International Labour Office

PROMOTING COLLECTIVE BARGAINING

Collective Bargaining Convention, 1981 (No. 154)
Collective Bargaining Recommendation, 1981 (No. 163)

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Introduction

The Collective Bargaining Convention (No. 154) was adopted by the International Labour Conference in 1981 as an instrument for the promotion of collective bargaining.

Convention No. 98, the Right to Organise and Collective Bargaining Convention, 1949 provides that appropriate measures are taken to encourage and promote the full development and utilization of machinery for voluntary negotiations between employers or employers' organizations and workers' organizations. However it does not specify how this might be done. The Collective Bargaining Convention (No. 154) and its accompanying Recommendation (No. 163) were adopted by the International Labour Conference in 1981 to complement Convention No. 98. They set out the types of measures that can be adopted to promote collective bargaining and the aims of these measures. Because it is promotional in nature, Convention No. 154 can be implemented in countries with different economic and social conditions, with different legislative frameworks, and a variety of industrial relations systems.

Main elements of Convention No. 154

Promotes collective bargaining

An ILO member State that ratifies Convention No. 154 should take measures to promote collective bargaining. These measures are adapted to national conditions. According to Convention No. 154, they should be subject to prior consultation, and if possible agreement, between public authorities, employers' organizations and workers' organizations. The aim of the Convention is to promote collective bargaining that is voluntary, and undertaken by parties that represent free and independent organizations. Yet, while collective bargaining is a voluntary process, countries need to establish an enabling framework within which it can be encouraged and promoted, both through legislation and the creation of supporting institutions. A balance needs to be found between government intervention to encourage collective bargaining and its smooth functioning, and the freedom of the parties to conduct autonomous negotiations.

Defines collective bargaining

In the Convention the term "collective bargaining" means all negotiations between employers and or employers' organizations on the one hand and workers' organizations on the other, for:

- determining working conditions and terms of employment; and/or
- regulating relations between employers and workers; and/or
- regulating relations between employers or their organizations and a workers' organization or workers' organizations.

The ILO supervisory bodies have interpreted the issues that might be subject to collective bargaining as including "the type of agreement

to be offered to employees or the type of industrial instrument to be negotiated in the future, as well as wages, benefits and allowances, working time, annual leave, selection criteria in case of redundancy, the coverage of the collective agreement, the granting of trade union facilities, including access to the workplace beyond what is provided for in legislation etc".[1] Thus excluding particular issues relating to conditions of employment from the scope of collective bargaining is incompatible with the right to collective bargaining. The only acceptable restrictions could be a ban on those clauses that are liable to undermine public freedoms (such as discriminatory clauses) or are contrary to the minimum standards of protection set out in the law and matters pertaining primarily or essentially to the management and operation of government and business, including the assignment of duties and appointments.

Defines the parties to collective bargaining

The Convention deals with bipartite relations (between two parties). It does not deal with tripartite relations where the Government is also a party. Specifically, the parties to collective bargaining are:

- one or more employers; or
- one or more employers' organizations, on the one hand; and
- one or more workers' organizations, on the other.

For their participation in the collective bargaining process to be effective, these organizations have to be sufficiently representative of the interests they are defending and independent from the other party to the negotiations and the public authorities.

1 *See* paragraph 913 of the *Digest of the Decisions of the Committee of Freedom of Association, 2006:* http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_090632.pdf

In some countries workers' representatives exist separately from workers' organizations (ie. trade unions). When collective bargaining does include negotiations with workers' representatives, measures should be taken to ensure this is not used to undermine the position of the workers' organizations concerned. In other words, the existence of other elected workers' representatives should not be used to undermine the position of trade unions or their representatives.

Aims of promotional measures

In promoting collective bargaining, Convention No. 154 outlines the aims of the measures to be taken by the public authorities after consultation and, whenever possible, agreement with employers' and workers' organizations:

- Collective bargaining should as far as possible be made available to all employers and to all groups of workers. The extent to which the armed forces and police are able to bargain collectively may be determined by national law and practice.

- Collective bargaining should be progressively extended to all areas addressed by the Convention. This means that, over time, relations between employers and workers and between their respective organizations can be negotiated collectively, as well as working conditions and terms of employment.

- To encourage the establishment of rules of procedure agreed between employers' and workers' organizations. Such a framework should ensure that collective bargaining can be conducted efficiently. At the same time, collective bargaining should not be hampered by the absence of rules or the inadequacy of such rules.

- Labour dispute settlement bodies and procedures (such as conciliation and mediation bodies) also help to promote collective bargaining. They should be designed to encourage the two parties to reach agreement between themselves (see Box 1).

Box 1.

Promoting collective bargaining through dispute resolution services in South Africa: Commission for Conciliation, Mediation and Arbitration (CCMA) and Bargaining Councils

Following the political transition to democracy in South Africa in 1994, a new Labour Relations Act of 1995 (LRA) was enacted which included among its objectives the promotion of collective bargaining and the effective resolution of labour disputes. To this end, the LRA established the Commission for Conciliation, Mediation and Arbitration (CCMA), specialised Labour Courts and a Labour Appeals Court. The LRA also makes provisions for private agencies and sectoral bargaining councils to be accredited by the CCMA to resolve disputes through conciliation and arbitration. Private agencies and bargaining councils are supported in these functions through subsidies granted by the governing body of the CCMA.

The CCMA is independent and governed by a tripartite Governing Body. It is publically funded. The CCMA addresses a broad range of labour disputes which include the mediation/conciliation of collective bargaining disputes. Should the dispute remain unresolved, or the period for attempting to resolve the dispute elapse, the bargaining partners have the right to strike or to lock out, unless engaged in an essential service. At this point, the bargaining partners can also request the CCMA to establish picketing rules. Apart from its role in both resolving disputes and/or facilitating orderly conduct during a dispute, the CCMA also plays a role in the prevention of disputes through facilitation services, training, the provision of information sheets and codes and the promotion of good practices.

The CCMA accredits and subsidises bargaining councils to conciliate and arbitrate certain categories of disputes. The dispute resolution functions of bargaining councils extend to all employers and employees within their jurisdiction, irrespective of whether or not they are members of the trade unions and employers' organizations that are parties to the council. As of 2010, a total of 31 bargaining and statutory councils are accredited for both conciliation and arbitration and an additional 8 for conciliation. From 2012, employees that fall within the jurisdiction of a bargaining council are able to lodge disputes at CCMA offices. The completed referral form is then electronically transmitted to the bargaining council. In addition, employees are also able to refer disputes to the CCMA or bargaining council at labour advice centres operated by the Department of Labour. These innovations were introduced in order to enhance access to dispute resolution services.

Sources: Development Policy Research Unit: *Measuring the efficiency of the CCMA's dispute resolution service – An analysis of CMS data between 2007 and 2009 (2010); CCMA Annual Report 2009/2010;* LEP y NALEDI: *Support for bargaining councils and centralised bargaining* (2010); P. Benjamin: "Assessing South Africa's Commission for Conciliation, Mediation and Arbitration", Working Paper No. 47 (ILO, Governance and Tripartism Dept., 2013).

Principle of good faith

The preparatory work for the adoption of Convention No. 154 emphasised the importance of good faith. Collective bargaining can only function efficiently if it is conducted in good faith by both parties. While the legislative framework can encourage employers and trade unions to bargain in good faith, ultimately it is the commitment of the parties to negotiate in good faith that ensures the harmonious development of labour relations. Good faith bargaining implies genuine and persistent efforts by both parties to reach an agreement, that the negotiations are constructive, that unjustified delays are avoided and that the terms of the agreement be respected and complied with. In some countries, labour legislation outlines detailed requirements of what is expected from employers, employers' organizations and trade unions and may even deem the failure to meet these requirements an unfair labour practice. In others, while the legislation may not explicitly refer to the principle of good faith, it may encourage this through requirements to provide information necessary for negotiations.

Applies to all branches of economic activity

The Convention applies to workers and employers in all branches of economic activity. However, a member State may exclude the police and armed forces from its application. The Convention also acknowledges that the public service operates in special circumstances. Different approaches (or "special modalities") to collective bargaining can be applied to this group of workers and employers (see Box 2 and 3).

Changes in the world of work pose a number of challenges to the effective realization of the right to collective bargaining. The social partners are faced with finding ways through which collective bargaining can also apply to, and address, the needs of those in part-time and temporary employment – who tend to fall outside of its reach or who may be

Box 2.

Convention No. 154 and the Public Service

Convention No. 154 provides in Article 1 that the Convention applies to all branches of economic activity including the public service. The extent to which guarantees provided for in the Convention apply to the armed forces and the police may be determined by national laws or regulations and national practice (Article 1(2)).

As regards the public service, Article 1., paragraph 3 of the Convention refers to specific modalities of application for collective bargaining. These modalities can be fixed by national laws or regulations or national practice, specifically by means of collective agreements, arbitration awards or in other ways (Article 3, Convention No. 154). Special modalities could include:

- parliament or the competent budgetary authority setting upper or lower limits for wage negotiations, or establishing an overall budgetary package within which parties may negotiate monetary or standard-setting clauses;
- legislative provisions giving the financial authorities the right to participate in collective bargaining alongside the direct employer;
- harmonization of an agreed bargaining system with a statutory framework, as is found in many countries;
- the initial determination by the legislative authority of directives regarding the subjects that can be negotiated, at what levels collective bargaining should take place or who the negotiating parties may be. As noted, the determination of directives should be preceded by consultations with the organizations of public servants.

confronted with significant obstacles to its effective exercise. Through collective bargaining employers and/or their organizations and trade unions are also addressing a wider range of workplace issues, including job security, work organization, productivity incentives, equality of opportunity and treatment and other issues.[2]

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2 ILO: *Freedom of association in practice: Lessons learned, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, Report of the Director-General, International Labour Conference, 97th Session (Geneva, 2008). For the full text *see* ILO web site: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_096122.pdf

ILO: *Collective Bargaining: Negotiating for Social Justice: High-level Tripartite Meeting on Collective Bargaining International Labour Organization* (Geneva 2009). For the full text *see* ILO web site: http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_172415.pdf

Box 3.

Creating an enabling legal and institutional framework for collective bargaining in the public sector: the example of Uruguay

Uruguay has developed a legal and institutional framework conducive for collective bargaining in the public sector.

A Framework Agreement was concluded in July 2005 between the Executive and the trade union organizations which represent all the public sector employees through the Inter-Union Assembly of Workers-Workers' National Convention (PIT-CNT). This laid the foundations for collective bargaining in the public sector and led to the adoption of the Act No. 18508, in 2009. The Act extends collective bargaining rights to all employees in the public sector.

Collective bargaining in the public sector addresses a range of issues including: working conditions; health and hygiene; design and planning of training of employees in the civil service; career progression; proposals for the reform of the public sector; criteria of efficiency, effectiveness, quality and professionalism; relationships between employers and employees; and relationships between and within public agencies or organizations.

Collective bargaining in the public sector takes place under two distinct frameworks. The first framework covers the executive branch, autonomous and decentralised agencies carrying out the industrial and commercial activities of the State. It is comprised of three levels:

- **The general or highest level** negotiations are carried out in the Higher Council for Collective Bargaining for Public Sector Workers. The Council is composed of an equal number (eight) of representatives from four central government agencies (Ministry of Labour and Social Security, Ministry of Economic Affairs and Finance, Planning and Budget Office, and National Civil Service Office) and trade unions that are most representative of public employees at the national level.
- At the **level of sectoral or branch of activities** collective bargaining is carried out by an equal (eight) number of representatives from the four central government agencies composing the first level and delegates appointed by the organization representing public servants in the sector or branch concerned. In the case of autonomous bodies and decentralised services, negotiations may also include representatives of those institutions.
- At the **agency level**, bargaining involves trade union organizations and employer representatives from the bodies in question. Representatives from the government and trade unions as envisaged in the second level may also participate.

The Act provides broad autonomy on the issues to be negotiated at each level. Sectoral (second-tier) and agency (third-tier) level bargaining is conducted separately and deals with similar subjects within the broad framework established by the **Higher Council for Collective Bargaining**. Actual wage negotiations are carried out at the **sectoral or branch level**. Examples of agreements concluded at this level include: the agreement between Central Administration and non-commercial entities (2010); the wage agreement for the employees of the non-financial public enterprises (2011); and the collective agreement in the Official Financial Sector (2011, 2012). Negotiations at the **agency level** tend to deal with specific issues related to a specific Ministry or Directorate.

The second framework covers the legislature, the judiciary, the Administrative Court, the Electoral Court, the Court of Accounts, autonomous public education bodies and local government (town councils, departmental councils and elective autonomous local councils). Collective bargaining is conducted in accordance with specific criteria set out in the Constitution.

The Ministry of Labour and Social Security is responsible for the implementation of the Act and for coordinating, facilitating and promoting labour relations and collective bargaining in the public sector. It also provides conciliation and mediation services and is required to take measures to ensure compliance with agreements.

Since the new Act was adopted, most of the public sector, with the exception of few municipalities, is covered by collective agreements.

Adapted to national conditions

Because the measures to promote collective bargaining are to be adapted to national conditions, no one set of measures is required. The Convention can be applied in different national contexts and a variety of industrial relations systems. The Convention does not preclude collective bargaining within the framework of voluntary conciliation or arbitration procedures.

Collective bargaining progressively extended

The Convention states that collective bargaining should be progressively extended to all the matters set out in the Convention. The matters are as follows: determining working conditions and terms of employment; regulating relations between employers and workers; and regulating relations between employers or their organizations and workers' organizations. Ratifying the Convention, therefore, means that the machinery for promoting collective bargaining should at least apply to some of these areas initially and can be progressively extended to all of these areas over a reasonable period of time.

Ways of giving effect to the Convention

There are several ways to give effect to the Convention. The Convention may be applied through national laws or regulations, collective agreements, arbitration awards, or "any other manner as may be consistent with national practice". This is consistent with the central principle of the Convention: as far as possible, collective bargaining should be the province of the parties involved. Complementary measures set out in Recommendation No. 163 provide practical guidance for promoting collective bargaining (see Box 4.)

Box 4.

Ways of promoting collective bargaining: Recommendation No. 163

Recommendation No. 163 outlines in more detail measures that the Government and the parties might take to promote collective bargaining. As an initial matter, these measures should aim at creating a framework for objectively verifiable representation of workers and employers by the organizations that undertake collective bargaining and the empowerment of such organizations to engage in effective collective bargaining. The goal of such measures is to:

- facilitate the voluntary establishment and growth of free, independent and representative employers' and workers' organizations;
- ensure that such employers' and workers' organizations are recognized for the purposes of collective bargaining; and
- determine, where procedures for recognition exist, the organizations to be granted the right to bargain collectively on the basis of pre-established and objective criteria in respect of their representative character, established in consultation with representative employers' and workers' organizations.

In addition, the promotion of collective bargaining by government and the parties, as outlined in Recommendation No. 163 should involve measures adapted to national conditions to promote collective bargaining and provide for the independent resolution of labour disputes. The goal of such measures is to:

- allow collective bargaining to take place at any level, from single workplaces, the organization or firm, the occupation, the industry, or at the regional or national levels;
- ensure that both parties have access to the information required for meaningful negotiations;
- establish, if necessary, procedures for the settlement of labour disputes that help the parties find a solution to the dispute themselves.

As indicated in Recommendation No. 163, the parties to collective bargaining should also promote collective bargaining by:

- ensuring coordination between the various levels of bargaining, where collective bargaining occurs at multiple levels;
- ensuring that their negotiators have the opportunity to obtain appropriate training, including by requesting that public authorities assist in the provision of such training;
- ensuring that their negotiators have the necessary mandate to conduct and conclude negotiations.

Governments also play a key role in promoting collective bargaining through providing a legislative framework and establishing supportive institutions. This includes dispute resolution machinery that facilitates bargaining. Initiatives taken by a number of countries include the following:

- maintaining public databases on agreements concluded, thus providing a valuable source of information for the social partners;
- maintaining statistics on the number and type of collective agreements and their coverage;
- providing training on collective bargaining and dispute prevention and settlement;
- offering dispute resolution services by labour authorities; and
- providing information on the economic and social situation of the country and the branch of activity concerned.

Points to consider when ratifying and applying Convention No.154

Convention No. 154

- Is flexible and respects different traditions of collective bargaining.
- Acknowledges the potential need for a different approach in the public service.
- Provides practical means to promote collective bargaining.
- Respects the autonomy of the bargaining parties.
- Acknowledges the unique and important role of trade unions vis-à-vis other workers` representatives.
- Demonstrates government commitment to the effective realization of the right to collective bargaining.

The application of Convention No. 154 may

- Provide a way for workers to negotiate a fair share of productivity gains with due respect to the financial position of the enterprise or State.
- Promote collaborative efforts to raise productivity and improve conditions of work.
- Provide an effective means for addressing difficult issues jointly by identifying common interests.
- Promote dispute prevention and resolution through dialogue.
- Contribute to the better application of other Conventions, since many can be implemented through collective agreements.
- Promote a greater acceptance of change.
- Promote gender equality.
- Strengthen social dialogue.
- Promote sound industrial relations.
- Promote good governance.

Frequently asked questions

Are there different ways of promoting collective bargaining?

There are many ways to promote collective bargaining, as listed in Recommendation No. 163 (see Box 4). Convention No. 154 does not require all of these means to be used, nor any specific combination of them. Each country may decide, in consultation with the workers' and employers' organizations, which are the most appropriate measures to promote collective bargaining.

Must collective bargaining result in a collective agreement?

The aim of collective bargaining is to reach a collective agreement. However, the Convention addresses the process of bargaining and not the outcome. If bargaining is undertaken in good faith but an agreement cannot be reached, this still complies with the Convention.

Does application of the Convention require the enactment of a law?

Convention No. 154 can be applied through many different means. These include collective agreements, arbitration awards or any other manner consistent with national practice. Or it can be given effect by national laws or regulations. In undertaking to ratify the Convention, the Government should always examine the existing legal framework to ensure that collective bargaining is not hampered by the absence of rules, or by inadequate or unsuitable rules.

How can dispute settlement bodies and procedures contribute to the promotion of collective bargaining?

Dispute settlement procedures, such as conciliation and mediation, involve a neutral third party. This third party can help those involved in collective bargaining understand where they may have common

interests and to re-establish communications where negotiations have broken down. In this way parties can find a solution to the dispute themselves and continue the bargaining process.

Is ratification of Convention No. 98 a prerequisite to ratification of Convention No. 154?[3]

It is not a prerequisite, even though both Conventions address voluntary collective bargaining. Convention No. 98 is a fundamental Convention and one of the most widely ratified. It underlines not only a commitment to the promotion of voluntary collective bargaining, but also the protection of workers against discrimination. Free collective bargaining is only possible if there is protection against anti-union discrimination. For negotiations to be meaningful, they must take place in an environment where workers' and employers' organizations can express their views as independent and autonomous organizations. All member States, whether or not they have ratified Convention No. 98, are bound to respect the principle of freedom of association and the effective recognition of the right to collective bargaining, by virtue of ILO membership. The 1998 ILO Declaration on Fundamental Principles and Rights at Work reaffirms this. Once Convention No. 98 is ratified and applied, however, ratification of Convention No. 154 is made easier. Ratification of Convention No. 154 further demonstrates a government's commitment to effectively recognize the right to bargain collectively, and at the same time provides practical means of promoting it.

What is the difference between negotiation and consultation?

Convention No. 154 is aimed at collective negotiations. Negotiation means discussions between parties with a view to reaching a formal agreement. It goes beyond consultation which does not necessarily

3 For information on ratification of ILO Conventions *see* ILO web site: www.ilo.org/normlex

aim at an agreement. Consultation involves ensuring that the voices of those concerned on a matter are given due consideration before a decision is taken. Successful negotiation, however, means that the parties concerned become partners in a decision-making process on matters of common interest.

What is the reporting requirement?[4]

Ratifying countries need to report every 5 years on the measures taken, in law and in practice, to apply the Convention.

Is recognition of representative workers' and employers' organizations required?

Measures to ensure that representative organizations are recognized for the purpose of collective bargaining can be an important means of promoting collective bargaining. Recommendation No. 163 sets out various means of promoting collective bargaining, including the taking of measures so that representative workers' and employers' organizations are recognized for the purposes of collective bargaining. Recommendation No. 163 says that in countries where procedures for recognition are established, these should be based on pre-established and objective criteria with regard to the organizations' representative character established in consultation with representative employers' and workers' organizations.

Can a trade union be given exclusive bargaining rights?

Yes, if it is the most representative union, based on objective and pre-established criteria. However, where a distinction is made between the most representative trade unions and other trade unions, minority

4 For information on reporting requirements for countries ratifying ILO Conventions *see* ILO web site: www.ilo.org/normlex

unions should not be prevented from functioning and should have the right to make representations on behalf of their members and to represent them in individual grievances.

What are the rights of federations and confederations under the Convention?

Federations and confederations should be able to participate in negotiations and conclude collective agreements.

At what level should bargaining take place?

Parties to the collective bargaining should be able to choose the most appropriate levels at which collective bargaining takes place. Recommendation No. 163 says that measures adapted to national conditions should allow collective bargaining at any level whatsoever, including that of the "establishment, the undertaking, the branch of activity, the industry, or the regional or national levels".

How is the public service treated differently?

The Convention allows special modalities for the public service, fixed by national laws or regulations or national practice. Box 2 gives more details on this.

How can ratification of Convention No. 154 promote gender equality?

Ratification of Convention No. 154 demonstrates a commitment to collective bargaining and collective bargaining can be an important way to promote gender equality. Collective bargaining in many countries is a key means for determining terms and conditions of employment, including all aspects of gender equality at work. Equal pay, overtime, hours of work, maternity leave and family responsibilities, health and

the working environment and dignity at the workplace are all examples of issues for collective bargaining that could promote gender equality in the workplace. The issues for negotiation depend on what women themselves choose as priorities. For collective bargaining to be truly effective and equitable, the concerns of men and women must be understood and be given credence. Consultations with women and ensuring that women are represented on negotiation teams are good ways to do this.

What is the role of training in collective bargaining?

Appropriate training in negotiation skills and key bargaining issues can be essential for meaningful collective bargaining. Recommendation No. 163 recognizes the importance of such training, and states that measures should be taken by the parties so that negotiators have the opportunity to obtain appropriate training. At the request of workers' or employers' organizations, public authorities may provide assistance for training.

What information can be made available in the bargaining process?

Without a common base of information, it is difficult to have meaningful negotiations. Recommendation No. 163 stresses the importance of access to information. Measures adapted to national conditions can be taken so that the parties have access to information required for meaningful negotiations. This may include information on the economic and social situation of the negotiating unit and the undertaking as a whole. The public authorities should make available information on the overall economic and social situation of the country and the branch of activity concerned, as long as it is not prejudicial to the national interest.

How the ILO can help

The ILO can help constituents interested in the ratification and application of Convention No. 154. The ILO can:

- provide employers' and workers' organizations and governments with a better understanding of the substance of Convention No. 154 through promotional materials, workshops and discussions;
- conduct a review of law and practice in order to assess prospects for ratification and assist the constituents to develop a roadmap for ratification;
- provide technical assistance in establishing and strengthening the collective bargaining framework;
- help design and execute technical cooperation projects to strengthen collective bargaining;
- provide advice and assistance on measures that may be adopted to encourage and promote the full development of collective bargaining;
- give technical support to government officials for the purpose of ratification of Convention No. 154;
- help the Government meet its reporting requirements under the ILO Constitution;
- provide or help design training for workers' and employers' representatives in negotiation skills and issues for collective bargaining;
- provide information and training to help make collective bargaining more responsive to gender issues;
- share the ILO's international experience on the implementation of the Convention with member States.

Further information

International Labour Office publications

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International Labour Office websites:

Collective Bargaining and Labour Relations
www.ilo.org/collectivebargaining

International Labour Standards
www.ilo.org/normes

NORMLEX: online data base on international labour standards and their supervision:
www.ilo.org/normlex

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Texts of Convention No. 154 and Recommendation No. 163

Text of the Collective Bargaining Convention, 1981 (No. 154)

[...]

Part I. Scope and Definitions

Article 1

1. This Convention applies to all branches of economic activity.

2. The extent to which the guarantees provided for in this Convention apply to the armed forces and the police may be determined by national laws or regulations or national practice.

3. As regards the public service, special modalities of application of this Convention may be fixed by national laws or regulations or national practice.

Article 2

For the purpose of this Convention the term ***collective bargaining*** extends to all negotiations 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, for:

(a) determining working conditions and terms of employment; and/or

(b) regulating relations between employers and workers; and/or

(c) regulating relations between employers or their organisations and a workers' organisation or workers' organisations.

Article 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*** shall also extend, for the purpose of this Convention, to negotiations with these representatives.

2. Where, in pursuance of paragraph 1 of this Article, the term ***collective bargaining*** also includes negotiations with the workers' representatives referred to in that paragraph, appropriate measures shall be taken, wherever necessary, to ensure that the existence of these representatives is not used to undermine the position of the workers' organisations concerned.

Part II. Methods of Application

Article 4

The provisions of this Convention shall, in so far as they are not otherwise made effective by means of collective agreements, arbitration awards or in such other manner as may be consistent with national practice, be given effect by national laws or regulations.

Part III. Promotion of Collective Bargaining

Article 5

1. Measures adapted to national conditions shall be taken to promote collective bargaining.

2. The aims of the measures referred to in paragraph 1 of this Article shall 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 Convention;

(b) collective bargaining should be progressively extended to all matters covered by subparagraphs (a), (b) and (c) of Article 2 of this Convention;

(c) the establishment of rules of procedure agreed between employers' and workers' organisations should be encouraged;

(d) 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;

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

Article 6

The provisions of this Convention do not preclude the operation of industrial relations systems in which collective bargaining takes place within the framework of conciliation and/or arbitration machinery or institutions, in which machinery or institutions the parties to the collective bargaining process voluntarily participate.

Article 7

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

Article 8

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

[...]

Text of the Collective Bargaining Recommendation, 1981 (No. 163)

[...]

I. Methods of Application

1. 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.

II. Means of Promoting Collective Bargaining

2. 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.

3. 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 pre-established and objective criteria with regard to the organisations' representative character, established in consultation with representative employers' and workers' organisations.

4. (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, the branch of activity, the industry, 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.

5. (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 may 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 appropriate workers' or employers' organisation 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.

6. 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.

7. (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 on the economic and social situation of the negotiating unit and the undertaking as a whole, as is necessary for meaningful negotiations; where the disclosure of some of this information could be prejudicial to the undertaking, its communication may be made conditional upon a commitment that it would be regarded as confidential to the extent required; 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 overall 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.

8. 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.

[...]