyprian Federation of Labour proposes the deletion of the words “subject to national laws and regulations and national practice”.

Czechoslovakia. The Government considers that the instrument should apply to all branches of economic activity, it being understood that public employees, members of the armed forces and the police could be excluded from its scope by national laws and regulations.

Denmark. The Government considers that the instrument should apply to all branches of economic activity, including the public sector.

France. The Government considers that the instrument would defeat its own purpose as an international instrument if Paragraph 1 of the proposed text were maintained. It is therefore highly desirable to revert to an approach more in line with the general principles of international law, which would in no way—on the contrary—prevent due consideration being given to the legitimate concern of the public authorities. Consequently, the Government suggests replacing the Office text by the following wording: “This instrument applies to all branches of economic activity. The extent to which the guarantees provided for in the instrument should apply to public-service employees governed by laws and regulations, and to persons employed in publicly- or semi-publicly-financed non-profit-making activities, may be determined by national laws and regulations and national practice.”

In the Government's view, this amendment takes account of the fact that in most, if not all, countries, public-service activities are carried out in conditions which depart to varying degrees from common law; and when certain activities, particularly in social areas, are subsidised or partly subsidised out of state funds, “those who sign are not the ones who pay”.

Federal Republic of Germany. If, during the course of the discussions, the text originally proposed by the Office were to be re-established, the Government considers that a provision should be added that would take account of the situation of countries with special regulations in respect of conditions of work and labour relations in the public service.

India. The Government strongly urges that the proposed text should be retained as at present worded. As the Government member of India pointed out during the discussions in the Conference Committee in 1980, it would not be possible for a number of countries which lack the necessary organisation of workers in the rural sector to take effective steps to promote collective bargaining in the rural and similar unorganised sectors of activity.

Netherlands. In the Government’s view, Part I of the proposed Recommendation is not satisfactory because it is left to member States to determine the categories of workers to which the instrument will apply. In this way the Recommendation will not attain its objectives and will fail to encourage member States to promote collective bargaining. The Government would like the scope of the instrument to be defined more precisely, with a clear indication of possible exceptions. In any case an exception should be made for workers—such as those in the public service—who have a special type of employment relationship and for whom collective bargaining must consequently take place according to special conditions.
Norway. The Government considers that the provision concerning scope is awkwardly formulated and suggests that it should be replaced by the original Office text. According to the Government, the instrument should include all sectors of working life and all economic activities.

Pakistan. The Government considers that persons employed by the public authorities and the police should be excluded from the scope of the instrument. It also considers that developing countries might have difficulties in implementing the instrument in the non-organised rural sector and in certain other sectors such as essential services. In the Government's view, member States should be allowed to restrict the scope of the instrument when they have good reasons for so doing.

Tunisia. The Government considers that the words “subject to national laws and regulations and national practice” are well chosen since they take account of the situation of certain developing countries, like Tunisia, which are not yet in a position to promote collective bargaining in all sectors, including agriculture and the public service.

USSR. The Government would like the instrument to apply to all workers. Consequently it proposes the deletion of the word “economic” and of the phrase “subject to national laws and regulations and national practice”.

United Kingdom. The Government shares the Office's misgivings about this Paragraph, which it would like to reconsider since, in its present form, it would render an international instrument virtually meaningless. However, as the debates in 1980 made clear, it is important for States to be allowed the discretion to exclude some groups of workers with special responsibilities from the scope of the instrument. The United Kingdom would like to exclude at least the armed forces and the police.

Uruguay. The Government considers, as regards principles, that the scope of the proposed instrument is too broad in that it should apply “to all branches of economic activity”. The addition of the phrase “subject to national laws and regulations and national practice”, however, makes the provision in question more flexible.

Office Commentary

A number of governments have emphasised that if the proposed text were maintained, the instrument would have little effect because member States would be completely free to determine its scope. The French Government went so far as to express the view that “the instrument would defeat its own purpose” if the proposed text remained unchanged. In response to these observations, the Office has deleted the words “subject to national laws and regulations and national practice”. It will be recalled that these words did not appear in the text originally put forward by the Office. When they were added during the 66th Session of the Conference, by an amendment which received only a very small majority of votes, there were appeals from various sides—and in particular by the Reporter of the Committee—for the provision to be seriously reconsidered during the second discussion.
Most of the governments which requested a strengthening of the proposed text nevertheless also hoped that the instrument would allow national laws and regulations to have the possibility of providing for certain exceptions. While most of the governments concerned wanted these possibilities to relate to persons (either all or some) employed by the public authorities, certain others proposed that these possibilities should be wider and cover non-profit-making activities financed out of public funds, essential services and the non-organised sector.

As regards persons employed by the public authorities, the Office has re-established the text of paragraph (2) of Point 7 of the Conclusions submitted to the 66th Session of the Conference. There are two reasons for this: first, as regards the extent of the exceptions proposed, the text could perhaps represent a compromise between the various proposals that have been made up to this stage in the procedure whether during the first discussion or with a view to the second. Contrary to the wish of certain governments the restored text quite simply avoids including the public service in the scope of the instrument. The main reason for this is that labour relations in the public service are governed by special instruments which, incidentally, are very recent. Furthermore, and contrary to the suggestions made by certain other governments, the text in question does not allow public undertakings to be excluded from the scope of the instrument. This is due essentially to the fact that, in the field of labour relations, these undertakings face problems that are largely similar to those of private undertakings. The second reason why the Office proposes to re-establish the original text is that, unlike some of the proposals submitted so far, this text does not refer to legal concepts which, while playing an important role in some countries, are unknown or at least difficult to apply, in others.

The Office has not deemed it appropriate to provide for possibilities of exceptions other than those concerning persons employed by public authorities. This is because the aim of the instrument is precisely to promote collective bargaining, particularly in areas where it is not yet very developed. Thus, the Office has not retained the proposal made by the Government of France to allow for non-profit-making sectors, financed out of public funds, to be excluded from the scope of the instrument, since the Office considers that even if collective bargaining may give rise to special problems in such sectors, this is no reason for concluding that nothing should be done to promote it. The same consideration applies, in the view of the Office, in the case of essential services which the Government of Pakistan suggested should be excluded from the scope of the instrument.

With regard to the observation made by the Government of India, the Office considers that the proposed Recommendation can be applied in the non-organised sector, even when the workers' organisations there are very weak or even non-existent. In such cases, the "measures adapted to national conditions" referred to in Paragraph 5 (1) of the proposed text, would, however, be limited for the time being to those provided for in Paragraph 8 of the text, that is to say measures taken "to facilitate the establishment and growth, on a voluntary basis, of free, independent and representative… workers' organisations". The Conference will no doubt wish to consider if this interpretation is to be confirmed.
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.

Observations on Paragraph 2

Belgium. The Government recalls that during the first discussion the Committee, being unable to reach agreement, confined itself to referring to the preparatory discussions on Recommendation No. 91, in which the words “working conditions and terms of employment” cover “all conditions of work and life, including social measures of all kinds”. This reminder, however, does not allow it to be concluded that certain matters, such as the development of industrial relations in the undertaking and the structural organisation therein, automatically fall within the scope of the new instrument. Moreover, the presentation of Paragraph 2 with clauses (a) and (b) gives the impression of a formal and restrictive definition. If the new text is to mark an advance on existing texts, the definition in Paragraph 2 must make it clear that collective bargaining may relate either to areas which apparently do not come within the framework of “relations” in the narrow sense of the word, or to new areas.

(Clauses (b)) The Government points out that in the French text the word “régler” is a translation of the English “regulating” and might be misleading. In view of the changing character of relations between employers and workers, collective bargaining should aim not only at regulating but also at “standardising” or “regularising” these relations where necessary. The word “régler” might therefore well be followed by another.

Colombia. The Government suggests that the instrument should also cover bargaining between the representatives of non-unionised workers, while guaranteeing that the presence of these representatives would not weaken representative organisations of workers.

Cuba. (Clause (a)) Referring to the situation in its country, the Government considers that the term “collective bargaining” should not apply only to bargaining designed to determine “working conditions and terms of employment”, but also to bargaining relating to matters such as the development of social, cultural and recreational activities, the participation of workers in organising production and the introduction of new technology.

Cyprus. (Clause (a)) The Pancyprian Federation of Labour proposes replacing the words “working conditions and terms of employment” by the following: “all terms of employment and all conditions of work and life, including social measures of all kinds”.

France. The Government approves of the proposed definition, which has the advantage of being both fairly broad and relatively precise. Moreover, it corresponds to the reality in many countries.

Federal Republic of Germany. (Observation concerning only the German version of the text.) The Government requests the reinsertion, at the end of clause
(a), of the words "and/or" which appear in the Conclusions adopted by the Conference in 1980, since the omission of these words would remove the alternative.

**USSR.** (Clause (a)) The Government hopes that the wording of this clause will be changed so that the term "collective bargaining" applies equally to all types of bargaining designed to determine workers' conditions of life and the social measures affecting their interests.

**United Kingdom.** The definition proposed is generally acceptable to the Government. However, it wishes to raise again the question of extending the definition to include the discussions of wages councils. In Report V (2) submitted to the 66th (1980) Session of the Conference, the Office's view in response to the Government's earlier query was that such discussions would be included in the definition (see page 33 of the Report). The Government agrees with the Office that wages councils deserve encouragement because they can pave the way to full collective bargaining but cannot accept that their activities constitute full collective bargaining in themselves because they employ certain measures which are contrary to the principles of collective bargaining. The Government therefore wishes to reserve its position on Paragraph 2 of the proposed text.

**Office Commentary**

Some governments have suggested changing the proposed wording, particularly in clause (a), to bring out more strongly the fact that collective bargaining can relate to very varied matters. The Office considers that the present text already meets the concern expressed by these governments. It recalls in this respect that the words "working conditions and terms of employment" were taken from Paragraph 2 of Recommendation No. 91. It was stated, during the discussions which preceded the adoption of this Recommendation, that according to its terms, "the parties are entirely free to determine, within the limits of law and public order, the content of their agreements and consequently also to agree to clauses dealing with all conditions of work and of life, including social measures of any kind" (ILO: *Industrial Relations*, Report V (2), International Labour Conference, 34th Session, Geneva, 1951, p. 51). The Conference will no doubt wish to consider whether this interpretation is to be confirmed.

The Belgian Government has objections to the word "régler" in clause (b) of the French text. Since the term was accepted generally during the first discussion, the Office has felt that it should be retained.

The Office has not deemed it appropriate to follow the suggestion made by the Government of Colombia to include bargaining with the representatives of non-unionised workers in the definition of collective bargaining. There is no reason to think that the relevant Committee at the 66th Session of the Conference wished to promote this type of bargaining.

The Government of the United Kingdom asks whether the proposed definition also covers discussions on wages councils. The Office wishes to recall that the purpose of the instrument is to promote collective bargaining, whatever the institutional framework within which it takes place. Consequently, the Office considers that discussions on wages councils are covered by the proposed
instrument whenever they have the character of bargaining between employers' and workers' representatives. The Conference may wish to state whether it accepts this interpretation.

In response to the observation by the Government of the Federal Republic of Germany, the Office has re-introduced the words "and/or" in the German version of the proposed text. Their omission was due to a printing error in Report IV (1).

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.

Observations on Paragraph 3

France. The Government approves of these provisions provided they cannot be interpreted in such a way as to undermine the prerogatives recognised by existing instruments—particularly Convention No. 98—as belonging to trade union organisations.

New Zealand. The Government supports the proposed text but states that it is necessary that the situation should be acceptable to existing unions and that their position should not be undermined by negotiations with workers' representatives.

Spain. The Government considers that subparagraph (1) of Paragraph 3 and subparagraph (4) of Paragraph 10 both deal with the problem of capacity to negotiate. Consequently, the Government suggests that these provisions should be combined as follows in Paragraph 3:

"(1) For the purposes of this instrument, the right of workers' and employers' organisations to choose their own representatives for the purpose of collective bargaining should be recognised." (replacing subparagraph (4) of Paragraph 10 of the text proposed by the Office.)

(2) Subparagraph (1) of the text proposed by the Office.

(3) Subparagraph (2) of the text proposed by the Office.

Consequently, subparagraph (4) of Paragraph 10 of the Office text would be deleted.

Office Commentary

The Government of Spain proposes combining Paragraph 3 with subparagraph (4) of Paragraph 10 of the proposed instrument. While appreciating the concern of the Government to enhance the coherence of the proposed text, the Office has preferred to leave the two provisions in question where they stand. This
is because the Office considers that Paragraph 3 deals with the question of defining the concept of “collective bargaining” for the purposes of the instrument, whereas subparagraph (4) of Paragraph 10 deals with the question of the designation of negotiators.

The Governments of France and New Zealand have stressed that negotiations with bodies such as works committees must not be allowed to undermine the prerogatives of workers’ organisations. The Office considers that subparagraph (2) of the proposed text meets the concern expressed by these Governments.

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.

Observation on Paragraph 4

Spain. The Government suggests replacing the proposed text by the following: “The provisions of this Convention may be applied by national laws or regulations, preferably by collective agreements and, where such agreements cannot be reached, by arbitration awards or in any other manner consistent with national practice.” The purpose of the amendment is to emphasise the fact that collective agreements should have priority among means of promoting collective bargaining and that arbitration awards should take only second place.

Office Commentary

The Government of Spain has submitted a proposed amendment to give preference to collective agreements as a means of applying the instrument. While fully appreciating the Government’s suggestion, the Office has deemed it preferable to retain the present text, since it does not consider that collective bargaining is sufficiently developed in all countries for its promotion to be carried out mainly through collective agreements. The Office also recalls that during the first discussion there were no amendments to Paragraph 4 of the proposed text.

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.

Observations on Paragraph 5

Belgium. (Subparagraph (1)) In view of the discussions to which the definition of the word “promote” gave rise, the Government regrets the laconism of the proposed text; it would welcome a more precise wording.

Federal Republic of Germany. (Subparagraph (2) (b)) The Government suggests adding at the end of clause (b) the words, “in accordance with national laws and regulations”. This amendment aims at making it clear that matters for negotiation can be limited by the overriding provisions of national law.

Japan. (Subparagraph (2) (b)) The Government suggests that the following sentence should be added: “provided, however, that matters indicated in the same Paragraph may be regulated by national laws or regulations with a view to defending the interests of individual workers, third persons or the public”. The Government stresses that governments assume the responsibility of defending the interests of the public and that the laws or regulations they enact and enforce to this end may happen to be ones governing matters referred to in Paragraph 2 of the proposed Recommendation, such as laws stipulating minimum working conditions with a view to defending the interests of individual workers, laws stipulating requirements for an effective closed-shop agreement with a view to defending the interests of third-party trade unions, and laws for maintaining orderly labour-management relations in the public interest.

Netherlands. (Subparagraph (2) (b)) The Government points out that some of the matters dealt with in clause (b) are regulated by law. This is the case in the Netherlands, for example, with the legal consequences of collective agreements. It will be evident that collective bargaining cannot be used to settle questions of this kind in any way other than that laid down by law.

Spain. (Subparagraph (2)) The Government suggests rewording clauses (a), (b), (c) and (d) as follows:

“(a) national laws and regulations should recognise collective bargaining as the normal means of regulating industrial relations” (replacing clause (c) in the text proposed by the Office);

“(b) all employers and all categories of workers in the branches of activity covered by this Convention should be able to have access to collective bargaining” (replacing clause (a) of the text proposed by the Office);

“(c) (clause (b) of the text proposed by the Office);

“(d) (clause (d) of the text proposed by the Office).”

Switzerland. (Subparagraph (2) (b)) The Government points out that in Switzerland collective bargaining covers the areas referred to in the proposed text. It is advisable, however, for the matters under discussion to remain within the competence of collective bargaining. Consequently, measures aiming at participation by workers at various levels could not be contemplated at the moment.
United Kingdom. So long as the instrument is adopted in the form of a Recommendation, the Government could accept this Paragraph with the following reservations:

1. The Government considers that it is not clear whether Paragraph 5 uses the words “collective bargaining” in the same sense as Paragraph 2. If so, then Paragraph 5 (2) (b) is circular (“collective bargaining should be progressively extended to all collective bargaining”). If the meaning is different, it should be spelled out in the text.

2. The Government would like the words “as far as is consistent with national legislation” to be inserted at the beginning of subparagraph (2) (b).

3. The Government would like to be assured that clause (d) does not affect the right to use individual grievance procedures where these are preferred to collective bargaining as a means of settling grievances.

Office Commentary

The Government of Belgium has stated that it would welcome any proposal to replace the word “promote” by a more precise term. The Office has not felt able to submit suggestions in this respect since the term in question is a keyword in the proposed instrument and was generally accepted during the first discussion. The Office recalls also that the term “promote” is widely used in ILO instruments.

The Office has not felt able, either, to follow up the amendment suggested by the Government of Spain in respect of subparagraph (2) of the proposed text. In the opinion of the Office, this proposal would result in changes of both form and substance that would be too sweeping for one of the main provisions of the proposed instrument which was widely supported during the first discussion.

The Governments of the Federal Republic of Germany, Japan, the Netherlands, Switzerland and the United Kingdom have suggested in various ways that subparagraph (2) (b) should specify that collective bargaining might be extended to the matters referred to in this provision only in so far as this is compatible with national laws and regulations. In the Office view, these proposals, as formulated, would give the public authorities unlimited powers to restrict the scope of collective bargaining. The Office considers that it would be inappropriate to take up such proposals in an instrument designed precisely to promote collective bargaining. The Office recalls, moreover, that similar suggestions were already made during the first discussion and that they encountered strong opposition within the Conference Committee.

It transpires from the observations of the Government of Japan that one of the reasons why it submitted the proposal mentioned in the preceding Paragraph was its fear that the present text might affect the power of the legislator to determine minimum conditions of work. In this respect the Office wishes to recall that the relevant Committee at the 66th Session of the Conference seems to have considered it clear that parties to collective bargaining could agree on conditions that were more favourable for the workers than those laid down by law but not on less favourable conditions.

Furthermore, the observations of the Government of the Netherlands reveal the latter’s fear that the present text might enable the parties to collective
bargaining to settle the question of the legal consequences of collective agreements in a manner different from that laid down by law. In this respect, the Office, basing itself on the laws and regulations and practice in various countries, considers that it should not be possible, through collective bargaining, to derogate from the statutory provisions governing the legal consequences of collective agreements unless the law makes specific provision to the contrary. The Conference may wish to state whether it agrees with this interpretation.

In response to an observation by the Government of the United Kingdom, the Office specifies that in its view the term “collective bargaining” has the same meaning in Paragraphs 2 and 5 of the proposed instrument. The Office considers that it does not, however, follow—as the Government of the United Kingdom seems to think—that subparagraph (2) (b) of Paragraph 5 would be duplicating Paragraph 2. It was because the latter appears in the Part entitled “Scope and Definitions” that the Office thought it advisable to state clearly under the Part entitled “Promotion of Collective Bargaining” that measures should be taken to ensure that collective bargaining is in fact extended to the matters indicated in the definition. The Office has nevertheless made a slight amendment to subparagraph (2) (b) which may reassure the Government of the United Kingdom.

In response to another observation by the same Government, the Office points out that, in its view, subparagraph (2) (b) of the proposed text should not affect the possibility of settling individual labour disputes through the grievance procedures existing for this purpose. The Conference may wish to consider whether this interpretation should be confirmed.

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.

Observations on Paragraph 6

Japan. The Government suggests that the words “employers' and workers' organisations” should be replaced by the words “the representative organisations of employers and workers concerned”.

Pakistan. The Government considers that this Paragraph would be difficult to implement if it included measures adopted by legislation. In the Government's view, the enactment of legislation is the exclusive function of the legislature.

United Kingdom. The Government would like to amend this Paragraph so that the words “whenever possible” appear before the words “be the subject of prior consultation”. Although the Government fully accepts the desirability of prior consultation with employers' and workers' organisations, parliamentary sovereignty dictates that the Government must retain a discretion to act without prior consultation where it considers this to be necessary in the national interest.

Office Commentary

The Office has not felt able to take up the proposals summarised above which all aim at restricting the scope of the consultations provided for in the proposed
text. These proposals would entail changes that would be too sweeping in a text on which there was wide agreement during the first discussion.

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.

Observations on Paragraph 7

India. The Government considers this Paragraph to be redundant, as it is difficult to conceive situations where measures to promote collective bargaining would in effect hamper freedom of collective bargaining. In any case, Paragraph 6 would ensure that such measures do not hamper freedom of collective bargaining.

Switzerland. The Government emphasises that the collective bargaining process is governed by civil law in Switzerland and that one of the fundamental principles in this field is consequently that of freedom of contract. For the Government it is inconceivable that this freedom should be hampered.

Office Commentary

The Office has not deemed it appropriate to take up the proposal of the Government of India to delete Paragraph 7 of the proposed text, since this Paragraph had received the approval of the Workers' members and Employers' members of the relevant Committee at the 66th Session of the Conference, and had been criticised by only a few Government members of this Committee.

Proposed New Paragraph

Belgium. In the Government's view, the proposed instrument should be supplemented by a Paragraph providing that measures taken with a view to promoting collective bargaining may not result, directly or indirectly, in affecting the right to strike where such a right exists. The Government emphasises its opinion that the purpose of this provision is solely to prevent possible consequences since its aim would be simply to avoid measures that had been taken solely in order to promote collective bargaining resulting in undermining the exercise of an existing right which can in no way be called in question.

Cyprus. The Pancyprian Federation of Labour suggests adding, after Paragraph 7, a new Paragraph worded as follows: "Any measures taken to promote collective bargaining shall not limit in any way the right to strike."

Norway. The Government considers that the instrument should affirm that its provisions must not restrict the right to strike or to impose a lockout.

Office Commentary

The Office has not taken up the various proposals summarised above to introduce a new provision on the right to strike or, in one case, the right to impose a lockout. The Office recalls that a similar proposal was discussed during the 66th Session of the Conference and was rejected (though by a small majority) after
having aroused strong feelings both for and against. In the circumstances, and taking account of the fact that the proposal to reintroduce a provision of this kind was made by only a very limited number of governments, the Office has not felt able to depart from the attitude adopted on the matter by the 66th Session of the Conference.

Observations concerning Former Point 12 of the Conclusions Submitted to the 66th Session of the Conference

Greece. The Government would like Point 12 of the Conclusions submitted to the 66th Session of the Conference to be re-examined since it considers that the problem dealt with in this Point, namely that of the relation between collective bargaining and the general interest, is of the utmost importance.

India. The Government is of the view that Point 12 of the Conclusions submitted to the 66th (1980) Session of the Conference should have been adopted, with suitable modifications if considered necessary. The role of governments in safeguarding the general interest of society at large, as against sectoral interests, is obvious. It is not considered necessary to mention the exceptional cases (which are only too well known) where governments may have to intervene in collective bargaining in the wider national interest. The Government consequently suggests that Point 12 of the Conclusions submitted to the Conference in 1980 should be discussed again.

Japan. The Government proposes to re-establish the text of Point 12 of the Conclusions submitted to the 66th Session of the Conference concerning the relation between collective bargaining and the general interest. The Government recalls that this provision was deleted during the first discussion not because it was unacceptable in principle but because its inclusion in an international instrument would have raised a number of problems. In the Government's view, nobody can deny the necessity of the parties to collective bargaining making an endeavour to reconcile their specific interests with the general interest. The Government also recalls that under the provision in question, the public authorities, when defining the requirements of the general interest, should first consult employers' and workers' organisations. The Government emphasises that this provision would in no way impair the basic rights of employers' and workers' organisations provided for in existing international instruments—such as those on freedom of association and autonomy of employers' and workers' organisations—because the proposed instrument does not revise any existing instrument. Consequently, the reintroduction of the provision in question into the proposed instrument cannot, in the Government's opinion, create any problem.

Switzerland. The Government considers that the instrument should not deal with the problems of the relation between the general interest and collective bargaining since this problem raises so many difficulties, particularly as regards the definition of the concept of the general interest, that it is better not to deal with it in an international instrument.

Office Commentary

The Office has not followed up the proposals to reinsert in the proposed instrument a provision identical or similar to Point 12 of the Conclusions submitted
to the 66th Session of the Conference dealing with the relation between collective bargaining and the general interest. It will be recalled that during the discussions of the relevant Committee at the 66th Session of the Conference, the text originally put forward by the Office aroused much strong feeling—both for and against—on the part of a number of members of the Committee and that the decision to delete this text was finally reached by a large majority. This being so, the Office considers that it could not have proposed reinserting this text unless suggestions to this effect had been made by a very large number of governments, which was not the case.

IV. MEANS OF PROMOTING COLLECTIVE BARGAINING

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.

Observations on Paragraph 9

Belgium. (Clause (b)) In the opinion of the Government the expression "criteria agreed in advance" is unfortunate. First, it is difficult to see how criteria for recognition could be "agreed afterwards". Second, it is unclear between whom the agreement on the criteria for representativeness should be concluded. Since the expression can be interpreted in a number of different ways and may give rise to disputes, its deletion should be envisaged, unless the expression "pre-established criteria" originally proposed by the Office is reinstated.

Canada. (Clause (b)) The Government would like this clause to indicate by whom and how the criteria with regard to the organisations' representative character should be agreed to in advance.

Federal Republic of Germany. (Clause (b)) The Government proposes the replacement of the words "criteria agreed in advance" by the words "pre-established criteria". The Office text leaves doubts as to who should conclude the agreement on the criteria of representativeness. The proposed provision would be inapplicable in practice if it allowed organisations whose representative character was in doubt to exert a direct or indirect influence on the fixing of criteria for representativeness.

India. (Clause (b)) The Government is in principle in agreement with the proposed text. However, in some countries, as in India, where there may be no agreement on the procedure for determining an organisation's representative character, the practical application of the provision might be difficult. The Government therefore suggests that the words "agreed in advance" be deleted.
United Kingdom. The Government cannot support this Paragraph in its present form and would prefer the instrument to make no reference to recognition procedures, although a general reference as in clause (a) would probably be acceptable. Clause (b), on the other hand, would not allow sufficient flexibility for the operation of recognition procedures. The wording “objective criteria agreed in advance” is particularly restrictive. In addition, the representative character of organisations should not be the sole criterion for recognition, as other factors may be relevant, for example the wider collective bargaining arrangements into which recognition for a particular union for a particular group must fit. The above observations are based on recent experience in the United Kingdom. This experience, which ended with the repeal of statutory recognition procedures, showed that it is not feasible to formulate in advance a set of objective criteria to cover all eventualities satisfactorily. The Government therefore suggests a more flexible wording of clause (b) if a reference to recognition procedures is to be retained at all.

Office Commentary

All the governments which sent observations on the proposed text criticise the words “agreed in advance” in clause (b) of this Paragraph, which are the result of an amendment adopted during the first discussion. Certain of these governments stress that the present text leaves doubts as to who should agree on the criteria for representativeness. Others point out that the proposed text was inapplicable in practice, since it allowed organisations whose representative character was in doubt to exert an influence on the fixing of criteria for representativeness. In these circumstances, most of the governments concerned propose either to delete the words “agreed in advance”, or to replace them by the term “pre-established”, which appeared in the text originally proposed by the Office. It will be recalled that the words “agreed in advance” met with the approval of the Employers’ and Workers’ members of the competent Committee at the 66th Session of the Conference, but that they were severely criticised by a number of Government members of this Committee for the reasons given above. Nevertheless, since only a few governments have suggested amending the text proposed in Report IV (1), the Office has retained this text for the time being. However, it invites the Conference to make a very close study of the objections raised against this text.

The Government of the United Kingdom, basing itself on recent national experience as regards the recognition of trade unions, has suggested a substantially more flexible wording of clause (b) of the proposed text, or even its deletion. The Office has retained the present text, since it considers that the proposal of the Government of the United Kingdom moves too far from the principles on which this text was based, and which appear to have received widespread support during the first discussion.

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.

Observations on Paragraph 10

Austria. (Subparagraph (2)) The Government doubts whether workers' and employers' organisations really wish to receive assistance in the training of negotiators. On the contrary, it believes that such assistance would be refused as unwanted interference in the internal affairs of organisations.

Belgium. (Subparagraphs (2) and (3)) The Government considers that subparagraphs (2) and (3) should be revised, since it believes that the public authorities in many countries would refuse to bear the burden which would be imposed on them by subparagraph (2), particularly as subparagraph (3) provides that workers' and employers' organisations would have the sole responsibility for determining the content of the training programmes and supervising their application. On the latter point the Government also stresses that methods of supervision determined by law or practice may already exist in certain countries, and that they may not be in accordance with the proposed text.

Colombia. (Subparagraph (2)) The Government considers that the public authorities should encourage workers' organisations to provide their negotiators with appropriate training.

Denmark. (Subparagraph (2)) The Government considers that the training of negotiators lies within the competence of employers' and workers' organisations. It proposes that the word "should" be replaced by the word "may".

Federal Republic of Germany. (Subparagraph (2)) The Government proposes that the Office text be replaced by the following: "Where necessary, and in so far as the organisation concerned considers desirable, the public authorities may provide assistance to workers' and employers' organisations for such training."

The training of negotiators is a matter which lies solely within the competence of independent employers' and workers' organisations. Any provision under which the public authorities might impose assistance on these organisations and thus interfere in their internal affairs must be avoided.

Greece. The Government proposes that this Paragraph be replaced by the following text: "(1) Measures adapted to national conditions should be taken, where necessary, to provide negotiators with the opportunity to obtain appropriate training enabling them to bargain effectively. (2) 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."

Japan. (Subparagraph (1)) The Government suggests the following wording for the beginning of this subparagraph: "Where necessary, measures should be taken by each of the parties to collective bargaining...".

This proposed amendment is designed to make clear that not all parties to collective bargaining should provide training measures uniformly, and that they should be taken separately by labour and management.
(Subparagraph (2)) The Government proposes the addition of the words "where appropriate" at the beginning of this subparagraph. In the Government's view assistance should be provided by the public authorities only when they, as well as those who receive assistance, consider that such assistance is appropriate.

(Subparagraph (3)) The Government proposes that the words "each of" should be inserted after the word "by". The purpose of this amendment is to clarify that training of negotiators should be conducted by each of the workers' and employers' organisations voluntarily.

Mauritius. (Subparagraph (2)) The Government considers that assistance for the provision of training to employers' and workers' representatives involved in negotiation procedures should be at the discretion of the public authorities.

Mexico. (Subparagraph (2)) The Government proposes that the Office text be replaced by the following text: "At the request of employers' and workers' organisations the public authorities should provide assistance to them for such training".

Training of negotiators should be done by the employers' and workers' organisations themselves, and they should request assistance from the public authorities only when they face technical or infrastructural problems. If the proposed amendment were accepted, it would be easier for employers' and workers' organisations to play a part in determining the content of training programmes and supervising them in accordance with subparagraph (3) of Paragraph 10.

Netherlands. (Subparagraph (2)) In the Government's view it is not acceptable that the public authorities simply have the obligation to assist workers' and employers' organisations in providing training for negotiators. The Government proposes to add that, when requested by the organisations concerned, such assistance could be provided when necessary.

Spain. (Subparagraph (4)) See the observations of the Government on Paragraph 3.

United Kingdom. (Subparagraph (2)) The Government proposes that the word "should" be replaced by the word "may" and the insertion of the words "where requested" after "may".

(Subparagraph (3)) The Government would like this subparagraph to recognise that the public authorities will have an interest in the content and supervision of training programmes if they are contributing to the funding of the programmes.

Office Commentary

Many governments have disagreed with subparagraph (2) of the proposed text. A number of these governments consider that the public authorities cannot simply be obliged to provide assistance to employers' and workers' organisations in the training of negotiators, particularly when, according to subparagraphs (3) and (4) of the proposed text, these organisations have the sole competence to determine the content of training programmes and to supervise their application. In the view of other governments, assistance of this kind would constitute interference in the
internal affairs of the organisations concerned unless they had requested it. It will be recalled that the text proposed in Report IV (1), which is the result of an amendment submitted during the first discussion, was supported by the Employers' and Workers' members of the competent Committee of the 66th Session of the Conference, but that it was criticised by a number of Government members of this Committee. In these circumstances, and as a compromise, the Office has amended subparagraph (2) of the proposed text so that it now provides for assistance by the public authorities to employers' and workers' organisations in the training of negotiators only if the parties to the negotiation so request.

As regards the proposals of the Government of Japan to amend subparagraphs (1) and (3) of the proposed text, the Office wonders whether these are really indispensable, since it considers that the text proposed in Report IV (1) fully safeguards the right of each employers' organisation and each workers' organisation to organise its own training programme and does not in any way oblige them to organise identical or joint programmes. The Conference may wish to confirm this interpretation.

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.

**Observation on Paragraph 11**

*Mexico.* The Government proposes that the words "conduct and conclude" be replaced by the words "conduct and/or conclude" to enable organisations to provide their negotiators with a mandate to conduct and conclude negotiations or merely to engage in either of these activities.

The Government also suggests the addition of the words "as regards the conduct or conclusion of the negotiations" at the end of the Paragraph. This amendment would have the merit of specifying the object of the consultations mentioned in the Paragraph.

**Office Commentary**

The Office has not followed the proposed amendment of the Government of Mexico, since it considers that the present text meets this Government's concerns. The Office is of the opinion that the text proposed in Report IV (1) leaves employers' and workers' organisations who so wish enough latitude to provide their negotiators with separate mandates to conduct and conclude negotiations. The Office also believes that it is clear from the proposed text that the consultations referred to concern the conduct or the conclusion of negotiations. The Conference may wish to confirm these interpretations.

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.

Observations on Paragraph 12

Austria. (Subparagraph (2) (a)) In the Government's view the words "to the extent to which its disclosure is not prejudicial to the undertaking" might favour employers, since they have more information at their disposal than workers. They should be replaced by a provision to the effect that trade secrets must be respected by the workers taking part in collective bargaining to the extent to which the disclosure of these secrets would result in unjustified prejudice to the undertaking.

Belgium. (Subparagraph (2) (a)) The Government notes that the proposed text gives the employer the right to decide whether the disclosure of information is prejudicial to the undertaking. In the Government's view this right is not effectively limited by the possibility of agreement mentioned at the end of clause (a). Provision should therefore be made for the possibility of setting up machinery, or using existing machinery, for the purpose of guaranteeing the disclosure of information without the employer being the sole judge of whether such information is confidential or whether the disclosure is prejudicial to the undertaking.

Colombia. (Subparagraph (2) (a)) The Government would like a provision to the effect that public employers should provide the relevant information "in accordance with national conditions".

(Subparagraph (2) (b)) The Government would like to insert a provision into this clause to the effect that the public authorities should make available the relevant information "only to the extent to which it is available to them".

Cyprus. (Subparagraph (1)) The Pancyprian Federation of Labour proposes the deletion of the words "adapted to national conditions".

(Subparagraph (2) (b)) The Pancyprian Federation of Labour proposes the deletion of the words "in so far as the communication of this information is not prejudicial to the national interest".

Denmark. (Subparagraph (2) (a)) The Danish Employers' Confederation suggests two amendments to the proposed text. First, the obligation to provide information should be binding on both parties. Second, the text should take account of whether the material in question is already available and the costs of making available new material.

France. (Subparagraph (2)) The Government suggests the replacement of the Office text by the following: "(2) For this purpose—(a) public and private employers should, at the request of workers' organisations, make available such information as is necessary on the economic and social situation of the negotiating unit and the enterprise as a whole; in the event that the disclosure of certain
information may be prejudicial to the enterprise, its communication may be made conditional on an undertaking to treat it with the necessary confidentiality; (b) the information to be provided may be determined by agreement between the employers concerned, or their organisations, and the organisations of workers concerned; (c) the public authorities should make available such information as is necessary on the over-all economic and social situation of the country and the branch of activity concerned, to the extent to which the disclosure of this information is not prejudicial to the national interest”.

As regards clause (a), the Office text is unsatisfactory, since on the one hand it is not the information itself, but its disclosure, which may be prejudicial; on the other hand, the Office text gives full freedom to the party possessing the information to withhold it because its disclosure would be prejudicial to the undertaking. In these circumstances the Government considers that it would be legitimate to make the communication of information whose disclosure would be prejudicial to the enterprise conditional on an undertaking to treat it as confidential (which is in any case required by the legislation of many countries). In the Government’s view the proposed amendment would favour more responsible participation of all the parties concerned in negotiations.

Clause (b) of the amendment retains the notion of agreements as to the type of information to be furnished, contained in the Office text, and adds that such agreements may be concluded not only by employers’ organisations (at the level of branches of activity) but also by employers (at the level of the undertaking). In the Government’s opinion such agreements would not prejudice the confidential nature of various types of information. The reason for this is that the disclosure of information may be harmful or otherwise to the undertaking, depending on whether it is in difficulties or whether it is in a healthy situation. It should therefore be clearly understood that such agreements may not limit the employer’s right of judgement in this connection depending on the trends in the situation of the undertaking.

Clause (c) of the amendment reproduces clause (b) of the Office text, but merely replaces the term “industry” by the term “branch of activity” used in the other Paragraphs.

**Federal Republic of Germany.** (Subparagraph (2)) The Government proposes the addition of the words “and/or” at the end of clause (a). The purpose of this amendment is to make the Office text more flexible for those countries where the public authorities already supply enough information to enable the parties to bargain meaningfully. The Government also points out that employers in the Federal Republic of Germany supply information of the kind mentioned in Paragraph 12 in their own interests. It would, however, be very difficult, if not impossible, to provide for express statutory obligations in this regard at the national level.

**Japan.** (Subparagraph (2) (a)) The Government proposes the addition of the words “does not impair the public interest and” after the words “to which its content”. In this connection the Government points out that the disclosure of information by employers, especially by public employers, may be harmful to the public interest.
The Government proposes that the words “the national interest” be replaced by the words “the public interest”. The Government stresses that the disclosure of certain information may be prejudicial to the interests of inhabitants in certain areas, even if it is not prejudicial to the national interest.

*Kenya.* The Government suggests the addition of a subparagraph (3) with the following wording: “Any party granted such information shall treat it with the required confidentiality”. An identical amendment was submitted by the Government at the first discussion, but was not adopted.

*Mexico.* (Subparagraph (2) (b)) The Government proposes the addition of the words “at the request of the parties to collective bargaining” after the words “the public authorities should”. In this way, the two parties would always have the same information at their disposal, which would be helpful for the proper conduct of the negotiations.

*Netherlands.* (Subparagraph (2) (a)) The Government proposes the adaptation of the formulation of clause (a) in order to make it clear that it is not the contents of certain information, but its disclosure, that will be detrimental to the enterprise.

*New Zealand.* (Subparagraph (2) (a)) The Government supports the proposed text, but considers that, when collective bargaining covers a number of employers, or even all the employers, in a branch of activity, information on any individual undertaking or group of employers is of dubious value. Where multi-employer negotiations take place the issue of trade secrets and confidentiality is important, as the negotiators are often business competitors.

*Norway.* (Subparagraph (2) (a)) The Government is of the view that this provision should contain the three following ideas: all parties should be under the obligation to supply information; only relevant information should be supplied; and account should be taken of the expense involved in procuring information.

The Confederation of Trade Unions in Norway suggests that the proposed text be replaced by the following: “Reliable information should be made available by employers both public and private as requested by workers’ organisations, on the economic and social situation of a negotiation unit and undertaking. The content of the information should not be prejudicial to the undertaking.”

*Pakistan.* (Subparagraph (1)) The Government would like this subparagraph to contain the idea that the workers should have access to “reasonable information” only.

*Spain.* Subparagraph (2) (a)) The Government proposes the addition of the words “or their representatives in collective bargaining” after the words “at the request of workers’ organisations”. According to the Government this wording would be more in line with Paragraph 3, subparagraph (1), of the text proposed by the Office (which, according to the Government, should become Paragraph 3, subparagraph (2) (see the Government’s observations on Paragraph 3)).

*Switzerland.* Subparagraph (2)) In the Government’s view the parties should have access to general information, as provided in subparagraph (1) of the text proposed by the Office. However, the Government considers that the information
to be supplied should not be defined in too much detail. It feels that it would be unwise to provide that the parties must negotiate and agree in advance on the content of the information. Furthermore, there can be no question of making it binding on the State to furnish detailed information, since it is obvious that information, even of a general nature, must not be prejudicial to the general interest.

**Tunisia.** The Government approves of the proposed text. It would even be in favour of measures enabling employers' and workers' organisations to develop their own means of information on the economic situation of the country and the various branches of activity by establishing and consolidating units to keep statistics and carry out surveys and research.

**United Kingdom.** The Government encourages the disclosure of information by the parties to collective bargaining. However, it would prefer the relevant provisions to be more closely defined, in particular to ensure that the information the parties are required to provide is necessary to the conduct of meaningful collective bargaining and that the confidentiality of the information is protected. Other safeguards are also needed (for more details see the reply of the Government of the United Kingdom to the Office questionnaire in Report V (2), 66th Session of the Conference (1980), page 60). The instrument should either enumerate such safeguards in detail, or preferably be restricted to a general statement which, while encouraging the disclosure of information, would leave the preparation of more detailed regulations to member States.

**Uruguay.** (Subparagraph (2) (a)) The Government remarks that this provision takes account of the concern which it expressed in reply to the Office questionnaire, namely that the prescribed measures should not aim at obtaining confidential information from undertakings (see Report V (2), 66th Session of the International Labour Conference (1980), page 61).

**Office Commentary**

**Subparagraph (2) (a)**

The Governments of France and the Netherlands remark that it is not the content of certain information but its disclosure that may be prejudicial to the undertaking. The Office has accordingly replaced the word “content” by the word “disclosure”.

The Government of France suggests the amendment of the last phrase of clause (a) so as to make it clear that the agreements in question in this provision may be concluded not only by employers’ organisations but also by individual employers. The Office has complied with this proposal by replacing the words “employers’ and workers’ organisations” by the words “parties to collective bargaining”, which are also used in various other paragraphs of the proposed instrument.

The Government of Colombia proposes that clause (a) should specify that public employers should supply the information concerned “in accordance with national conditions”. The Office draws attention to the fact that subparagraph (1) already specifies that the matters to be taken must be “adapted to national conditions”.
The Governments of Austria, Belgium and France suggest the amendment of
the proposed text so that it no longer leaves employers freedom to withhold
information the disclosure of which they regard as prejudicial to the undertaking.
The Governments of Austria and France instead propose a provision that workers
should respect the confidential nature of this information. The Governments of
Kenya, New Zealand and the United Kingdom also stress the importance of
protecting the confidential nature of certain information, but it is not always clear
from their observations whether or not, in their opinion, the right of employers to
withhold certain information should be maintained. While recognising the impor­
tance of the problem which has been raised, the Office has felt unable to comply
with the observations just summarised, since they would result in excessive
amendment of a text which was discussed at length in the competent Committee of
the 66th Session of the Conference, and which finally received wide support.

The Government of Norway proposes the introduction of the three following
ideas in clause (a): all parties should provide information; only relevant
information should be supplied; and account should be taken of the expenses of
providing the information. The Office has preferred to retain the present text, since
similar proposals were already presented during the first discussion, but were not
accepted. In the opinion of the Office the term “such information as is necessary”
in the proposed text is in any case fairly close to the notion of “relevant
information”. These terms should also go some way towards meeting the concern
of the Government of Pakistan, which suggests a provision to the effect that
workers should have access to “reasonable information” only.

The Office has not followed the proposal of the Government of the Federal
Republic of Germany to add the words “and/or” at the end of clause (a), since an
identical proposal already met with strong opposition during the first discussion.
For the same reason the Office has not followed the proposal of the Government of
Japan to add the words “does not impair the public interest and” after the words
“content”.

The Government of Spain suggests that it should be specified that the
information mentioned in clause (a) should also be supplied to the workers' 
representatives mentioned in Paragraph 3 of the proposed instrument. The Office
finally decided not to comply with this proposal, since it felt that it was preferable
to avoid any explicit reference to workers' representatives in Paragraphs 5 to 14 of
the proposed instrument, as negotiations with these representatives may be
excluded from the scope of the instrument under Paragraph 3. It should, however,
be understood that the terms “parties to collective bargaining”, “workers' 
organisations” or other similar terms used in Paragraphs 5 to 14 also refer to
workers' representatives to the extent that this is in conformity with national law or
practice.

Subparagraph (2) (b)

The Office has followed the proposal of the Government of France to replace
the word “industry” by the words “branch of activity”, which are also used in
other paragraphs of the proposed instrument.

The Office considers that the proposal of the Government of Colombia, that
the public authorities should supply only information already in their possession,
would have the effect of unduly weakening the proposed text. It has accordingly not taken account of this suggestion.

The Office did not consider that it was appropriate to follow the proposal of the Government of Mexico to insert the words "at the request of the parties to collective bargaining" after the words "the public authorities should", since the Office feels that, in practice, the information supplied by the public authorities is generally supplied on a permanent basis and not in response to specific requests.

The Government of Japan proposes the replacement of the expression "national interest" by "public interest" to ensure that the interests of the inhabitants of an area are also protected. While appreciating the concern of the Japanese Government, the Office has preferred to keep the expression "national interest", to which no objections were raised during the first discussion. In the opinion of the Office, the term "national interest" should, however, be interpreted as also covering the interests of the inhabitants of an area. The Conference will no doubt wish to examine whether this interpretation should be confirmed.

Observations concerning Former Point 20 of the Proposed Conclusions Submitted to the 66th Session of the Conference

Greece. The Government would like a re-examination of Point 20 of the Proposed Conclusions submitted to the 66th Session of the Conference, respecting negotiations in good faith and fair labour practices.

India. The Government proposes that the provision in Point 20 of the Proposed Conclusions submitted to the 66th Session of the Conference should be discussed again, as a provision along those lines would be in the interest of the parties to collective bargaining themselves, particularly in situations where the workers' and employers' organisations are not equally matched. The Government suggests the insertion of the following text in the proposed instrument: "Whenever necessary, measures may be taken in consultation with employers' and workers' organisations to ensure that parties negotiate in good faith and refrain from any practices that are liable to hamper the collective bargaining process".

Office Commentary

The Office has not followed the proposals to reintroduce into the proposed instrument a provision identical or similar to that in Point 20 of the Proposed Conclusions submitted to the 66th Session of the Conference regarding negotiation in good faith and unfair labour practices. It will be recalled that the text originally proposed by the Office was deleted by a large majority of votes during the proceedings of the competent Committee of the 66th Session of the Conference. In these circumstances the Office considers that it would have been able to propose the reinsertion of this text only if a very large number of governments had requested it, which was not the case.

Proposed New Paragraph

Norway. The Government is of the view that the instrument should contain provisions to the effect that workers' organisations in affiliates of undertakings
should be secured the right of negotiation with the management of the concern as a whole.

The Norwegian Employers' Confederation strongly disagrees with this proposal. According to the Confederation, the proposed provision would raise a number of practical problems because of differences in national legislation, particularly as regards the definition of the concept of the "right of negotiation".

Office Commentary

The Office has not followed the proposal of the Government of Norway to insert in the proposed instrument a provision that the workers' organisations in an affiliate of an undertaking should have the right to negotiate with the management of the undertaking as a whole. The Office recalls that a similar proposal was the subject of a very lively discussion during the 66th Session of the Conference and that it was finally rejected for lack of a quorum. Since a suggestion to insert a provision of this kind has been presented by only one government, the Office has considered that it cannot go against the stand taken on this matter by the Conference at its 66th Session.

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.

Observations on Paragraph 13

Austria. (Subparagraph (1)) In the Government's view this provision should take account of the situation of countries such as Austria, where collective bargaining is traditionally highly centralised, particularly because of the structure of employers' and workers' organisations. Workers' and employers' organisations in Austria exceptionally conclude collective agreements whose coverage is limited to a single undertaking (but never to an establishment). Collective agreements for an undertaking properly speaking (that is to say concluded between an individual employer and a workers' union) are, however, unknown in Austrian law. It is true that there are "undertaking agreements", namely agreements concluded between the employer and the works committee, but these can regulate very few subjects, and in no case wage problems. In these circumstances, the Government proposes that the beginning of subparagraph (1) should be worded as follows: "In so far as this is not contrary to the national collective bargaining system, measures should be taken so that..."

France. The Government suggests that Paragraph 13 should be placed at the beginning of Part IV, since the promotion of collective bargaining at all levels would appear to be a fundamental recommendation. In addition, Paragraph 13 contributes to an understanding of the other Paragraphs of Part IV.

Japan. (Subparagraph (1)) In the opinion of the Government, the words "if necessary" should be moved from their present position to the beginning of the
subparagraph. The Government points out that, in the case of a country where trade unions are organised mainly at the level of the undertaking, measures to make collective bargaining possible at all levels may not always lead to the promotion of collective bargaining as a whole.

Office Commentary

The Government of France has proposed that Paragraph 13 should be placed at the beginning of Part IV of the proposed instrument. The Conference will no doubt wish to take a decision in this connection once the French Government has had the opportunity to set forth its arguments in greater detail.

The Government of Japan has suggested displacing the words "if necessary". The Conference will no doubt wish to postpone any decision on this subject until such time as the Government of Japan will have had the opportunity to explain the reasons for its proposal in greater detail.

Referring to the situation in its country, where collective bargaining at undertaking level is virtually excluded, the Government of Austria has suggested making the proposed text more flexible so as to take account of this situation. The Office has felt that it was not possible for it to meet this wish, since the situation of Austria in this respect is a very special one, perhaps even unique.

Proposed New Paragraphs

Colombia. The Government proposes that the proposed instrument should be completed by a Paragraph providing that measures adapted to national circumstances should be taken to enable collective bargaining to be conducted successfully.

Denmark. The Danish Employers' Confederation has stressed that it is of paramount importance that the parties observe the agreements entered into by them, and emphasis should therefore be laid on the obligation of the parties not to resort to industrial action during the period of validity of collective agreements. The Confederation suggests that a provision to this effect should be included in the instrument.

Office Commentary

The Office has not retained the proposal of the Government of Colombia to add to the proposed instrument a provision to the effect that measures should be taken "to enable collective bargaining to be conducted successfully", since the suggested provision might be interpreted as authorising the government to apply coercion to ensure that collective bargaining results in an agreement. Furthermore, if the purpose of the suggested provision is merely to facilitate the conduct of the bargaining process, it repeats many other Paragraphs of the proposed text. The problem raised in the proposal of the Danish Employers' Confederation—transmitted by the Government of Denmark—was not dealt with during the first discussion. Moreover, no government has raised this problem in its observations on the proposed text. This being so, the Office has not dealt with this problem in the proposed instrument.
PROPOSED TEXT

(English Version)

The following is the English version of the proposed Recommendation concerning the promotion of collective bargaining, which is submitted as a basis for discussion of the fourth item on the agenda of the 67th Session of the Conference.

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 complemented 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:
The following is the French version of the proposed Recommendation concerning the promotion of collective bargaining, which is submitted as a basis for discussion of the fourth item on the agenda of the 67th Session of the Conference.

**Projet de recommandation concernant la promotion de la négociation collective**

La Conférence générale de l'Organisation internationale du Travail,
Convoquée à Genève par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le 3 juin 1981, en sa soixante-septième session;
Réaffirmant le passage de la Déclaration de Philadelphie qui reconnaît «l'obligation solennelle pour l'Organisation internationale du Travail de seconder la mise en œuvre, parmi les différentes nations du monde, de programmes propres à réaliser... la reconnaissance effective du droit de négociation collective»;
Tenant compte de l'importance capitale des normes internationales contenues dans la convention sur la liberté syndicale et la protection du droit syndical, 1948; la convention sur le droit d'organisation et de négociation collective, 1949; la recommandation sur les conventions collectives, 1951; la recommandation sur la conciliation et l’arbitrage volontaires, 1951, ainsi que la convention et la recommandation sur les relations de travail dans la fonction publique, 1978;
Considérant qu'il est souhaitable de donner un plus grand effet aux buts de ces normes et particulièrement aux principes généraux contenus dans l’article 4 de la convention sur le droit d’organisation et de négociation collective, 1949, et le paragraphe 1 de la recommandation sur les conventions collectives, 1951;
Considérant par conséquent que ces normes devraient être complétées par des mesures appropriées fondées sur lesdites normes et destinées à promouvoir la négociation collective libre et volontaire;
Après avoir décidé d’adopter diverses propositions relatives à la promotion de la négociation collective, question qui constitue le quatrième point à l’ordre du jour de la session;
Après avoir décidé que ces propositions prendraient la forme d'une recommandation,
adopte, ce jour de juin mil neuf cent quatre-vingt-un, la recommandation ci-après, qui sera dénommée Recommandation sur la négociation collective, 1981:
I. SCOPE AND DEFINITIONS

1. (1) This Recommendation applies to all branches of economic activity.

   (2) The extent to which the guarantees provided for in this Recommendation should apply to persons employed by public authorities—other than those employed in public undertakings or establishments of a commercial, industrial, agricultural or similar nature—and to the armed forces and the police may be determined by national laws or regulations.

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" should also embrace, 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 embraced by clauses (a) and (b) of Paragraph 2 of this Recommendation;
I. CHAMP D'APPLICATION ET DÉFINITIONS

1. (1) La présente recommandation s'applique à toutes les branches d'activité économique.

      (2) La mesure dans laquelle les garanties prévues par la présente recommandation devraient s'appliquer aux personnes employées par les autorités publiques — autres que celles employées dans les entreprises ou établissements publics à caractère commercial, industriel, agricole ou similaire — ainsi qu'aux forces armées et à la police, peut être déterminée par la législation nationale.

2. Aux fins de la présente recommandation, le terme « négociation collective » s'applique à toutes les négociations qui ont l'un, l'autre ou les deux objets suivants :  
   a) fixer les conditions de travail et d'emploi ;  
   b) régler les relations entre les employeurs et les travailleurs ou leurs organisations,  

   et qui se déroulent entre, d'une part, un employeur, un groupe d'employeurs ou une ou plusieurs organisations d'employeurs et, d'autre part, une ou plusieurs organisations de travailleurs.

3. (1) Pour autant que la loi ou la pratique nationales reconnaissent l'existence de représentants des travailleurs tels qu'ils sont définis à l'article 3, alinéa b), de la convention concernant les représentants des travailleurs, 1971, la loi ou la pratique nationales peuvent déterminer dans quelle mesure le terme « négociation collective » devrait également englober, aux fins de la présente recommandation, les négociations avec ces représentants.

      (2) Lorsque, en application du sous-paragraphe (1) ci-dessus, le terme « négociation collective » englobe également les négociations avec les représentants des travailleurs visés dans ce sous-paragraphe, des mesures appropriées devraient être prises, chaque fois qu'il y a lieu, pour garantir que la présence de ces représentants ne puisse servir à affaiblir la situation des organisations de travailleurs intéressées.

II. MÉTHODES D'APPLICATION

4. L'application des dispositions de la présente recommandation pourra être assurée par voie de législation nationale, par voie de conventions collectives, par voie de sentences arbitrales ou de toute autre manière conforme à la pratique nationale.

III. PROMOTION DE LA NÉGOCIATION COLLECTIVE

5. (1) Des mesures adaptées aux circonstances nationales devraient être prises en vue de promouvoir la négociation collective.

      (2) Les mesures visées au sous-paragraphe (1) ci-dessus devraient avoir les objectifs suivants :
   a) que la négociation collective soit rendue possible pour tous les employeurs et pour toutes les catégories de travailleurs des branches d'activité visées par la présente recommandation ;  
   b) que la négociation collective soit progressivement étendue à toutes les matières couvertes par les alinéas a) et b) du paragraphe 2 de la présente recommandation ;
(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, at their request, 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.
c) que la négociation collective ne soit pas entravée par suite de l’inexistence de règles régissant son déroulement ou par suite de l’insuffisance ou du caractère inapproprié de ces règles ;

d) que les organes et les procédures de règlement des conflits du travail soient conçus de telle manière qu’ils contribuent à promouvoir la négociation collective.

6. Les mesures prises par les autorités publiques pour encourager et promouvoir le développement de la négociation collective devraient faire l’objet de consultations préalables et, chaque fois que ceci est possible, d’accords entre les pouvoirs publics et les organisations d’employeurs et de travailleurs.

7. Les mesures prises en vue de promouvoir la négociation collective ne devraient pas être conçues ou appliquées de manière telle qu’elles entravent la liberté de négociation collective.

IV. MOYENS DE PROMOTION DE LA NÉGOCIATION COLLECTIVE

8. Pour autant que ceci est nécessaire, des mesures adaptées aux circonstances nationales devraient être prises en vue de faciliter la constitution et le développement, sur une base volontaire, d’organisations libres, indépendantes et représentatives d’employeurs et de travailleurs.

9. Pour autant que ceci est approprié et nécessaire, des mesures adaptées aux circonstances nationales devraient être prises pour que :

a) les organisations représentatives d’employeurs et de travailleurs soient reconnues aux fins de la négociation collective ;

b) dans les pays où les autorités compétentes appliquent des procédures de reconnaissance en vue de déterminer les organisations qui bénéficient du droit de négociation collective, ladite détermination soit fondée sur des critères objectifs convenus à l’avance relatifs au caractère représentatif de ces organisations.

10. (1) Des mesures devraient être prises par les parties à la négociation collective pour que leurs négociateurs, à tous les niveaux, aient la possibilité de recevoir une formation appropriée.

(2) Les pouvoirs publics devraient, à la demande de celles-ci, fournir une assistance aux organisations de travailleurs et d’employeurs pour cette formation.

(3) Le contenu et la surveillance des programmes en vue de cette formation devraient être déterminés par les organisations de travailleurs et d’employeurs intéressées.

(4) Cette formation ne devrait pas porter atteinte au droit des organisations de travailleurs et d’employeurs de choisir leurs propres représentants aux fins de la négociation collective.

11. Les parties à la négociation devraient investir leurs négociateurs respectifs du mandat nécessaire pour conduire et conclure la négociation, sous réserve de toute disposition concernant des consultations dans le cadre de leurs organisations respectives.
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 such information as is necessary on the economic and social situation of the negotiating unit and the undertaking as a whole, to the extent to which its disclosure is not prejudicial to the undertaking; the information to be made available may be agreed upon between the parties to collective bargaining;

(b) the public authorities should make available such information as is necessary on the over-all economic and social situation of the country and the branch of activity concerned, to the extent to which the disclosure 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.
12. (1) Des mesures adaptées aux circonstances nationales devraient être prises, s'il y a lieu, pour que les parties aient accès aux informations nécessaires pour pouvoir négocier en connaissance de cause.

(2) A cette fin :

a) les employeurs publics et privés devraient, à la demande des organisations de travailleurs, fournir les informations nécessaires sur la situation économique et sociale de l'unité de négociation et de l'entreprise dans son ensemble dans la mesure où leur divulgation n'est pas préjudiciable à l'entreprise ; les informations à fournir pourraient être déterminées par un accord conclu entre les parties à la négociation collective ;

b) les pouvoirs publics devraient fournir les informations nécessaires sur la situation économique et sociale globale du pays et de la branche d'activité intéressée dans la mesure où la divulgation de ces informations n'est pas préjudiciable à l'intérêt national.

13. (1) Des mesures adaptées aux circonstances nationales devraient, si nécessaire, être prises pour que la négociation collective soit possible à quelque niveau que ce soit, notamment ceux de l'établissement, de l'entreprise, de la branche d'activité ou aux niveaux régional ou national.

(2) Dans les pays où la négociation collective se déroule à plusieurs niveaux, les parties à la négociation devraient veiller à ce qu'il y ait une coordination entre ces niveaux.


V. DISPOSITION FINALE

15. La présente recommandation ne porte pas révision de l'une quelconque des recommandations existantes.