The Americas: Social dialogue and current processes of economic and technological changes

Emilio Morgado
Working Paper № 146  
**Social dimension of globalization and integration processes**  
*J. Somaviá, A. Muñoz, M. C. Ferreira, P. Verge, M. Verea, T. Sala*

Working Paper № 147  
**Labour reforms and integration processes in the member states of the OAS: 1980-2000**  
*A. Ciudad*

Working Paper № 148  
**Labour Inspection within a modernized Labour Administration**  
*V. Jatobá*

Working Paper № 149  
**Labour Justice and alternative dispute resolution of collective and individual labour conflicts**  
*J. Sappia*

Working Paper № 150  
**Labour training policies in the OAS countries**  
*J.M. Rodríguez*

Working Paper № 151  
**Worker's unemployment protection systems in the OAS countries**  
*G. Rojas*

Working Paper № 152  
**The social and labour dimensions of globalization and integration process. Experience of CARICOM**  
*Mark, V. Oxman*

Working Paper № 153  
**The Americas: Social dialogue and current processes of economic and technological changes**  
*E. Morgado*
The Americas: Social dialogue and current processes of economic and technological changes

Funding provided by the United States Labour Department under Cooperation Agreement Nº E-9-K-1-0002.

REGIONAL OFFICE FOR THE AMERICAS
IACLM-ILO PROJECT
ILO
The Americas: Social dialogue and current processes of economic and technological changes
Lima, International Labour Office, 2002

ISBN 92-2-113202-1
ISSN 1020-3974

Also available in Spanish (América: El diálogo social y los actuales procesos de cambios económicos y tecnológicos) (ISBN 92-2-313202-9) and in both languages on the Website: www.oit.org.pe

Printed in Chile
PROLOG

This working paper is part of a series of publications that were the outcome of the activities carried out by The “Fundamental Principles and Rights at Work in the context of The XI Interamerican Conference of Labor Ministers of The OAS” Project. This Project was sponsored by The United States Department of Labor and executed by ILO’s Regional Office in close collaboration with its headquarters Declaration Infocus Program in Geneva. Mr. Luis Miguel Díaz, along with a team of collaborators, was responsible for the Project that was carried out in The Americas.

In this paper, the experienced jurist Emilio Morgado not only masterly tackles the context of this process, its main results, and the conditioning factors for social dialogue but he also introduces elements of reflection dealing with the depth and philosophy of the concept as an instrument for participation and social peace.

Due to the accelerated growth of technological advancement and the vertiginous increment of the economy’s globalization process with its different integration variants such as free trade agreements, investment agreements, etc., a growing perception of uncertainty has covered a vast sector of the world. This has hit hard, particularly, in the American continent, bringing about concerns and queries on whether these processes will increase inequalities, cause unemployment, and if they reduce employment quality.

However, without questioning the fact that technological advancement generally has a positive impact or the fact that trade growth is a source of development, and that globalization is a necessity, it becomes indispensable to render a wider understanding of these processes and their consequences at all levels. Doing so, will democratize the knowledge acquired, allowing different sectors of society stand up for their interests and points of view, that not always coincide.

What is more, in the business world, especially in small and medium size businesses, employers are increasingly pushed to create new development strategies or even sometimes mere survival strategies, when facing exacerbated competition. This becomes even more relevant under a scope where economies are opening up ever more, searching for greater productivity and competitiveness.

Under such scenarios, adaptation processes are under way in different countries and businesses. These processes look for a grater labor market flexibility along with having strategies such as: Joint-ventures, externalizing, reduction of work-posts, work done through the phone (work-phone), part-time jobs, employment for a specific job or task, and numerous other atypical forms of work contracts. Such issues generate wide, and sometimes difficult, debates amongst business and the work force, as well as, the policy makers of the country.

Under such scenario, the discussion on which set of strategies should be adopted to face these circumstances, acquired a capital worth. This includes the debate on labor reforms at a national, federal or state level, or at a branch/industrial or business level. Therefore, the development of social dialogue mechanisms has been explored in many countries, hence making the results that the American continent had extremely interesting as a case study.

The author encloses a detailed analysis of the issues, subjects and levels of the dialogue. He even tackles those that are at a supra-national level that globalization, integration and liberalization processes of trade bring forth. They have for example, also, come up in the Interamerican Conference of Labor Ministers held in Ottawa, in October, 2001, and at the same time have become part of declarations done by representatives of union and business organizations of the region.
To end with, the author links classical reflections with current restlessness by introducing crystal clear reflections that let integration and technological change processes go hand in hand with indispensable ethical elements that should guide them. Such elements in our field are drawn around the concept of a Decent Work. These elements along with others have been also stated by ILO’s General Director. They were widely endorsed and supported by all members of Ottawa’s 2001 Declaration and Plan of Action.

Cecilia Huneeus assisted in the Project and María Inés Opazo collaborated in the publishing process. The compiling and editing of the papers was carried out by consultants Mario Velásquez and Pablo Lazo.

Agustín Muñoz
ILO’s Regional Director for The Americas

Lima, June, 2002
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section I</th>
<th>PRELIMINARY CONCEPTUALIZATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>Current processes of economic and technological change. Productivity, and quality in the context of global competitiveness and their effects on labour</td>
</tr>
<tr>
<td>1.</td>
<td>Specific changes in the existence, coming into being and termination of the labour relation</td>
</tr>
<tr>
<td>2.</td>
<td>Specific changes in labour remuneration</td>
</tr>
<tr>
<td>B.</td>
<td>Social dialogue and its main expressions, projections and dimensions in predominantly heteronomous or autonomic democratic environments</td>
</tr>
<tr>
<td>C.</td>
<td>Objective and subjective factors that condition social dialogue</td>
</tr>
<tr>
<td>1.</td>
<td>Favorable subjects, participants, levels, procedures and environments</td>
</tr>
<tr>
<td>2.</td>
<td>Favorable attitudes, aptitudes and convictions</td>
</tr>
<tr>
<td>D.</td>
<td>Participation and social peace in democracy</td>
</tr>
<tr>
<td>1.</td>
<td>Social dialogue as a participatory instrument</td>
</tr>
<tr>
<td>2.</td>
<td>Social dialogue as a tool to preserve social peace</td>
</tr>
<tr>
<td>3.</td>
<td>Social peace and conflict</td>
</tr>
<tr>
<td>4.</td>
<td>“Animus et corpus” of social dialogue</td>
</tr>
</tbody>
</table>

# Section II

<table>
<thead>
<tr>
<th>PECULIARITIES OF SOCIAL DIALOGUE IN NATIONAL ADAPTATIONS TO THE PROCESSES OF GLOBALIZATION AND ECONOMIC AND TECHNOLOGICAL CHANGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
</tr>
<tr>
<td>1.</td>
</tr>
<tr>
<td>2.</td>
</tr>
<tr>
<td>B.</td>
</tr>
<tr>
<td>1.</td>
</tr>
<tr>
<td>2.</td>
</tr>
<tr>
<td>3.</td>
</tr>
</tbody>
</table>
C. Levels

1. National intersectoral dialogue
2. National sectoral dialogue
3. Social dialogue at the enterprise level
4. Social dialogue at the level of enterprise divisions
5. The case of small-medium-sized and micro-enterprises
6. Correspondence between levels, subjects and participants
7. Reflections on Latin American experiences with centralized dialogue

D. Social dialogue and national boundaries

1. Bilateral, multilateral and regional environments
2. Beyond national boundaries
3. Fundamental rights

E. Environments

1. Political and economic environments
2. Legal and institutional environments

Section III
SOCIAL DIALOGUE IN THE PUBLIC SECTOR

A. “Labourizing” labour relations in the public sector

1. “Labourizing” labour relations at public enterprises
2. “Labourizing” labour relations in the public administration

B. The impact of the processes of change on the work in the public sector

1. External entry flexibilization
2. External exit flexibility
3. Internal flexibilization

Section IV
CENTRALITY OF THE DIALOGUE

A. Social dialogue as an element of and point of reference for public policies
B. Performance and suitability of social dialogue
Section V
INSTITUTIONALIZATION OF SOCIAL DIALOGUE 66
A. Assigning responsibilities and creating institutions 68
B. Temporary, permanent, formal, informal, ‘ad hoc’ or multiple-competency organs or mechanisms? 68

Section VI
LABOUR MINISTRIES AND SOCIAL DIALOGUE 73
A. The central role of social dialogue in labour public policy 73
B. Tasks 73
   1. General tasks 73
   2. Tasks derived from the Declaration of Viña del Mar 74
   3. Tasks derived from the Decent Work Program 74
C. Means of action 75
   1. Studies and publications 76
   2. Dissemination and promotion 76
   3. Advice 76
   4. Training 76
   5. Support and follow up catalyst facilities 76
   6. Regulatory actions 76
   7. International technical cooperation 77

Conclusions 79
Bibliography 81
THE AMERICAS: SOCIAL DIALOGUE AND CURRENT PROCESSES OF ECONOMIC AND TECHNOLOGICAL CHANGES

Emilio Morgado*

Executive Summary

This Report consists of an Introduction and six Sections. In the Introduction, I highlight the principal approaches to social dialogue in the Americas since its inception in the first half of the 1940s to the present, emphasizing the current understanding of social dialogue as objective and tool, specially in the light of the Declaration of Viña del Mar and the Decent Work Program.

In Section I, I present some preliminary conceptualizations regarding, in particular, the current processes of economic and technological change, the requirements of productivity and quality imposed by global competitiveness and their effects on the initiation, continuance and termination of labour relations, and labour compensations (contracted work or service and agreed remuneration.) Additionally, I examine the principal manifestations, projections and dimensions of social dialogue in the context of democratic regimes whose labour relations systems are characterized by the prevalence of either heteronomy or collective autonomy in the determination of labour policies and standards.

Subsequently, I discuss the objective and subjective factors that condition the existence and efficacy of social dialogue: these are, on the one hand, the subjects, participants, levels, procedures and suitable environments, and on the other hand the proper attitudes, aptitudes and convictions.

I will end Section I by presenting some considerations about social dialogue as a tool for participation and social peace. I also offer some reflections on the coexistence of social peace and conflict, as well as the importance of the so-called *corpus et animus* of social dialogue.

In Section II, I address the special role of social dialogue in the Americas as a means of adjustment to the processes of globalization and economic and technological change. To this end, I separately review everything having to do with the subjects (the agenda of the dialogue and some recurrent matters such as hiring arrangements; working time; remuneration; work execution; industrial restructuring, mergers and property transfers; availability of rights and termination of the labour relation); the participants (representation and representativity; freedom, independence, autonomy and attitudes); national, intersectoral, sectoral and decentralized levels at the enterprise and the divisions of the enterprise. Subsequently, I provide some reflections on the situation of small-, medium-sized and micro-enterprises with respect to social dialogue and the required correspondence between levels, subjects and participants, as well as on certain profiles and deficiencies of centralized social dialogue that can be observed in Latin America.

Subsequently, I examine supranational issues, specially with regard to the bilateral, multilateral and regional scope of social dialogue.

Next, I examine the presence of social dialogue in the legal instruments of SICA, CAN, CARICOM, MERCOSUR, the NAFTA Agreement on Labour Cooperation, the Labour Cooperation Agreement appended to the Free Trade Treaty between Canada and Chile, ALCA and some national developments in the geographical area covered by those Treaties.

---

Labour Relations. Honorary President and former President of the Chilean Society of Labour Law and Social Security. Former Director of the Labour Lawyers Guild. Doctor Honoris Causa at the Université de Bordeaux.
I conclude this Section by analyzing social dialogue in relation to its transnational scope, fundamental labour rights and the political-economic and legal-institutional environments.

In Section III, I study social dialogue within the public sector, highlighting the “labourization” of relationships of work in public enterprises and the civil service, as well as the role played by social dialogue in the identification and management of the impacts of the processes of change in the public sector, particularly with regard to external entry and exit flexibilization, specially due to reductions of personnel and privatization. As far as internal flexibilization is concerned, I address the need for social dialogue to manage the consequences of policy changes in areas such as productivity, quality and remuneration.

In Section IV, I discuss the centrality of dialogue, both as part of and point of reference for public policies, along with its functionality and suitability.

In Section V, I address the institutionalization of dialogue, specially whether responsibilities should be assigned to existing institutions or whether new ones should be created, and the comparative advantages of employing temporary, permanent, formal, informal, general or specialized bodies or mechanisms.

In Section VI, I address the role of the Ministries of Labour vis-à-vis social dialogue by reviewing the centrality of dialogue in the area of labour public policy, as well as the tasks and means of action that the Ministries could undertake or strengthen, specially considering the commitments of the Declaration of Viña del Mar and those derived from the application of the Decent Work Program and the ILO Declaration on Labour Fundamental Principles and Rights at Work.

With respect to the means of action, I make particular reference to international technical cooperation in the light of the commitments that derive from the above mentioned international instruments.

In the Conclusions, I address the historical pertinence and efficacy of dialogue as an instrument and objective of public policy, as well as its present validity and usefulness in the quest for, and application of, consensual responses to major challenges and demands presented by current processes of change. Social dialogue may be a means to harmonize the irremissible duty to protect, with the exigencies and urgencies related to competitiveness, quality and productivity.

At the same time, I call attention to basic aspects regarding the objective and subjective factors that condition social dialogue, and emphasize the need for a legal and institutional framework that facilitates the application of results achieved so far through social dialogue.

In the Conclusions, I return to the need for, and feasibility, range and different forms of social dialogue, in relation to extensive economic and technological transformations.

I mention, in particular, the need to ensure that social dialogue does not pass over the needs and perspectives of those who are not part of the formal sector, and who toil under conditions of subordination and dependence.

Lastly, I make some suggestions for possible activities aimed at the promotion, support and follow-up of actions of the Ministries of Labour in the field of social dialogue, at the decentralized, sectoral, intersectoral, national and subregional levels.

Keeping in mind the nature and effects of social dialogue, I highlight its relevance, both in systems where collective autonomy prevails, as into heteronomous systems. I express particular interest in social dialogue as part of the implementation and defense of fundamental labour rights that have been declared, agreed upon and ensured by international Human Rights instruments issued by the UN, the OAS and the ILO.

I also argue that the legal efficacy of the results of dialogue must be ensured. This is necessary to strengthen social dialogue, rather than turn it into a source of frustration.

Hence, the goal is to help social dialogue take a central role in the formulation and implementation of public policies aimed at addressing the challenges, problems and pending questions linked to the profound economic and technological changes brought about by globalization that give rise, as it were, to a new “social question”.

By virtue of their nature and historical mission, the Ministries of Labour must take the lead with respect to the institutionalization, dissemination and improvement of social dialogue, which should be considered one of
their principal tasks and an instrument towards the formulation and application of labour public policy.

Admittedly, in order to facilitate the accomplishment of that mission, the Labour Ministries should have timely and effective access to appropriate international cooperation developed at the national, subregional and regional levels, which cooperation must count with proper facilities and coordination to strengthen its impact.

Introduction

Social dialogue and its possibly resulting cooperation have regained validity in a very significant part of the Americas. Since their inception in the 1930s, social dialogue and cooperation went through boom and bust periods, without ever disappearing from the political scene. As a matter of fact, they showed their vitality and usefulness at crucial stages of our institutional development. Although it is true that throughout its history of over 60 years, social dialogue has reflected a variety of motivations and has taken different forms, it is also true that, in general, it served its established purpose (Morgado, 1998-a).

The first tripartite social pacts were signed in Guatemala (1945), Mexico (1945) and Venezuela (1958), in response to specific political and social circumstances. Thus, in Guatemala, the Triangle of Escuintla brought together several social – not only labour - sectors to study proposals for the solution of economic and social problems which the government of President Juan Jose Arevalo wished to attend. In Mexico, a Worker-Industrial Pact sketched the labour component of the country’s postwar economic policy. This pact had been preceded in 1915 by a bipartite pact in which the Mexican Trade Unions rejected Huerta’s coup d’état, and the government committed itself to social areas such as wages and housing. In Venezuela, the so-called Pact of Punto Fijo, along with an agreement between labour and the entrepreneurial sector, facilitated the transition to democracy following the dictatorship of Marcos Perez Jimenez, by addressing issues such as the regulation of layoff and labour conflict resolution.

At a second stage (the 1970s), social pacts were mainly concerned with price and wage policies, as in the cases of Argentina and Mexico, among other countries.

In the decade that followed, the number of social pacts multiplied as did the number of countries that experimented with them. In general, those pacts, which concerned anti-inflationary and structural adjustment policies, gave rise to a variety of labour legislation reforms and buttressed policies of wage containment. Pacts of this kind were adopted in Brazil (1988), Colombia (1981), Mexico (1982 to 1989) and Venezuela (1989). But there were also agreements to consolidate incipient democracies (Honduras, 1985), guide democratic transitions as in the case of Uruguay (1985), and promote social dialogue (Dominican Republic, 1988).

The results of these efforts were uneven among countries and even within each country, due to the different circumstances under which they took place, the nature of the issues involved, the persons who participated and the levels at which activities were developed.

The search for consensual solutions to the great challenges and demands raised by economic and technological changes, along with the urgent need to widen, deepen and strengthen democracy, have left their mark on the orientation and content of social pacts since the beginning of the 1990s.

Therefore, it is hardly surprising that social dialogue is part of the objectives and the strategy of the Declaration of Viña del Mar (1998) and the Decent Work Program (1999), which comprises the ILO Declaration on Labour Fundamental Principles and Rights at Work and their Follow Up (1998).

The Declaration of Viña del Mar was adopted by the Inter-American Conference of Labour Ministers of the Organization of American States (OAS) on October 21, 1998, in Viña del Mar, following analysis of the following subjects: “economic globalization and its social dimension”, and “modernization of the State and the labour administration: Requirements and challenges”.

The Decent Work Program was adopted at the 87th Meeting of the International Labour Conference of the ILO, in June 1999, and the ILO Declaration on Labour Fundamental Principles and Rights at Work and their
Follow Up, was adopted at the 86th Meeting of the International Labour Conference of the ILO, in June, 1998.

**Social Dialogue in the Declaration of Viña del Mar**

Paragraph 8 of the Declaration states that the policies of the governments and Ministries of Labour assign priority to the following subjects: the role of the Ministries of Labour; employment and the labour market; professional training; labour relations and workers’ basic rights; social security; occupational safety and health; labour inspection; labour justice administration and social dialogue.

Therefore, social dialogue is part and parcel of policies acknowledged by the Ministers of Labour, who placed their deliberations in the context of “the guidelines and commitments agreed upon at the I and II Summits of Chiefs of State and Government of the Americas and their Plans of Action, the Declaration of Buenos Aires of October 1995, signed on the occasion of the X Inter-American Conference of Ministers of Labour, as well as the Declaration issued by the Conference in May, 1997, at a Meeting of Ministers of Trade held in Belo Horizonte”.

In that context, the Ministers repeated that, “in the context of the consolidation and strengthening of democracy, the fundamental ethical, social and political objectives that must guide the design and implementation of development policies, modernization and economic integration (…) are, on a priority basis, those that favor equality in social and economic development, and the eradication of poverty and all forms of discrimination; in other words, the objectives of equality and social justice”.

They also stated that “the policies that constitute the foundation for growth, necessary to achieve social development, (…) must be designed in such a way as to produce more and better quality jobs consistent with basic internationally recognized labour standards. This implies the generation of jobs that ensure workers economic and professional remuneration in accordance with their productivity, and offer them and their families opportunities for social and human progress, always considering the dignified role that work fulfills in our societies”.

The Ministers also indicated that these policies “shall be particularly concerned with initiatives aimed at improving the situation of those who are already employed, while also promoting the incorporation of those who seek employment, specially young starters, women, migrants, the disabled and other minorities or vulnerable groups; those who are affected by conversion of production and those who participate in informal and precarious sectors of the economy”.

At the same time, the Ministers emphasized that these policies “must be carried out in the framework of individual and collective labour regulations that guarantee, according to the actual conditions of each country, labour standards consistent with fundamental workers’ rights established by the International Labour Office (ILO), and reiterated in the ILO Declaration on Labour Fundamental Principles and Rights at Work and their Follow Up, adopted by the constituents of the ILO in June, 1998”.

The Ministers agreed to develop a Plan of Action in the framework of the Inter-American system of the OAS, through the creation of two Working Groups in charge of “Economic Globalization and its Social and Labour Dimension”, and “Modernization of the State and the Labour Administration: Requirements and Challenges” respectively, with the instruction to address the eight subjects identified in point 8 of the Declaration.

To this end, the OAS, in its capacity of Technical Secretariat of the Inter-American Conference of Labour Ministers, was requested to “consider providing the necessary institutional resources to facilitate the activities of the Working Groups, if necessary with possible cooperation by the national counterpart, and the participation of COSATE and CEATAL, the International Labour Office, the IDB, the United Nations Economic Commission for Latin America and the Caribbean (ECLAC) and other regional and subregional bodies”.

In accordance with the Declaration of Viña del Mar, social dialogue is one of the mechanisms available to the Ministries of Labour to fulfill their commitment to implement the Plan of Action that was designed to promote the objectives of said
Declaration in the areas of employment and the labour market, social security, the functions and tasks of the Ministries of Labour, and inspection of national labour and social security norms.

Which issues, according to the Declaration of Viña del Mar, should be submitted to social dialogue between the social actors and the Ministry of Labour? An analysis of the declarative and operative parts of the Declaration, as well as its Plan of Action, indicates the following:
- The identification of “new and innovative types of policies and procedures that respond to the new structures and functioning of the labour markets”.
- The identification of “successful experiences in terms of guaranteeing an adequate and fair correlation between workers’ income and their levels of productivity, quality and professional training”.
- The identification and conceptual, institutional and operative design of “professional training systems, programs and actions”, and promotion of public and private systems of labour orientation and information aimed at bringing together demand and supply in the labour market, as well as help workers to select appropriate training with a view to their reinsertion into the labour market; systems for the certification of professional qualifications should also be studied.

Conducting a study “about the possibility of establishing systems of economic assistance to the unemployed”.

Extending the scope of collective bargaining to the greatest possible number of economic sectors, “in order to reach stable agreements between employers and workers that favor cooperation in various matters pertaining to labour relations”, together with identifying the most effective procedures “that allow a majority of the workers and employers to have access to adequate collective bargaining about labour and employment conditions”. At the same time, “the implementation of certain forms of collective bargaining about labour and employment conditions in the public sector”.

- The promotion of workers’ and employer’s organizations “as an indispensable tool to achieve labour relations that are founded on equality between the parties”.
- The promotion of alternative means of labour conflicts resolution.
- The formulation of recommendations with respect to jurisdictional functions and labour procedure.
- Establishment and reinforcement of the most diverse environments of tripartite or bipartite social dialogue at the national, sectoral or territorial levels, as appropriate.
- Redefinition of social security or pension plans “on those aspects that are inadequate for newly emerging work regimes”, keeping in mind that “the growing expansion of temporary labour regimes, subcontracting, part-time, fin term arrangements and others, such as independent self-employment and micro-enterprises, do not match, in several aspects, the classic social security systems (…)”.
- Protection of migrants in issues of social security.
- Active participation of the Ministries of Labour “in the economic and social policy decisions of the governments”, and reinforcement of “their capacities to produce and process relevant empirical information on the labour world as a basis for policy making”, as well as their ongoing efforts to “become a recognized source of public information on labour relations, employment, labour markets, professional training, labour conditions, labour legislation, the labour aspects of integration policy and other equally relevant subjects”.

Cooperation with the Ministry of Labour “in calling various entities to social dialogue”, such as the social actors and the Government for its catalyst role, and in the promotion of areas and subjects that are open to economic, social and labour agreement (…).

Intensification of supervision by the labour inspection services to ensure compliance with national labour legislation and social security, -which constitute a basic factor in the context of international and regional integration-, and modernization of institutional design and
methodologies, emphasizing cooperation between employers, workers and public inspection agencies in the area of prevention, by instructing about labour legislation, forms of compliance and joint prevention programs”.

**Social dialogue in the context of the Decent Work Program**

In June 1999, in response to the first Report presented to the Labour Conference by Juan Somavia, the new Director General of the ILO, the Conference adopted the Decent Work Program, which is considered “one of the principal global demands in our era”. That program was born out of the recognition that the “primordial aim of the ILO is to promote opportunities to men and women to secure decent and productive work in freedom, equality, safety and human dignity”. Thus, four strategic objectives converge into this program: Promotion of labour fundamental principles and rights at work, employment, social protection and social dialogue.

Social dialogue is considered both end and means. It is an end because it implies participation and freedom of association. At the same time, “it is equally fertile for purposes of conflict resolution, social justice and the actual application of policy. It is the means by which to defend rights and promote employment and stable work, as well as a source of stability at all levels, from the enterprise to society at large”. That is why the above mentioned Report states that “tripartism and social dialogue are objectives in their own right that guarantee participation and democracy and contribute to the achievement of all other ILO strategic objectives”. Moreover, the Report declares that the new global economy “offers opportunities that are readily available to all, but that must be rooted in social institutions based on participation, in order to attain the legitimacy and permanency of economic and social policies”; thus, social dialogue is an indispensable element of the adjustment (ILO, 1999a).

In the Somavia Report, social dialogue is conceived as a manifestation of participation in the development process, whose key objective is to achieve equality in the allocation of required efforts and in the distribution of gained results. The goal is to give all workers—an in any kind of work and everywhere—free and egalitarian access to the exercise of fundamental rights at work; appropriate employment and remuneration; sufficient, effective and timely protection and social security, as well as social dialogue – tripartite and bipartite, centralized and decentralized, formal and informal, conducted by free, independent and properly equipped workers’ and employers’ organizations.

Furthermore, the Report states that the role of the State is to facilitate and promote all forms of social dialogue; to this end, it is indispensable to “respect the principles of freedom of association and facilitate collective bargaining (…)” (ILO, 1999a).

Moreover, in the Report to the 89th International Labour Conference, Juan Somavia, Director General of the ILO, emphasized the existing deficit of decent work and the need to “move from subsistence to existence”, underlining poor labour supply, inadequate social protection and deficiencies in the area of social dialogue (ILO, 2001).

With regard to social dialogue, the Report of the Director General holds that the “culture of dialogue is unevenly spread throughout the world”, adding that the existing gulf “reflects differences in terms of organization, institutions and often in attitudes too.” At the same time, the Report states that these differences derive from a worldwide “representation deficit” in the labour area. “Rural workers, domestic workers, small and micro-entrepreneurs, public sector workers and migrant workers face specific problems and hurdles. Obstacles to representation and dialogue are frequent at Industrial Free Zones, which concentrate worldwide about 27 million workers. Everywhere, both workers and employers in the informal economy are excluded from tripartite dialogue or are poorly represented (…)”.

On the same occasion, the Director General of the ILO stated that decent work is both a goal and a policy structure, a method to organize programs and activities and a platform for dialogue and association with other institutions. Besides indicating that decent work is rooted in the Declaration of Philadelphia, the Director General reiterated that social dialogue is an adequate instrument for creating positive responses to four questions about decent work: Can it be
universal? Is it accessible? Can it be consistent with current policies? Is it viable in a global economy?

Against this background, it may be argued that social dialogue, besides being one of the substantial objectives of decent work, is an appropriate means to accomplish the other three objectives. Therefore, the agenda for social dialogue should embrace, among others, the following subjects:

- Respect for and promotion and materialization of freedom of association and the effective recognition of collective bargaining; eradication of all forms of forced or compulsory work; effective eradication of child labour and elimination of discrimination in employment and occupation, in accordance with the ILO Declaration of the Fundamental Principles and Rights at Work, that was approved at the 86th Meeting of the International Labour Conference (ILO, 1999a).

- Interrelations between macro and microeconomic policies and employment, specially with regard to macroeconomic efficacy, work and employment; investment and labour markets; the impacts and adjustments associated with current changes in the productive systems and the labour markets; employment policy and programs and the size of enterprises; transnational enterprises; the restructuring of enterprises; increasing employment and productivity levels; professional education, training and employability, and the duration of the workday.

- Promotion of general access to income and jobs by eliminating inequality of women, young starters, the disabled and other special and vulnerable groups such as migrants in the current process of globalization and integration; access to employment services.

- Strengthening social protection and social security, including coordination between labour market policies and employment, with social security and protection policies, specially with regard to coverage, costs and financing; discrimination and exclusion; insurance for the unemployed, underemployed and laid off workers; social security at work, prevention and attendance to professional risk.

The renewed and reaffirmed need to recur to social dialogue must incorporate certain conceptualizations and peculiarities of national adjustments to the processes of economic globalization and technological change, specially in relation to subjects, participants, internal and supranational levels, and political, economic, legal and institutional environments. At the same time, it is necessary to consider the current situation within the public sector, in terms of the functionality and suitability of dialogue and its central role as point of reference for public policies; the institutionalization of social dialogue and its central role in public labour policy, and the tasks and means of action of the Ministries of Labour, including international technical cooperation and activities based on the Declaration of Viña del Mar and the Decent Work Program.
SECTION I

PRELIMINARY CONCEPTUALIZATIONS

A. Current processes of economic and technological change. Productivity and quality in the context of global competitiveness and their effects on labour

Although processes of change are hardly new, current changes, due to their intensity and speed are different and almost reorganize contemporary society and the relationships that are involved.

Without pretending to provide a comprehensive analysis of the origins, causes, expressions, effects and projections of these changes, we think it appropriate to point out that their character and dimension are even more important in an international context that is also undergoing a series of significant changes, both in terms of relationships and power structures, as a result of political changes during the last decades of the XX century, along with developments that are presently shaking the world.

No single assessment of these changes is possible for the time being. As is true for any radical process, its immediate and foreseeable effect is to give rise to a variety of paradoxes and uncertainties with positive and negative consequences, encouraging optimism and pessimism alike. To a certain extent, this effect is stronger when only short term effects are measured.

As a matter of fact, some changes have already settled. But it also true that it is not easy to predict with any certainty whether they will preserve their present form, and by what kind of changes they will be replaced or when this will happen. Given these uncertainties about uncertainties, the appropriate course of action seems to be to develop responses based on the analysis of currently valid situations that appear to be permanent.

From this point of view, we may say that current international economic relations make it necessary to acknowledge the new dimensions of competitiveness, productivity and quality. In turn, these new dimensions have induced changes in the systems and organization of production, the availability of and access to new technological resources, the structure and management of enterprises, the organization of work, the coming into being and extinction of labour relations, the place and time in which a task or service is to be provided, the shape and content of this task or service, and the remuneration that the employer should pay.

This is the changing environment in which the role of social dialogue, its nature, viability and efficacy must be considered.

The main effects of economic and technological change on work can be classified under two closely interrelated categories that help to make way for new changes and transformations.

One category contains the effects upon the labour relation per se: Its existence, coming into being and extinction. The other category contains the effects upon the labour relation between workers and employers; i.e. labour and its remuneration.

1. Specific changes in the existence, coming into being and termination of the labour relation

In the 1980s, the emergence of so-called atypical labour relations questioned in the Americas the continuity of so-called typical labour relations that are typically indefinite and imply working for a specific employer at the employer’s work site and under his/her direct supervision and control. The description of the tasks to be performed and required skills were relatively stable, since they were not subject to frequent changes nor required significant levels of autonomy for their execution. Labour training was mainly unidirectional and relatively circumscribed to the acquisition of specific knowledge and the development of certain skills. Meanwhile, remuneration was stable and not necessarily related to performance. The duration and distribution of working time were also relatively stable and uniform. There was relative employment stability and termination of the labour relation at the initiative of the employer was generally founded on
disciplinary grounds. Social protection against occupational hazard was usually secured through a social security system, essentially characterized by public management, a distributive system and a correlative intra- and inter-generational solidarity system. In turn, individual labour relations favored increased establishment and expansion of trade unions and collective bargaining.

Presently, there is a growing tendency to replace undetermined hiring by fix term or specific work contracts. Such temporary labour arrangements do not necessarily correspond to the nature of the contracted work, but to the operational requirements of the enterprise. Therefore, these temporary labour arrangements are losing their exceptional character.

The temporary nature of work is joined by the emergence and dissemination of numerous and diverse contractual arrangements meant to “foster employment”, specially for certain groups of workers, such as youths and women. For example, apprenticeship, probation and part-time arrangements have increased substantially in number.

Next to fix term contracts and contracts that promote access to the labour market, there are special arrangements in the case of new or expanding enterprises, as well as triangular agreements of intermediate subcontracting, branching, externalization, third party hiring, outsourcing and others, due to which workers do not provide their services to the employer who formally hired them, but to a third party, while the formal employer has a civil or commercial relationship with this third party who actually commissions the work in question.

Furthermore, the introduction of subcontracting arrangements with a company’s own workers has ‘delabourized’ the labour relationship.

So-called atypical relations continue to multiply and acquire highly diverse features through the constant creation of new variants.

Atypical relations usually weaken the links of subordination and dependency that characterize labour relations. Hence, the increase of so-called “gray areas” where the use of traditional means to identify the existence of a labour relation is less conclusive or effective. Therefore, one of the present tasks consists in updating the concepts of subordination and dependency and other factors that indicate the existence or non-existence of a labour relation.

Besides the above mentioned effects upon the existence and coming into being of a labour relation, current changes have strengthened the existing tendencies to facilitate termination of the labour relationship. Consequently, wherever dismissal for a cause is required, standards have been introduced to allow termination of the labour relation on the ground of the operational requirements of the enterprise. Additionally, there is a tendency to reduce the costs of termination.

2. Specific changes in labour remuneration

Contracted human labour is variable in terms of content, occasion, form and place. Since its content varies, the description of the tasks at hand is also variable and frequently embraces multiple functions. Thus, it is necessary to have access to workers who have or may acquire multiple skills.

Time wise, the duration and distribution of human labour does not respond to a constant pattern. The maximum duration and the beginning and end of the work day may vary, as well as the breaks throughout the day, the determination of working and non working days and the distribution of rest periods. All these factors give rise to broad and flexible criteria for the duration of work.

Human labour can be carried out by autonomous or semiautonomous groups or teams who plan and conduct their own work, which reduces or transforms managerial, technical and disciplinary functions.

Likewise, human labour may be carried out at work sites other than the employer’s, such as at the worker’s home, which normally entails an increased level of autonomy in terms of its development and the coming into being of new types of labour relations; i.e. telework.

At the same time, both direct and indirect remuneration tend to diversify and be cut to the size of each individual person. Payment has also become more closely related to productivity. Moreover, individualized components are sometimes added, in the form of a share in the benefits that are generated by the high productivity and quality work
performed by the worker. In these schemes, performance, rather than seniority, is the principal factor for determining total remuneration.

**B. Social dialogue and its main expressions, projections and dimensions in predominantly heteronomous or autonomic democratic environments**

Social dialogue may be tripartite or bipartite and take different forms, both at the centralized and decentralized levels. In a broad sense, it involves “negotiations and consultations that take place throughout society, at the national, sectoral or enterprise level”. In a restricted sense, “social dialogue is a process carried out at a relatively high level (….) not including, therefore, dialogue within an enterprise or at the work site”. While some consider that social dialogue is inherent to relationships of cooperation, others relate it rather to conflictive relationships (Osaky and Rueda, 2000).

Participants in a joint ILO and EU meeting devoted to the promotion of social dialogue in the Caribbean area, held that this institution “embraces all kinds of negotiations, consultations or exchanges of information between government representatives, employers and workers, over issues of common interest related to social and economic policy” (Greaves, 2000).

We understand social dialogue to be a formal or informal, permanent or temporary process that may lead to the adoption of agreements on matters determined by the parties. In this sense, it is a dialogue that tends towards compromise, without excluding the possibility of conflict. Thus, social dialogue’s first priority is to achieve agreement through mutual concessions that are specified and evaluated through exchange of arguments and pressure in support of the different interests of the parties involved. While its more notorious and, to a certain extent, more desirable manifestations have been at the centralized level, decentralized manifestations usually prevail in decentralized systems of labour relations (Morgado, 1998a).

It is safe to say that social dialogue is not only a desirable institution in democratic societies, but also a widely accepted one. However, it differs in form, influence and dimensions, not only among different countries, but within a single country as well, depending on the characteristics of their social evolution, the composition of their leadership and the diverse nature of different economic and professional activities.

As far as the subject of this paper is concerned, it must be determined whether a certain system of labour relations and its corresponding subsystems shows any prevailing tendency towards heteronomous or rather autonomous determination of decisions aimed at dealing with the labour issues in the processes of change. In the former, decisions are mostly made by third parties, rather than by the parties to the labour relation. In the latter, decisions are made mostly by the parties directly involved in the labour relation. To a great extent, the scope and depth of social dialogue are influenced by the degree of heteronomous or autonomous decision making.

To be sure, no fully heteronomous or autonomous systems exist, since both extremes are in some way present in each system or subsystem. Social dialogue may insert and manifest itself more easily in more autonomous systems. But this preference does not exclude its presence in more dominantly heteronomous systems. On the contrary, in these systems, social dialogue may enrich decision making and enhance its efficiency.

**C. Objective and subjective factors that condition social dialogue**

Social dialogue depends on the presence of objective and subjective factors that make possible and ensure its effectiveness. These factors are interdependent and influence each other reciprocally. Therefore, the absence or insufficient presence of any of them weakens the existence and efficiency of the dialogue.

Social dialogue, in order to function properly, must involve suitable issues, the proper participants, at the right levels and using adequate procedures. The various institutional, political and economic environments must also be favorable.

Yet, the success of social dialogue also depends on the existence of three principal subjective factors: a) attitudes, aptitudes and
convictions that are favorable to dialogue; b) perception of the necessity, convenience, viability and effectiveness of dialogue, and, c) good faith and mutual confidence, including the intention of making reciprocal concessions to achieve enforceable agreements.

1. Favorable subjects, participants, levels, procedures and environments.

There is no doubt that the determination of the subjects is the first step of the social dialogue. Therefore, the first agreement among the parties should address the matters that are on the agenda.

Dialogue entails the intention to negotiate and, if possible, to reach agreements. Consequently, both the agreements and their contents are possible but not mandatory outputs of the dialogue. Thus, if the parties do not accept the obligation to agree upon one or more subjects, the incorporation of these subjects into the agenda does not necessarily mean that an agreement must be reached or that any agreement will strictly match the initial proposition.

To ensure the effectiveness of the dialogue, the individuals must have social legitimacy, be representative and properly empowered to negotiate and forge agreements. Their formal and legal existence is not enough; i.e. it is indispensable that the validity of their participation be recognized by their constituents and the rest of the participants in the dialogue.

It is important to take into account that the determination of the representatives of a group of workers acquires special characteristics when two or more trade unions claim to represent the workers, or when non-unionized groups clash among themselves or with union organizations over the representation of the same labour segment.

As for the level at which the dialogue should be organized, this depends on the nature of the subject matter on the agenda and the participating individuals. Therefore, there is no single and exclusive preference for a certain level at which dialogue should be conducted. On the contrary, social dialogue will be more effective to the extent that it takes place at different levels, in accordance with the nature of the pertinent subject matter.

Therefore, dialogue should be conducted at the most appropriate level. However, the lack of rigid, pre-established levels may result in social dialogue at more than one level. Under these conditions, it is necessary to clearly define their correlation, agreements, coordination and cooperation, in order to avoid a ‘waterfall’ of negotiations about the same question. This effect, perhaps unwanted and unsought for at the beginning, seriously obstructs participation in social dialogue, due to the insecurity and uncertainty that may affect the parties.

The rules of procedure should be flexible and avoid rigid routines, stages, deadlines, recourses and means of action. On the contrary, procedures should be adapted to the nature of the subjects, participants and levels at which dialogue is conducted. Since it is hardly possible to determine all these issues before the dialogue has started, the parties to the process should themselves agree upon the procedures they wish to abide by. This is why heteronomous provisions that regulate the procedure should deal only with its general aspects, establishing certain guarantees to make sure that the dialogue will take place under fair conditions for all the parties, be respectful of their independence and autonomy and facilitate the reaching of agreements.

The presence and efficiency of the previously described objective factors are enhanced or decreased to the extent that social dialogue is carried out in positive or negative political, economic and institutional environments.

Positive environments include institutions and labour relation practices that favor dialogue and seek prevention and peaceful resolution of conflicts; the existence of conditions and political instances conducive to social participation in democracy and respect for pluralism, as well as economic conditions favorable to dialogue, adoption of compromises and enforcement of agreements.

2. Favorable attitudes, aptitudes and convictions

Those who participate directly in social dialogue must be tolerant, meaning that they accept diversity, value dialogue as a means to understand other people’s perspectives and
missions, and must be determined to promote transactions through agreements in which each party makes concessions that are deemed fair and equivalent.

This favorable disposition to dialogue must be accompanied by the necessary aptitudes. The parties must have access to information and knowledge conducive to a balanced, informed and technical dialogue.

These features should be complemented by a conviction that dialogue is the proper course, as opposed to authoritarian, paternalistic, intolerant or disrespectful positions.

In short, participants in the social dialogue must be convinced of the advantages of this process over unilateral imposition or cooptation, and be determined to give preference to dialogue. For these reasons, the decision to join in the dialogue responds to the conviction that objectives which the participants deem necessary generate more support and loyalty than imposed objectives, while the agreements thus reached are more likely to be stable.

D. Participation and social peace in democracy

1. Social dialogue as a participatory instrument

Participation exists at all levels of decision making: assigning priorities to subjects of present or foreseeable collective interest which give rise to a variety of possible actions; the analysis of the proper means of action for a certain activity; the choice between different courses of action; enforcement of compliance with a decision. Participation also implies enjoying the results of one’s actions, evaluating whatever has been decided, carried out and distributed, and taking measures to enhance the corresponding positive aspects and lessons or eliminate the negative consequences.

Hence, participation may take place at one or more stages of management in macro and micro-social environments.

Taking into account that participation entails the intervention of two or more individuals, participation implies dialogue.

Participation does not relieve government agents from the obligation to make and enforce decisions, should the participatory processes fail. In other terms, a fruitless participatory dialogue can not and must not weaken the function and obligations of government.

However, even if dialogue should fail, it should not be discarded as a democratic participatory tool, if the initial decision to recur to participatory dialogue responded to the recognition of its desirability, convenience and necessity. On the contrary, each failure or poor result must lead to a decision to remove obstacles and other intervening factors. In this respect, any dialogue, including unsuccessful ones, is a recommendable and useful learning experience.

2. Social dialogue as a tool to preserve social peace

To engage in dialogue is to try to reach agreements that prevent open conflict or resolve already existing conflicts. From this point of view, dialogue aims to substitute existing conflictive relations by relations of cooperation, which help to extend and deepen, instead of obstruct, social peace.

Thus, social peace requires the prevalence of dialogue-based relations over conflict relations. The former reduce, what is often called, the “country’s risk”, while favoring a positive “country image”. Both conditions acquire greater importance in our current global society, to the extent that the growing effectiveness of social dialogue will heighten the country’s competitiveness by increasing comparative advantages derived from the “country’s image”.

This ‘external’ dimension is clearly related to the ‘internal’ dimension of social relations, that form the basis for increased growth with equity, promoted, achieved and monitored with the direct participation of the social agents.

On this issue, Juan Somavia, the Director General of the ILO, stated in his Report to the XIV Regional Meeting of the Member States of the ILO in the Americas, that social dialogue, specially tripartite social dialogue (…) “is the foundation of future stability. If we fail to engage in dialogue, we will have to face increasingly evident truths: unstable societies
do not attract stable investments, and there can be no long term economic efficiency without social efficiency. The legitimacy of democracy and open economies will not last over time if their benefits are unequally distributed. We have to find solutions that gradually extend the advantages of freedom and modernization to all citizens. Social exclusion is bad company for democracy. Hence, the importance of social dialogue (...) and respect for the opinions of others in our continent”.

Therefore, I have no doubt that social dialogue will be one of the central foundations of social stability, while tripartism “is destined to become the social anchor of our societies” (ILO, 1999b).

3. Social peace and conflict

Peace is not just the absence or cessation of conflict between individuals or different groups, nor just the calm and quiet after a conflict has ended. Peace is not just the aftermath of wars, conflicts and violence generated by disturbances and contrary passions. Peace can not be reduced to a state of tranquility that does not disturb nor offend, thanks to being permitted and approved by the counterparts.

In other terms, peace is not a value whose existence is determined in opposition to negative values such as war, conflict and violence. Peace is the active value of rebuilding and recomposing relations between individuals and groups. As a matter of fact, the value of peace is a condition for harmonious living. In this sense, peace is not just reactive, but also –and perhaps essentially- an active creator of bodies and arrangements that consolidate and strengthen peace. Being able to live and develop in peace is more than merely living without conflicts.

Moreover, peace does not imply the absence of conflicts, but the prevalence of peace over conflict. At the same time, it entails the existence of peaceful methods to prevent and resolve conflicts and avoid, as much as possible, any recourse to physical and psychological violence in all its forms. Hence, peace is a decision not to use direct actions founded on force. Thus, peace is the human disposition to prefer a properly regulated compromise. In other words, peace does not suppress conflict, but regulates, organizes, anticipates and resolves conflict.

“Active peace” tends towards a more perfect and suitable social life that promotes other values, such as access to and enjoyment of freedom, equality, fraternity and justice.

From this perspective, the value of social dialogue augments to the extent that it leads to the formation and consolidation of consensus and the adoption of social agreements. These consensus and agreements reflect the existence of basic compromises around socially desirable ends, the means to achieve them, general and specific issues of interest, individuals that represent diverse interests, evaluation and review procedures and administrative and supportive institutions.

Even social dialogue that fails to produce agreements paves the way towards future accords, heightens the degree of consensus within society and therefore reduces dissent.

By definition, democracy admits and requires consensus and dissent. Both are represented and expressed in a variety of ways, depending on the conditions of the countries and the moment in time. The quest for appropriate levels of consensus facilitates the consolidation of greater stability, increases the degree of cohesiveness and reduces marginalizing and excluding differences.

To reach consensus, one must take account of both favorable and obstructive factors, such as the nature of leadership, the mechanisms of socialization, ideologies, predominant visions and political, social, economic and technological change.

Equally, it forces one to keep in mind that “the system of labour relations exists, due to the fact that conflict is inherent to our society and acquires a specific form when originating in the context of subordinate work or a relationship of dependence. The central task of the labour relations system consists in regulating social and labour conflicts. Therefore, its effectiveness should be measured by its capacity to inspire credibility and confidence on the part of the actors” (Bronstein, 1997a).

4. “Animus et corpus” of social dialogue

The previously mentioned subjective and objective factors that condition dialogue and
the quest for consensus and concerted agreements constitute the ‘animus et corpus’ of concert seeking social dialogue.

Any policy aimed at favoring dialogue must contemplate which measures to adopt to promote at least the following factors:

- Acceptance of diversity and pluralism as necessary goods in a democratic society that privileges freedom of conscience and religion, tolerance and respect of the rights of all peoples.
- Understanding of the favorable conditions for social dialogue but also of undesirable or improper uses of dialogue, as when social dialogue is used as a tool for procrastination, when dialogue is transformed into an instrument for imposing decisions, or manipulated to simulate non-existing agreements.

Use of social dialogue as a pedagogical instrument for the social agents even under circumstances that prevent or impair its success. Dialogue is valuable per se, even when it does not result in consensus. Dialogue teaches the parties to understand each other, learn about their projects and visions, appreciate their values and strengthens future dialogues.

- Promotion and recognition of the autonomy and representativity of the social agents. In other words, a deliberate quest to extend the autonomy of the parties, in particular their collective autonomy, which reduces the need to recur to heteronomous decisions. Sometimes, autonomy may be secured through heteronomous regulations, which could be described as interventions in order not to intervene.
- Installation and functioning of the appropriate institutional mechanisms that promote and facilitate dialogue, support the participating parties and resolve possible disagreements in the course of the dialogue or the application of its outcome.
- Evaluation of social environments in order to remove or reduce those aspects that hamper or restrict the effectiveness of dialogue.
SECTION II
PECULIARITIES OF SOCIAL DIALOGUE IN NATIONAL ADAPTATIONS TO THE PROCESSES OF GLOBALIZATION AND ECONOMIC AND TECHNOLOGICAL CHANGE

Without claiming to fully cover the broad and growing repertoire of social dialogue practices carried out in the Americas in connection with current processes of change, we will discuss some of them and the particular way in which they addressed the subjects that were discussed, the participating agents and the level at which the process was conducted. To this end, we will review certain experiences conducted in the Americas since 1990, although some of them derive from or are related to earlier experiences.

A. Subjects

The nature of the changes related to globalization and technological transformation, the speed at which they are replaced by new changes and their generally unpredictable character, have generated new needs and challenges; they call for a review of the objectives, means and procedures of the existing institutions and, consequently, an evaluation of the suitability of the proposed or imposed replacements.

One of the ways of harmonizing labour and economic institutions is to reform labour regulations. In fact, the reform of Labour Codes, in which social subjects historically participate, directly or indirectly, creates an opportunity for social dialogue basically centered on the decision whether to give preeminence to stability or rather to flexibility in labour relations.

Those dialogues have become the occasion for a joint attempt to coordinate both objectives, avoiding extreme deregulation in terms of unlimited flexibilization, while avoiding excessive rigidity, without loosing sight of the protective nature of the labour legislation. In other words, social dialogue has contributed to avoid both extremes and achieve certain objectives that are related to the social and economic effects and conditions of economic and technological change.

A case in point in this respect is a tripartite agreement reached in the Dominican Republic resulting in the New Labour Code, adopted by Congress in 1992. The new Code “shields groups so far unprotected, such as non-manual employees working for official autonomous bodies and others who toil at small rural establishments. Regarding individual contracts, the new Code extends the duration of the advance notice and the ceiling of compensation for termination of the contract, payment of bonuses for overtime and vacation allowances; the new Code also derogates norms that prohibited women to perform night and underground work. Other provisions improved the protection of freedom of association, actualized pre-existing penalties on account of violations of labour law and improve the effectiveness of punitive sanctions of labour law violations” (Bronstein, 1997b).

1. The agenda for dialogue

The agenda for dialogue tends to incorporate new issues, including those related to the commitment to engage in dialogue.

As a result of certain clauses in collective agreements in the United States, part-time work in this country has increased from 18.4% of total employment in 1983 to 16.9% in 1990, and 18.6 in 1995. In the same period, part-time work in Canada amounted to, respectively, 16.8%, 17.0% and 18.6% of total employment. On the other hand, temporary work in the United States represented 0.8% in 1990 and 2.2% in 1995; meanwhile, the figures for Canada were 7.5% (1990) and 8.8% in 1995.

With respect to employed women, part-time work represented in the United States 25.2% in 1990 and 26.9% in 1996 of total female employment. In the same period, the percentages of women and men working on a part-time basis, vis-à-vis the total of employed men and women were as follows: 26.8% - 28.9% for men and 9.1%-10.7% for women (ILO, 1999).

In Costa Rica, the Forum of Concerted Action dealt with a variety of subjects in
special reports that reviewed the conclusions of dialogues carried out by commissions in charge of studying a great variety of subjects. Among them, we will highlight the following four aspects: a) The future of the insurance market, including the privatization of the National Insurance Institute; automobile insurance and insurance coverage of crops and labour hazards; b) Rural development, in particular the reorganization of this sector to support social structures, and the decentralization of power through concerted action and participation at the local and regional levels; attendance of problems generated by poverty, particularly extreme poverty, and unemployment; improvement of purchasing power of the population; school attendance and education; health and exclusion of the rural population from benefits related to globalization and technological development; c) The Fund for Social Development and Family Allowances, with special attention to the fight against poverty and improvement of standards of living of the population; generation of more and better employment opportunities and remuneration; improvement of human capital to facilitate access to the labour market; appropriate care of existing needs in the areas of health, education and social security, effective allocation of resources, and, d) Reform of the National Pension System, aimed at overcoming the main problems of the present system in terms of coverage, growing costs, limited capitalization and management performance, along with problems derived from the structure of the population and present social and labour conditions.

In order to face these problems, a number of propositions were advanced, such as universalization of the non-contributive regime; extending incorporation to independent workers, improving the administration and equity of the regime, as well as the sustainability of the system through the adoption of some of the proposed models, such as individual capitalization or multiple source model (Costa Rica, 1998).

Starting in November 1998, the over a hundred and fifty issues that were subject of those agreements were organized in Executive Decrees, Directives and projects. It should be noted that not all these agreements were adopted by consensus. Some of them were passed on the basis of majority votes, such as in the case of the liberalization of telecommunications and insurance markets. The failure to distinguish between consensual agreements and accords adopted by majority votes had the effect of truncating the dialogue process (Rojas, 2001).

In Honduras, a variety of social dialogues have been conducted on different subjects. Among these was a failed intent to reform the Labour Code; however, the parties signed Rules of Procedure that will allow them to resume negotiations and dialogue.

On the other hand, the constitution of the National Convergence Forum (FONAC) was successful; this established a “National Project” to match the Strategy of Sustainable Human Development that was approved as a regional alliance at the 1994 Central American Summit, and which provided the foundations for the Central America Treaty of Democratic Security. The role of the Forum is to maintain constant dialogue between society and the State, under the premise of interdependence between participating social agents. In accordance with a decision made by its General Assembly, FONAC assigned priority to the following subjects: Strengthening social organizations; fight against poverty; women and national development; reform of the educational system; citizens and property; mediation and political concert; agrarian reform; forestry reform and environmental reform.

Organized professionals in the health and education sectors have established bipartite dialogues with the Government or other public services, and were successful in promoting the adoption of statutes to regulate the relations of these groups with the Government, the private sector and the users of their services, specially in the area of wages and professional fees.

In the aftermath of hurricane Mitch, the Government, the private sector and the trade union federations signed an agreement to suspend ongoing negotiations over a new minimum wage and the right to enjoy a three-day holiday. Under normal conditions, increase of minimum wage is the usual subject of negotiations in Honduras. If dialogue fails to forge a bilateral agreement on this issue, the decision is left to the Government.

On the other hand, amendments to the law of Social Security were the object of tripartite
consultations, but the lack of solid agreements opened the door to legal actions based on presumed unconstitutionality.

Lastly, several sectors have expressed the view that governmental commitments to international financial organizations should be subjected to social dialogue.

2. Some recurrent subjects

a) Hiring arrangements

In Argentina, on February 28, 1995, the total accumulated number of modal contracts of youths, duly approved by collective agreement, amounted to 7,357 work/training contracts and 7,838 probation contracts; most of these in the years 1993 and 1994 and mostly concentrated in the tertiary sector and telecommunications (RELASUR, 8).

On the other hand, in accordance with a tripartite accord achieved by a Frame Agreement on Employment, Productivity and Social Equity (July, 1994), Law 24.465 was adopted on 15 March, 1995 to amend the Statute of Labour Contracts with regard to the probation period, part-time contracts, apprenticeship contracts and modal contracts for workers over 40 years of age, the disabled and veterans of the Falklands War.

The main changes were the following:

- Probation period

Labour contracts for indefinite period of time will be preceded by a probation period of three months, that may be extended to six months by means of collective agreement. In both cases, a worker cannot be hired more than once on probation by the same employer. During the probation period, any party may terminate the labour relation without cause or right to severance damages.

Meanwhile, the following rules will apply throughout this period: a) the worker will enjoy the rights and duties of the category or job that he performs, including union rights; b) both employers and workers are only obliged to pay their contributions to welfare institutions and family insurance, but not any other social security contributions; c) workers will be entitled to accident or occupational hazard benefits (without fault) and, d) if the contract continues in force following the probation period, the probation period will be counted as labour time for all labour and social security effects.

The law also permitted collective contracts to limit probation contracts to a certain percentage, and give priority access to the worker on probation in case the effective work force is expanded.

- Part-time contract

This type of contract is defined as an instrument by which workers commit themselves to provide their services during a certain number of hours per day, week or month, but less than two thirds of the regular working hours of the enterprise. The remuneration shall not be less than proportional to the remuneration of a full-time worker of the same category or job. Similarly, contributions to social security and other due contributions are proportionate to the worker’s remuneration and accumulate in the case of several part-time jobs. In such a case, the worker is free to choose the institution to which he belongs.

All aspects related to social security and welfare institutions shall be determined by statute. On the other hand, these workers shall not work overtime, except when authorized by law.

Lastly, collective contracts may provide that part-time workers shall be given priority to fill vacancies in the enterprise.

- Contract of apprenticeship

The contract of apprenticeship is defined as a special relation between an entrepreneur and an unemployed youth, subject to the following regulations: a) the contract shall have a minimum duration of three months and a maximum duration of twenty-four months; b) parties to this contract may be unemployed youths of 14 to 25 years of age and entrepreneurs that are registered at the Labour Ministry; c) in all cases, the entrepreneurs shall commit themselves to meet the corresponding training needs under the regime that is approved by the labour authority. The latter shall establish mechanisms to guarantee the apprentice adequate health coverage; d) the apprentice shall earn a remuneration equal to
the minimum wage applicable by collective contract to the job. This remuneration shall not be less than the minimum hourly wage for each hour of apprenticeship; e) the apprentice shall be covered against any risks that he/she may suffer at the work place during his/her apprenticeship; f) the entrepreneur shall provide the apprentice a certificate crediting his/her experience or acquired skills, and, g) the negotiation commissions of collective contracts shall establish maximum percentages of the total permanent work force that may be hired under these contracts, in accordance with established criteria.

- Modal contract for workers over 40, the disabled and Veterans of the Falklands War

This contract must be in writing, be registered before the Labour authority, for a minimum period of six months and a maximum period of two years. The employers shall be exempted of 50% of contributions to the social security system, to the exclusion of welfare institutions. The Executive Branch may suppress or modify these exemptions on a general basis or for certain areas, activities or categories of beneficiaries. The fact of being disabled or being a Veteran of the Falklands War must be accredited by means of a certificate provided by the competent authority. Lastly, the percentage of workers hired under this modality shall not exceed 10% of the total occupied work force, except in legally authorized special cases.

b) Working hours

While the last two years showed a tendency to reduce working hours as a form of creating employment, there is also a tendency to flexibilize the distribution of working hours over longer periods than the usual workday or workweek. The most obvious of these tendencies consists in the calculation of working hours on a yearly basis, and their redistribution depending on demand. This arrangement has given rise to a kind of credit of working hours that the employer may draw from, up to the maximum amount of legal hours in the corresponding reference period (weeks, fortnights, months, year).

Agreements on flexibility tend to distribute working hours on non-working days. Besides, this kind of flexibility avoids payment of overtime compensation as long as the corresponding reference period does not exceed the maximum number of legal hours.

Studies conducted on this subject in Argentina reveal that collective bargaining was used to establish annualized working time at the following automobile plants: Chrysler, (2.080 hours), General Motors, (2.138 hours) and Toyota, (2.133 hours). At the same time, Metrogas S.A. established periods of three to four non-working days for each four working days. Both arrangements did not violate the 1991 Labour Contract Law, which authorized agreements about certain rights with respect to work hours and rest periods.

In Venezuela, the law authorizes Unions and employers alike to agree upon the distribution of working hours. Likewise, the law also establishes that overtime need not be paid if the average number of hours worked every two months does not exceed 44 hours per week (ILO, 1999).

In Barbados, the law authorizes collective bargaining about the practical application of the right to receive remuneration on non-working days (ILO, 1999).

c) Wages

- Wages and productivity

Presently, wage levels take productivity into account. Moreover, bonuses and special allowances encourage and award increased productivity.

While there is no discussion that wage raises must be proportionate to the percentage of productivity increase to avoid macroeconomic unbalance, there is also consensus to the effect that there are many obstacles in the way of a fair regulation of productivity-related wages.

For a start, it is not easy to identify the factors that determine the existence of a given level of productivity, a given level of wages and the percentile relation between them. Problems also arise with respect to the selection of the appropriate method to measure productivity and the point of reference: the country, a sector, a branch, an enterprise, a plant, a section, a working team or the
individual worker? Lastly, it is problematic to determine each person’s share in the productivity increase.

In December 1994, a Tripartite Social Pact on Productivity, Prizes and Wages was signed in Colombia by representatives of the Government (the Ministry of Economic Development, who headed the process), the Ministers of Labour and Social Security, Finance and Public Credit, Agriculture and Social Development, Mining and Energy, Transport and the Director of the National Planning Department), employers associations (ANDI, ASOBANCARIA, SAC, FENALCO and ACOPI) and trade union organizations (CUT, UTRACUN and FANAL). The dialogue was coordinated by the Economic and Competitiveness Council.

Essentially, the parties agreed to relate price and wage policies to productivity and competitiveness, in the context of the globalization of the economy. They agreed that the relation should be based on economic growth, social justice and equity. At the same time, they recognized that the achievement of those objectives requires solid and representative labour and entrepreneurial organizations, and stated that concerted action must be the foundation of social relations. The following tripartite commitments were undertaken: a) develop joint programs to promote productivity through professional training and education, technological transfer and incorporation of modern systems of production and administration; b) structure a national system of sectoral productivity indicators to facilitate wage negotiations; c) improve corporate management indicators; d) promote sectoral productivity agreements and e) set up an Advisory Committee to the National Council on Competitiveness and a Tripartite Commission for the Evaluation and Follow Up of compliance with the Agreement.

Besides, the Government committed itself to the creation of a Permanent Commission for Consensus on Wage and Labour Policies, contemplated in the National Constitution. The Commission was established by law in 1996. A few days after signing the Pact, a Tripartite Commission for the Development of Organized Labour was established, resulting in the Tripartite Agreement to Strengthen Organized Labour, signed in 1995 (Pacheco and Carbonell, 1997) and (Morgado, 1998a).

In the United States, the AFL-CIO is concerned with the actual degree of control exercised by workers on new wage schemes. An ongoing debate examines whether product quality is an appropriate factor to measure performance, given that workers have no control on factors that determine quality. The AFL-CIO has also expressed its concern about possible effects of wage systems based on productivity as a source of favoritism and declining solidarity (ILO, 1999).

In the United States, there exist contingent or alternative payment systems that are pegged to productivity. A study involving 20,000 employees at 11 enterprises concluded that employment security increased with the presence of various flexible payment systems (Elvira, 1998).

Meanwhile, in 1980 and the early 1990s, only 1% of Canadian enterprises had introduced productivity bonuses and profit sharing schemes. In fact, the number of collective contracts that included these devices dropped from 14% to 8%.

- Readjustment

Canada and the United States are witnessing the decline of negotiations for adjustment of wages to compensate for inflation. In Canada, for example, cost of living adjustments were common in the 1950s and 1970s. To the extent that inflation declined in the 1980s, existing wages were not readjusted. Thus, while 30% of collective contracts in 1981 included this kind of provision, their number decreased to a 17% in 1995. The same occurred in the United States: During the 1975-1984 inflationary period, 60% of the workers covered by the most important collective contracts benefited from the inclusion of such provision. In the face of declining inflation in the late 1980s, this provision was replaced by other benefits, such as pension employment stability. In 1995, only 16% of these workers were covered by wage adjustment provisions for loss of purchasing power. This amounts to 22% of private sector workers and 6% of State and local workers. However, the clause kept its popularity in the manufacturing sector, where 57% of the workers enjoy its benefit (ILO, 1999).

The level of minimum wage readjustments and their connection to
productivity and “market wages” are subject of periodic negotiations within tripartite mechanisms and institutions responsible for the determination of wages. In Nicaragua, for example, the National Commission on Minimum Wage took note of a proposed increase filed in November 2000 by the National Workers Front (FNT), the Sandinista Workers Confederation (CST) and CAUS, amounting to an average of 195%. This increase was in excess of the amount calculated for the market wage and the cost of the “basic basket” of necessities (C$1,935.06 in March 2001). Governmental and entrepreneurial representatives agreed that this figure was “out of context, both with respect to the labour cost factor and the market of goods”. An increase determined by the Commission in March 2001 took account of “the behavior of the productive sectors by branches of economic activity”. Thus, the highest increase went to the construction industry (C$1,300), followed by the financial and insurance sectors (C$1,120); power and gas, commerce and transport (C$1,110); mining (C$950); export processing zones (C$895); fisheries, personal and communal services (C$785); manufacturing (C$670); Government (C$630); agriculture (C$550, plus food) (Melendez, 2001).

d) Execution of work

Various agreements have addressed subjects such as the declining number of professional categories and increasing multi-functionality, work carried out by autonomous or semiautonomous groups, and training that is necessary to achieve professional qualification and multi-functionality (ILO, 1999).

In Canada, the Communications, Energy and Paperworkers’ Union recently negotiated several collective contracts that flexibilize access to specialization and promote cooperative labour, instead of circumscribing workers’ activities to their specific skills. The objective is to build up a multi-functional and trained work force that reduces periods of inactivity and improves efficiency and productivity. In 1994, only 19% of collective contracts included provisions on professional training and education; in 1995, 49% of those contracts had incorporated such provisions. Their initial objections notwithstanding, the Canadian Autoworkers Union (CAW) has also negotiated agreements on issues such as professional training, technological change, team work, flexible distribution of working hours and quality (ILO, 1999).

A study conducted in 1990 at 1,000 U.S. enterprises revealed that 47% had created work teams; i.e. 19% more than in 1987, although the number of workers involved did not increase in the same proportion. A 1994 study showed that 12% of non-management employees participated in autonomous work teams and 17% in labour rotation schemes.

Likewise, concerned about the overhaul of the steel and automobile industries, major trade unions chose to negotiate training programs. Agreements signed by the United Steelworkers of America (USWA), United Autoworkers (UA) and the International Association of Machinists (IAM), sought mainly to retrain displaced workers and support labour restructuring, while protecting the work force. The USWA implemented a so-called “New Direction Program”, which led to an agreement with Inland Steel (1993) to establish a new association between labour and management with the participation of the entire work force at all levels of the company, including the members of the Board. The goal of this agreement was to modernize the

- Profit sharing

Several Latin American countries employ profit sharing schemes. Most of them were established several decades ago for purposes that did not necessarily coincide with the objective of promoting competitiveness.

As of lately, transnational corporations such as General Motors, Toyota and Chrysler have agreed to establish new profit sharing devices in Argentina (ILO, 1999).

In Brazil, a “provisional measure” enacted in April 1995, determined that every enterprise shall arrange with its employees a system of profit sharing, conceived as a tool conducive to the integration of capital and labour, as well as an incentive to increase productivity, considering criteria and indicators such as productivity, quality and profit levels, goals, results and previously programmed and agreed deadlines.
company with respect to employment security (ILO, 1999).

In Brazil, recent agreements achieved within the automobile industry address the improvement of professional skills and flexibility in the definition of jobs. Thus, an agreement between the Black & Decker Company and the Steel Workers Union at Uberaba (1996), regulated all the issues related to workers multi-functionality. An agreement with Mercedes Benz (1993) reduced the number of jobs from 419 to 250 and organized the remaining workers around four functions: support, semi-qualified workers, qualified workers and specialized workers.

Recently adopted agreements in Argentina have also incorporated a great number of provisions regarding multi-functionality. An agreement with enterprises in the plastics sector established 14 work categories, leaving the door open for the parties to restructure those categories or create new ones. An agreement in the food industry contains a detailed description of the existing occupational categories, and features occupational multi-functionality as a factor of productive efficiency. Other agreements, such as those entered into with water, gas and power utilities (Obras Sanitarias, Metrogas, Edenor) contemplate the possibility of changing workers’ assignments in accordance with the operational needs of the enterprise. Likewise, some agreements tend to favor multi-functionality in general, by establishing a short list of occupations pegged to broad tasks. In this respect, there is a most significant collective contract between Toyota and the Transport Workers Union (SMATA), which sets up only two categories of workers: multi-functional workers and their foremen. Similar contracts have been signed between SMATA and General Motors, Chrysler (four categories) and Fiat (six categories) (ILO, 1999).

In Brazil, these concerns go together with new ways of execution of labour, such as implemented at Volkswagen with respect to working groups (1997), subcontracting or outsourcing (1991) and flexible working hours (1996) (ILO, 1999).

In the area of professional education, there is consensus to the effect that both educational and labour issues are involved, and that “both in Brazil and Argentina, over 20% of collective contracts contain clauses on professional education”. Additionally, “the social actors participate in the CODEFAT (Deliberative Council of the Workers Protection Fund)’, which finances training programs in Brazil. In Uruguay, the Labour Conversion Fund is administered on a tripartite basis by the National Employment Board. In Paraguay, employers associations and trade unions “participate in the management of the National Service of Professional Promotion” (SEP). In the MERCOSUR area, the collective contract of Volkswagen “orders harmonization of training programs” and “the automatic recognition of certificates for courses, seminars or training acquired at any of the company’s units” (Ermida, 2000).

e) Overhaul, mergers and take-over

Due to processes of change, the number and frequency of restructuring operations, mergers and property shifts have multiplied. Generally, these activities have various repercussions on labour relations. At the individual level, for example, existing functions and the work place are reassigned, workers are rehired under different and sometimes worsened conditions, and labour relations come to an end.

Some of these effects occur with different levels of intensity, depending on the kind of transformation that is being carried out within the enterprise; generally, they are less intense in the case of restructuring operations, and more so in situations of take-over.

As far as mergers are concerned, the main predictable labour impact consists in cutting down the work force, specially at the management level, followed by reassignments and changes of function. The latter requires a higher level of workers’ acceptance and the necessary capacity to go through technical and professional readjustment.

U.S. enterprises tend to provide the work force with a great deal of transparent and timely information about an impending merger and its labour impacts, thus to prevent a delayed disclosure of information that would
tell the workers no more than confirm what they already knew from rumors.

f) Intermediation

Due to their nature, the highly diverse and changing modes of intermediation, subcontracting, externalization, branching, outsourcing, personnel supply and other similar arrangements, have not been the object of negotiations between employers and workers. Instead, the State has engaged in separate bipartite dialogue with employers organizations and workers unions. The employers favored these hiring arrangements and wanted to avoid any legal limitations to their implementation, as an expression of their right to organize, administrate and manage their enterprises. On the other hand, trade unions advocated legal provisions that prohibit or restrict these arrangements, to protect their individual and collective rights and prevent abuse or fraud that would affect them.

g) Regulation of rights

Even in countries where labour relation systems are characterized by the prevalence of heteronomy, there is an increasing tendency to adopt flexibilizing changes not only through legal measures or unilateral decisions, but also, on a supplementary basis, through bipartite or tripartite social dialogue.

In Barbados, for example, flexibilization of the labour market is mainly the result of tripartite consultations that led to the adoption of Protocols on the Implementation of Income and Price Policy (1993 and 1995-97), and stimulated interest in productivity and profit sharing schemes. During the same period, a National Productivity Center became fully operational, with advisory and training functions on productivity issues. At the same time, the Government promoted bipartite negotiations about restructuring, rationalization and productivity in the Port sector (ILO, 1999).

In Argentina, the regulation of labour flexibilization was delegated by the State to the social actors, who were requested to agree on the flexibilization of certain labour institutions. The resulting policy was first laid down in 1991 laws on employment and small- and medium-sized enterprises, and subsequently in the Frame Agreement on Employment, Competitiveness and Social Equity, signed on July 25, 1994, by representatives of the General Confederation of Workers (CGT) and the associations of employers. After a series of attempts in 1996 to return to the old scheme and have the State unilaterally determine labour flexibility, the Government and the CGT signed an agreement in 1997 which reaffirmed the role of collective bargaining in the flexibilization of institutions such as procedures to terminate labour relations and the “hyper activity” of labour contracts.

Venezuelan labour legislation delegates detailed regulation of working hours and overtime to collective bargaining. In Brazil, collective bargaining may regulate legally established rights concerning wages and working hours (ILO, 1999).

h) Termination of the labour relation

Competitiveness and the integration of national economies into global markets may force enterprises to resolve situations of crisis by laying off or suspending workers. In order to prevent or mediate the effects of such measures, the Bipartite Agreement between the Government of Argentina and the CGT, annexed to the Frame Agreement on Employment, Productivity and Social Equity (July 25, 1994), established that the Government, in consultation with the CGT, would approve a decree regarding collective layoffs that had been agreed upon in the context of a crisis preventive procedure stipulated in the National Employment Law.

In accordance with this commitment, in November 1994, the Government passed a decree establishing that if the employer should recur to the crisis prevention procedure, and if the enterprise in question employs over 50 workers, its initial presentation must explain the measures that the enterprise intends to implement to overcome the crisis or mediate its effects.

This initial presentation should in particular propose measures on the following aspects: a) the effects of the crisis on employment and tentative measures to preserve employment; b) functional, time and wage mobility; c) investments, technological innovation, productive conversion and
organizational changes; d) retraining and professional training of the work force; e) internal and external relocation of redundant workers and a regime of assistance to relocation; f) redefinition of operational modes, concepts and wage structures, contents of occupations and functions g) contributions to the Comprehensive Pension System, and, h) assistance to create productive activities for redundant workers.

If the proposal includes layoffs, the employer must include in his/her initial presentation the number and category of the workers that he/she intends to lay off, along with the severance damages offered to each of the affected workers.

If the initial presentation does not comply with the legal and statutory requisites, the crisis procedure shall be suspended until those deficiencies have been corrected.

To provide technical advise to the parties, the Decree created a Unit for Management of Crisis Situations, located at the Office of the Under-Secretary for Labour Relations of the Ministry of Labour and Social Security. This Unit has authority to request information, conduct investigations and cast opinions.

With respect to agreements between the employer and representatives of the workers that are reached as part of the crisis preventive procedure, the Ministry of Labour and Social Security, when confirming these agreements, may agree to improvements of unemployment benefits, if properly regulated and within the range of the available budget.

B. Participants

The nature and circumstances of the participants in the dialogue, as well as their convictions, approaches, aspirations and aptitudes are crucial to their disposition to engage in dialogue, its themes and coverage, and the effectiveness and efficiency of the dialogue. We will briefly consider some aspects of representation and representativity: freedom, independence, autonomy and attitudes.

1. Representation and representativity

The nature of atypical contracts is an obstacle per se to the unionization of the growing number of workers who are employed under these contracts. This situation restricts the exercise and, eventually, the coverage of collective bargaining. These hiring arrangements also affect the mechanisms that are established to determine representation and representativity.

To this must be added other factors that derive principally from economic and technological overhaul, increasing informality, third-party hiring and composition of the work force, individualization of labour relations, unemployment levels, violations to freedom of association and, in some cases, repression.

Central America seems to have experienced the strongest decline in unionization. A recent study holds that the effects of this trend are intensified by a growing fragmentation of the labour movement into 37 union confederations. There are five Confederations in Costa Rica, three in Guatemala and three in Honduras. In El Salvador, where the government has ratified ILO Conventions 87 and 98, Confederations have increased in number to eight (against four in 1990). Five of them have legal status but do not participate in the Labour Superior Council. In Panama there are eight (against four in 1993), that are affiliated to international trade unions such as CIOSL/ORIT, CLAT and COCENTRA. The rest are independent Confederations, without international affiliation (Arrigo, 2001).

To reduce the consequences of this fragmentation, Central American trade unions have agreed to act jointly on occasions of dialogue and other manifestations of collective labour relations. In Panama, for example, a National Council of Organized Workers brings together the following organizations: CGT, CNTP, CONUSI, CGT, CTRP, FSP, FENASEP AND UNION CONVERGENCE; in the Dominican Republic, a National Council of Workers Unity embraces CNTD, CGTD, CASC and UTU. In El Salvador, a broad Union agreement was signed on August 4, 2001, to engage in a dialogue aimed at strengthening the country’s organized labour. In order to overcome current restrictions and enhance their strengths and capacities as agents of development and democracy, the signatories agreed to start an inter-union dialogue in order to reposition themselves in civil society, and become interlocutors of the
government, the entrepreneurial sector and other social actors.

To that end, the Unions established an Inter-Union Commission for the Development and Revitalization of the Salvadoran Labour Movement, constituted by representatives of CATS, ACSTS, CUTS, CTD, CTS and CGT which, on a consensus basis, may invite other union organizations. The Commission will represent all the affiliates of the member organizations at the appropriate national and international fora.

The Unions agreed to create four sub-commissions that will address the following subjects: a) policies and strategies to strengthen the labour movement; b) social, economic and cultural policies; c) integration policies and d) labour legislation.

Each sub-commission will be headed by a coordinator appointed by consensus and will have a Secretary. Agreements will be adopted by consensus; in the absence of consensus, the records will note in writing the points on which agreement could not be reached; minutes signed by all the members of the sub-commitment shall be provided to the Intersectoral Commission. Besides, the latter will receive written reports on the activities of the sub-commissions. The Intersectoral Commission will elaborate its own bylaws, as well as those of the sub-commissions, supervise the latter’s activities and validate any preliminary agreements. The Commissions’ agreements, which shall be recorded in a special minute signed by all its members, are mandatory.

Lastly, the agreement asks for ILO support in the development of inter-union dialogue. At the same time, the agreement proclaims the right of the signatories to make any public statements they may deem appropriate, unless the Commission agrees, on a consensus basis, to refrain from going public on one or more issues.

With respect to union representation, it is worth pointing out that in the United States the exclusive representation bestowed upon a trade union with respect to a negotiating unit presupposes that the workers in question share common interests. Because workers who toil under atypical contracts will not have the same interests as workers who toil under typical contracts, the former tend to be excluded from collective bargaining and its results. For this reason, only 9% of atypical workers enjoy coverage by collective contracts, while 17.5% of the workers under typical contracts are protected by collective contracts.

Similar differences exist in the unionization of service and manufacturing sectors. The unions have developed different strategies to deal with this problem. Thus, the United Autoworkers (UAW) has agreed to hire temporary workers as a first step to becoming permanent workers (ILO, 1999).

At the same time, in the U.S. automobile industry, an agreement has been reached through collective bargaining to apply collective contracts to all non-apprentice workers of the corresponding negotiation unit, even if not affiliated to the Union that negotiated the arrangement (ILO).

2. Freedom, independence and autonomy

Issues pertaining to the freedom, independence and autonomy of trade unions that participate in social dialogue have been the frequent object of explicit declarations and commitments emanating from social dialogue. Therefore, subjects such as the existence and recognition of trade unions, the need to strengthen them and the convenience of their representative interlocution, as well as the rights of constitution and activity inherent to freedom of association, have been emphasized by social agreements, particularly in a tripartite context.

3. Attitudes

As noted before, social dialogue requires positive attitudes from all the parties; but this is something that does not come forward easily within non-cooperative labour relations systems. On this aspect, a comparative study about the attitudes of persons at the management level in the United States with respect to consultation revealed that the employers perceive cooperative relations as those in which unions play a lesser role in the decision making process. Consequently, managers feel that in order to promote cooperative relations, union participation in decision making should be less prominent (Markey and Pomfret).
C. Levels

The participants, thematic contents and coverage of dialogue are tightly related to the level at which the process is being carried out. It is interesting to know that, in the Americas, social dialogue has equal presence at the centralized and decentralized levels.

The greater presence of dialogue at any given level results from the nature of the corresponding system of labour relations and its preference for one or more levels, and the admission of labour relations at other levels than the one preferred. In turn, all these elements are influenced by the legal, political, economic and institutional factors that are part of the environment in which the dialogue takes place.

Centralized social dialogue at the intersectoral or sectoral level is not uncommon in Latin America, although it has not always been successful in terms of achieving social agreements, or the agreements that were reached failed to produce the expected results. In any case, dialogue has strengthened tolerance, diversity and the quest for consensus.

The institution first manifested itself in the 1940s and has clearly developed in the last two decades. Tentatively, I would distinguish four stages of evolution: Inception (1940s and 1950s), resurgence (1970s), multiplication (1980s), and fine tuning (1990s). Keeping in mind the central objective of this Report, I will limit myself to the period after 1990.

Starting in the 1990s, the main concern of social dialogue was to forge broad consensus agreements on the huge transformations in productive processes, and the organization of production in a context of fast economic and technological changes and growing globalization. Subjects such as flexibilization, employment promotion, protection against the termination of labour relations, productivity, quality and domestic and international competitiveness, share first row with emerging subjects such as mechanisms for social participation and the social dimension of integration and free trade processes.

1. National intersectoral dialogue

Without pretending to provide full coverage of the broad repertoire of experiences with centralized intersectoral social dialogue, I will present in this chapter the developments in Argentina, Chile, Mexico, Panama and Paraguay.

Of particular interest is the 1994 Frame Agreement on Employment, Productivity and Social Equity in Argentina. This tripartite agreement was signed in the presence of the President of the Republic by governmental representatives, the leadership of the General Confederation of Labour (CGT), the Argentine Industrial Union (UIA), the Argentine Chamber of Commerce, the Argentine Chamber of Construction, the Association of Argentine Banks (ADEBA), the Association of the Banks of the Argentine Republic (ABRA), the Argentine Rural Society and the Buenos Aires Stock Exchange.

The Frame Agreement was based on the conviction that the State, the entrepreneurial organizations and the trade unions must play a new role in the face of unemployment, rising costs, poor entrepreneurial competitiveness, sectoral complaints and the need for a model of economic development with social equity. To this end, the parties deemed it necessary to resume social dialogue to reach social concert with respect to modernization goals, conversion of the productive sector, increasing competitiveness and employment expansion.

The Frame Agreement was accompanied by three bilateral agreements, signed between the Government and the CGT, about the situation of union welfare institutions, social security indebtedness and a plan to assist enterprises that operate under critical conditions.

The tripartite commitments deal with employment and regional pro-employment agreements; professional training; reform of the Bankruptcy law; comprehensive reform of labour relations and their international context; right to information; workers’ participation and collective bargaining; resolution of individual conflicts; Labour administration and
inspection; protection against labour hazards, safety and occupational health and family allowances.

a) Employment and regional pro
employment agreements

In order to encourage and facilitate the hiring of workers and address the problems of the unemployed, the parties agreed to: a) regulate the probation period; b) establish a special contract arrangement to benefit workers over 40 years of age, the disabled, women, and Veterans of the Falklands War; c) regulate apprenticeship and part-time contracts; d) revise the National Employment Law to facilitate access to modalities of labour contracts; e) design new programs to promote productive employment; f) contemplate the new forms of entrepreneurial segmentation that are exempt from the legal and labour responsibility stipulated in the Statute of Labour Contracts; g) implement active policies to facilitate placement and professional retraining of the unemployed and, h) maintain health benefits for the unemployed.

To address special employment problems in some regions of the country, such as Patagonia and the Northern Region (Jujuy, Salto, Chaco, Formosa, Santiago del Estero, Catamarca, La Rioja and Tucuman), it was agreed to design mechanisms for collective autonomy and social, labour and economic public policies.

b) Professional training

The parties reached consensus about upon a National Agreement for Professional Training aimed at the unemployed, first-time job seekers and occupied workers who need continuous training.

c) Reform of legislation on competitive bidding and bankruptcy

The parties agreed that this reform should aim to preserve productive employment and patrimonial units. To this end, they agreed, among other things, to temporarily suspend the application of the collective contract that was in force at that time, along with the obligation to negotiate an emergency collective contract. Besides, in order to ensure job preservation, the new legislation would establish that the buyer only responds for the labour and social security obligations that come into existence at the moment of the acquisition.

d) Family allowances

One of the agreements achieved on this issue had to do with a commitment to study the possibility of launching a savings/training program financed by the family allowance regime, for the purpose of financing the professional training of workers and their children.

e) Comprehensive reform of labour relations and their international context

The parties also emphasized the need to undertake a comprehensive reform of the labour relations system that would strengthen its capacity to adapt to change, in order to improve competitiveness, increase productivity and reduce costs. To this end, collective bargaining was chosen as a tool to introduce innovations and productive reorganization.

Moreover, the parties agreed to establish a regulatory scheme for small enterprises due to the peculiarities of this sector and its dynamic influence on employment.

On the other hand, the parties realized that the globalization of labour markets include certain factors that require special attention, such as social dumping and unchecked labour migrations. Likewise, it was agreed to strengthen the presence of Argentina in the international fora. The Ministry of Labour would call the parties to establish a Commission as contemplated in Convention No. 144 of the ILO, for the follow up of compliance with labour international standards. At the same time, the 10th Inter-American Conference of the Labour Ministers of the OAS was welcomed as an opportunity to discuss common social problems and explore common positions regarding the coming Miami and Copenhagen Summits.
f) Right to information, worker participation and collective bargaining

The parties agreed to promote exchanges of information between employers and union representatives, as well as regulate the right of workers to receive information regarding collective bargaining processes, bankruptcy, competitive bidding and crisis procedures.

They also agreed to promote the adoption of a law on labour corporations and the establishment of a legal regime that would extend participatory property programs to the private sector. They also recognized the need to institutionalize tripartite dialogue and agreed to constitute the following tripartite organs: National Council on Social Security, National Council on Professional Training and Advisory Council of the National Employment Fund (as part of the Employment, Productivity and Minimum Wage Council). Among other functions, these organs may propose concrete measures in their respective areas of competence.

With respect to collective bargaining, the parties adopted the following principal agreements: a) foster good faith and establish a balance between the parties; b) generate a culture of collective bargaining; to this end, the Government would have to authorize the constitution of negotiation commissions and provide assistance to the different negotiation units; c) create a tripartite National Commission for Mediation and Collective Bargaining to encourage and promote collective bargaining, remove obstacles to its normal development and intervene, by means of a mediation procedure, in conflict resolution when the parties fail to achieve satisfactory agreements, and, d) extend the scope of collective bargaining to institutions such as holidays, suspensions and working hours, by means of collective labour contracts, on the basis of reached agreements and with the established restrictions.

Without prejudice to the importance of all the previously addressed subjects, the extension of collective bargaining is particularly relevant, both with respect to the level of the negotiation and its thematic range, and most prominently the parties’ authority to regulate certain legal institutions. The scope of collective autonomy is hereby increased, and it is made sure that collective bilateral decisions will respond timely and effectively to the changing needs of the productive system. This limited delegation of the regulatory function is in accordance with current demands to strike the right balance between protection and flexibility.

In this respect, the Argentine Industrial Union and other employers’ organizations expressed reservations about the contents and scope of the delegation, arguing that it should be extended to other institutions, such as established in special statutes that regulate productive activities.

g) Resolution of individual conflicts

In this area, the parties agreed to study possible reforms of the structure and the rules of procedure of Labour justice in favor of mediation. It was also agreed to give favorable fiscal treatment to any private agreements that bring conflicts to an end with the participation of trade unions or the competent authorities. Additionally, the Ministry of Labour committed itself to organize an Administrative Mediation and Conciliation Service, and study measures to reduce the legal costs that workers and employers must sustain.

h) Labour administration and inspection

The parties agreed to ensure compliance with labour standards and avoid labour fraud by strengthening the functions of the Labour inspection at the national and local levels.

i) Protection against professional hazard and occupational safety and health

The parties agreed on the need to carry out a comprehensive reform of legislation on safety and occupational health. At the same time, they laid down the characteristics of the provisions and agreed that these should cover other contingencies that affect dependent workers, such as diseases due to negligence and sudden disability. It was also agreed that the new legislation should provide for retraining of victims of occupational accidents.

In the light of the previously reviewed agreements, the Government committed itself to withdraw from Congress a labour draft
With regard to social dialogue, the undersigning institutions supported the existence of free, representative, efficient and technical trade unions and entrepreneurial associations, stating that a social dialogue based on mutual recognition is the natural course towards agreement. Thus their interest in encouraging members to these organizations to seek accords capable of sustaining harmonious, stable and fair labour relations. It was expressly said that the Frame Agreement does not intend to replace, but rather to facilitate the search for direct agreements between workers and employers, as well as between the Government and their labour and entrepreneurial interlocutors, preserving their respective roles, responsibilities, competencies and autonomy.

The parties reached an agreement on a non-exhaustive list of issues that could be subject of independent or joint undertakings, such as: a) education and labour training specially focused on the young; b) preventive and curative occupational health; c) housing; d) wage policy and minimum pension benefits, family allowances and other basic coverage; e) growth and development policies conducive to full employment; f) oversight of labour legislation and g) participation of social actors and permanent information and consultation venues.

These matters were complemented with those related to labour legislation, an area where the parties expressed their common views in favor of a reform “aimed at producing legislation that, by virtue of being accepted by the parties, ensures fairness in labour relations, strengthens the autonomy of trade unions and entrepreneurial associations, protects the rights of the parties, allows for balanced collective negotiation that extends to the highest possible number of workers, regulates and prevents conflicts and provides satisfactory employment stability, all in response to requirements such as productivity, competitiveness, technological change and job creation. In other words, labour legislation that is capable of ensuring its own legitimacy and effectiveness, compatible with an economy open to international trade, that addresses the challenges of the XXI century and is embedded in a democratic system that requires stability and citizen’s trust.”
The Frame Agreement also includes some tripartite and bipartite CUT-Government agreements around certain specific issues. The 1991, 1992 and 1993 agreements were complemented by a few others devoted to: a) common technical criteria for the determination of minimum wage, taking into account variables such as productivity, employment and inflation; b) policies aimed at maintaining and creating productive employment; c) protection of the unemployed through retraining and access to the labour market; d) joint analysis of training and professional education policy; e) consultations about the opening of new markets, technological development and preservation of the environment; f) joint policies to reduce labour occupational accidents and improve the functioning of joint enterprise committees; g) workers education and, h) economic integration and productive conversion (Morgado, 1993 and 1998).

The first social agreement to address the effects of the current processes of change was signed in Mexico in 1987. Under the name of Economic Solidarity Pact, this agreement brought down prices and wages; cut down labour absenteeism and established a Follow Up and Evaluation Committee. After its first renewal, the agreement was substituted in 1998 by the so-called Stability and Economic Growth Pact (PECE). Besides reaffirming commitments to price control, the entrepreneurs expressed in one of the clauses of the Pact their recognition of organized labour and collective bargaining. Following the 1989, 1990, 1991 and 1992 renewals, the PECE changed its name into the Stability, Competitiveness and Employment Pact. In 1995, the so-called Agreement to Overcome the Economic Emergency was signed, in order to preserve low wages and prices, regulate the creation of permanent employment, expansion of production, and the creation of a National Council for Small and Medium-sized Enterprises. At the same time, the Government committed itself to eliminate “obstacles to entrepreneurial activities that raise costs and reduce competitiveness and creation of employment”. This agreement was followed in 1996 by the so-called Alliance for Growth, which established measures to contribute to employment growth and real wages. The Government introduced general tax incentives to create new jobs, along with special incentives for the automobile industry.

It was agreed to adopt measures to promote rural employment and facilitate the insertion, reinsertion and development of workers’ productive capacities by means of strengthening employment services, consolidating the Mexican Council of Competitiveness and Productivity, on-the-job training and advisory fora to guide labour market development programs (Morgado, 1993 and 1998a).

The most recent accord, known as the Agreement of Cooperation and Consultation of the Productive Sectors, was signed in February 1998 by representatives of the Labour Congress, the National Peasant Confederation, the Entrepreneurial Coordinating Council, the Bank of Mexico and the Ministry of Labour and Social Security.

The parties reaffirmed their will to exchange views and analyze the different means available to improve the performance of the economy and the quality of the productive resources. They also committed themselves to continued serious and responsible action within their respective areas of responsibility, in order to continue on the road of social dialogue and reach the consensus that is necessary to build an increasingly strong economy. Thus, they decided to permanently engage in social dialogue to strengthen the development of the country.

The parties decided to maintain a Follow Up Commission charged with examining the evolution of national and international economic developments, propose the creation of sub-commissions or working groups, give priority to education and training within and outside the workplace and promote capitalization, infrastructure development and productive conversion in the rural areas.

Two features of the 1998 Agreement indicate the emergence of a new approach to Mexican social agreements. On the one hand, decentralization of dialogue is stimulated by proposing local governments to generate or reinforce permanent dialogue bodies. On the other hand, the goal of wage control that was part of previous pacts was abandoned, considering that the parties “with the highest respect for the freedom to negotiate collective contracts” agreed to foster a clime of
cooperation between all the sectors, favorable to the sustained growth of productivity and competitiveness and fair distribution of their benefits”.

These possible tentative tendencies must be complemented by those derived from the document called Principles of a New Labour Culture, signed in 1995 by the CTM and COPARMEX. This document recognizes the importance of bipartite dialogue as a cooperative tool in the context of permanent change. At the same time, it emphasizes the role of education and professional training to revalue human labour, increase productivity and satisfy the needs of workers and their families.

Its objectives include the promotion of productivity and competitiveness, creation of employment, harmonious labour relations and conflict resolution under the rule of law. In order to achieve those objectives, the parties agreed to strengthen mutual good faith and loyalty; generate a national culture of productivity and quality; guarantee just remuneration, access to high quality social security services, improve their performance and increase the competitiveness and productivity of the enterprise, and eliminate any “factors restrictive to a healthy economic development, without ignoring globalization and high competitiveness”. In this context, the parties declared that workers, trade unions, employers and labour authorities must promote compliance with legal standards, foster truth and ethics in the area of labour relations and discourage attitudes that go against these values.

In 1993, 1994 and 1996, tripartite declarations were issued in Panama under the names of Bambito 1, 2 and 3, respectively, which emphasized the need to achieve economic and social development and eradicate poverty and unemployment. Bambito 3 proclaimed a Commitment to Development. In this context, the government promised to incorporate employers and workers in an Advisory Commission that would conduct studies about the adhesion of this country to GATT, the predecessor of the WTO, and support professional training by the Work Foundation. Unions and employers promised to promote greater productivity, favor concerted solutions to the nation’s problems and foster the institutionalization of a Concerted Forum for Development (Morgado, 1998a).

The Declaration of Panama 2000 and the following Vision of Panama 2020 reiterated the firm conviction to reach, through dialogue, medium- and long-term agreements between the social subjects. The above mentioned vision was crafted around five fundamental axis: Democratic institutions, self-determination, economic development, equity and sustainability (Raul Leis).

In Paraguay, at the conclusion of A National Tripartite Seminar on Social dialogue and Tripartism (October 1994), CUT, CNT, CPT and the Federation of Production, Industry and Commerce (FERRINCO) signed the so-called Declaration of San Bernardino, agreeing to create the conditions for a tripartite social dialogue to study the countries’ problems, specially in the labour area. They also agreed to establish a tripartite body for conciliation, mediation and voluntary arbitration, turning the Ministry of Justice and Labour into a Ministry of Labour and Social Security, and launching a tripartite study of adequate public policies to face the integration of Paraguay into the MERCOSUR.

In April of 1995, a tripartite agreement was signed that ratified the parties’ conviction that dialogue and negotiation are the best instruments to address social problems. Among other matters, the parties also agreed to reactivate and implement tripartite dialogues on the following issues: wage policy, employment policy, social security, reform of the State, MERCOSUR, labour legislation, education and economic globalization.

In August 1999, a new dialogue of an advisory nature, called the Tripartite Council of Social Dialogue, was installed. Through a series of tripartite meetings that extended to October of the same year, the parties adopted the Bylaws of the Council, tabled two diagnosis of the economic situation, presented their opinion on which matters should be addressed by the Council, and the timetable of the four tripartite technical commissions devoted to study proposals on the reform of the State; employment and wages, including professional training, social security and rural employment; investments and financial and
social policy, including housing and agrarian reform.

The agreements adopted on a consensual basis included the following:
- Reform of the State: Reform of Statute 200, creating the Public Service career, implementing a system of permanent training and establishing a labour insertion program for those affected by this reform.
- Employment and wages: Establishing, on a consensual basis, a wage policy tightly linked to employment and social security policies, abiding by previously determined criteria; elimination of the referential character of minimum wage, establishment of a universal minimum wage and elimination, on a gradual basis, of regulations on higher than minimum wages, which must be established through collective bargaining.
- Investment and financial policy: Incorporate into a legislative draft known as “Ashwell Statute”, all the enterprises that manufacture goods and services, specially small- and medium-sized enterprises, except for banks, financial companies and insurers, as well as enterprises that have no economic viability or have been accused of fraud; amend the above mentioned piece of legislation with respect to debt refinancing and enterprise qualification, condemnation of punitive interests, suspension of judicial actions and integration of representatives of employers and workers in the Fund’s Administration Council, to the exclusion of the representative of the National Securities Commission.
- Social Policy: Provide impetus to the social housing program, in order to reduce the present deficit and generate employment; strengthen and democratize CONAVI and incorporate financial intermediaries to mobilize resources towards the construction area; regularize land seizing in the country’s Central Department.

The government committed itself to study only two of the projects adopted by consensus, and issued a Decree approving the establishment of a Health Insurance system for public servants. The remaining projects followed different courses, not always related to the agreement. For example, the area of privatizations was assigned to the Council for the Reform of the State, by means of a law passed in March 2000; while the reform of Statute 200 adopted by Congress was criticized by the labour movement on constitutional grounds, and CONAVI was suppressed.

Numerous measures and strategies were presented to reactivate social dialogue which, among other matters, tended to strengthen the need and feasibility of dialogue and the decision of organized labour and employers to participate; fortify the labour movement; incorporate new social subjects into the dialogue, such as micro-enterprises, freelance workers, home workers and similar social organizations; enhance the role of the Ministry of Labour in social dialogue; incorporate into the dialogue the Ministries of Finance, Health, and Education and create a Social Dialogue Institute whose establishment was approved by the Council (Peña and Barboza).

2. National sectoral dialogue

In 1992, the Argentine Government, the Union of Insurance Workers, the Argentine Association of Insurance Companies, the Association of Foreign Insurers in Argentina and the Argentine Association of Insurance Cooperatives and Funds, signed the Frame Agreement of the Insurance Sector, which was denominated as a collective contract, in order to enhance its legal relevance in accordance with legal statutes.

This Frame Agreement created a Permanent Commission charged, among other things, with the interpretation of its text; analysis of information mechanisms; proposal of procedures, conduct of studies to revise the system of categories and job classification in accordance with current and impending changes, and approval, on a unanimous basis, of the evaluation system, the new roll of categories and the transference and implementation procedure.

The Permanent Commission also established a permanent Labour Training Committee with joint representation. Its principal purpose consists in proposing training courses to readapt workers to new technologies, taking into account that professional proficiency is a fundamental condition for any promotion.

As far as multi-functionality is concerned, the Frame Agreement stipulated that labour categories should not be restricted to the
definitions adopted in each case, but be complementarily interpreted through the principles of multi-functionality and functional flexibility, in order to achieve higher productivity. Therefore, a worker may be assigned to functions and tasks distinct from those previously commissioned. However, less qualified tasks shall be assigned only when exceptional circumstances may so require or when they are complementary to the principal purpose. At the same time, the Permanent Commission established that all these assignments and reassignments shall not impair existing work and wage conditions.

Likewise, it was decided to create a Permanent commission on occupational safety and health. At the same time, the agreement authorized hiring arrangements contemplated by the National Employment Law. In accordance with those provisions, so-called atypical contracts were also authorized. Yet, the authorization excluded enterprises that were in debt with the unions, union welfare institutions or social security. It was also established that any contracts contravening those prohibitions shall be considered contracts for an indefinite period of time, unless the worker decides otherwise. Lastly, it was agreed that the union shall be informed on a monthly basis about modal hiring and shall have the right to supervise the situation.

In order to implement work systems and labour conditions that promote productivity and efficiency and contribute to improved wages, the parties agreed to apply certain parameters aimed to ensure that wages and awards that are based on efficiency and productivity may be agreed between the parties without worsening labour conditions.

Lastly, the parties committed themselves to establish mechanisms and procedures to coordinate the different levels of negotiation and the collective contracts that derive from this Frame Agreement.

Since 1991, Chile has seen the adoption of several sectoral agreements, such as the 1991 accord on the port sector and the 1997 forestry agreement. The former sought to amend current legislation and adopt certain administrative and oversight measures. The latter approved a code on forestry practices described as a "rational guide on practices to be followed by the entrepreneurs, workers and governmental authorities involved in the various forestry occupations, for the purpose of minimizing conceptual differences and the adverse impacts of these operations". The agreement regulates in particular the professional training of forestry workers (Campero, 1997) and (Morgado, 1998a).

In Brazil, an Agreement was signed in 1993 in the automobile sector with the participation of the Federal Government, private enterprises, employers associations and trade union organizations (CUT, Union Power and the Federation of Sao Paulo’s Metal Workers). The following general objectives were established, among others: growing employment supply and wage improvements, along with higher levels of production and quality; growing investments, sales and exports. To achieve these goals, the parties agreed to cut down taxes, reduce profit margins, extend access to financial resources, price reductions and implementation of projects focused on improving quality, productivity and technology. With respect to the latter, it was agreed to undertake scientific sectoral action to develop productivity, quality and technology programs, as well as certification of product quality. At the same time, the parties agreed to establish six working groups: one of them was charged, in coordination with the Labour Ministry, to take care of collective bargaining and the incorporation of commitments about employment and wages. Lastly, the agreement adopted procedural rules to guide the meetings of the working groups, presented proposals to a coordinating committee and set priorities.

3. Social dialogue at the enterprise level

At the decentralized level, social dialogue presents itself in a variety of ways, as a result of differences in geographical environments and economical sectors. As before with respect to centralized agreements, only some experiences after 1990 will here be discussed.

In 1993, a local collective contract in the gasoline distribution sector and related services was signed in the State of Rio Grande do Sul (Brazil). For the purposes of this Paper, the following clauses are worthy of note: a) those that guarantee employment stability to workers who are close to retirement, starting at 12 months before the date of retirement on the
ground of age or seniority; b) those authorizing the employer, in consultation with the union, to extend the workday in order to compensate for periods of inactivity, as well as agree with the union the extension, if necessary, of regular work hours; c) those that establish and regulate the activities of a commission constituted by representatives of the employer and the union, charged with advisory tasks and the application and interpretation of the contract, and d) those establishing meetings of the parties every four months to analyze compliance with the contract and renegotiate economic clauses.

In October 1995, the Federation of Guayas Free Workers (FETLIG) and the Chambers of Commerce and Industry of Guayaquil issued a Declaration stating the need to establish a dialogue to achieve agreements and develop joint work programs aimed mainly at elaborating a development model to be adopted between workers and employers on a consensus basis. The parties also declared their will to agree on proposals for public policy focused on fighting poverty and its consequences, and lay the foundations for a new productive culture. At the same time, they stated that workers and entrepreneurs must work together to overcome the country’s economic and social crisis, inflation, unemployment and poverty. Therefore, the parties promised to ensure that a culture of consensus shall prevail in their relations. To implement those objectives, the parties agreed to create a Permanent Commission of Cooperation between Workers and Employers, to develop human resources through professional training and improve productivity and competitiveness in the global market. The Ministry of Labour and Human Resources witnessed the signing ceremony, along with the leaders of the above mentioned organizations.

In a collective contract signed in Argentina in November 1993 between General Motors and the Machinist Unions (SMATA), the parties recognized and accepted that joint action is indispensable for the implementation of innovations necessary to achieve growing levels of quality, competitiveness and productivity. To this end, they reached the following relevant agreements:

- Work modalities: The parties agreed to accept all varieties of individual labour contracts contemplated by the legislation, including contracts related to the launching of a new activity and apprenticeship for youths.
- Working hours: in order to protect employment levels in special situations such as prolonged lack of supply or economic fluctuations, working hours were quantified as 2.128 hours per year while the company committed itself to abide by the previously arranged monthly pay and overtime.
- Reciprocal commitments and responsibilities: It was agreed, among other things, to improve productivity, quality, costs and customer service on a continuous basis;
- Employment security under adverse economic conditions: In the event of prolonged crisis, the parties agreed to mediate its impact on employment, in the understanding that a durable labour relationship helps the growth of the enterprise, and the enterprise’s prosperity increases employment levels.
- Vacancies: Vacancies shall be announced ahead of time within the enterprise, to give candidates an equal opportunity to apply.
- Productive restructuring programs: If the incorporation of new technology, new projects or new production systems alter the conditions of the collective contract, the parties shall analyze their effects on labour conditions and employment, to establish means to address the needs of the employees and the growth or survival of the enterprise;
- Work organization: Work shall be organized and based on multifunctional teams or work units, each of which with clearly defined attributions and missions. Those teams and units will promote multi-functional training. Continuous improvement systems will apply methods that allow the parties to keep abreast of achieved progress and effects on labour relations.
- Evaluation and follow up: It was agreed to constitute an Evaluation and Follow Up Commission composed by two representatives of the enterprise and two union delegates. The Commission shall meet regularly and will be in charge of the following functions, among others: Encouraging team work focused on achieving higher levels of quality on a gradual basis, customer service, productivity and workers’ quality of life; evaluation of productivity programs, duality, efficiency, effectiveness, training, occupational accident
and disease prevention, work environment and cost cutting; evaluation of participatory information channels and consultation; support the introduction of innovative methods and analyze any situations that may affect employment levels.

- Functions and classifications: Tasks will be classified and divided by functions remunerated according to a scale of basic remuneration. To this end, the contract describes the tasks corresponding to the following four functions: multi-functional apprentice employee, fully trained multi-functional employee, specialized multi-functional employee and fully trained specialized multi-functional employee. The established term for promotion to a higher function may be reduced up to a 50% with the unanimous consent of the members of the unit in question.

- Basic and additional remuneration: Along with the establishment of a basic wage scale, the parties agreed to pay a variable accessory remuneration consisting of awards to recognize the efforts of each unit in the pursuit of the objectives of the enterprise. To this end, each unit will have specific quarterly objectives on subjects such as accidents and compliance with security rules, absenteeism, order, organization, cleanliness at the work site, quality and customer service, cost reduction, time and losses, and compliance with the “exactly on time” system, visual controls, standardized work and continuous improvement.

In an Annex to the collective contract, the parties established detected needs, the plan of action and the objectives of professional education and training in five major areas: health and the preservation of life and physical and mental capacities; harmonious relations within and outside the enterprise; education; quality, maintenance of the enterprise, vehicle production and service, customer service; and scholarship beneficiaries.

According to an ILO publication, this contract was signed before the actual installation of the plant. In other works, the parties pre-established the regulatory standards for not yet existing activities involving workers that had not been hired yet. Besides, the contract has a strongly regulatory character, introduces modern concepts, and has a validity of 5 years, in order to ensure the stability of conventional labour regulations for a period of time that was deemed necessary vis-à-vis the important investment made by the enterprise (RELASUR, 5).

4. Social dialogue at the level of enterprise divisions

Without prejudice to the fact that enterprise divisions are governed by the rules of the main company, social dialogue may lead to the adaptation of rules of a higher level to the peculiarities of a given division.

On the other hand, this dialogue may be the consequence of a delegation made by the enterprise to its representatives in the division, in order to totally or partially conduct the corresponding collective or individual labour relations, with the participation of the respective union organization.

Concerning delegated faculties, a variety of matters may be the object of dialogue, in particular those related to the distribution of holidays and rest periods, the beginning and end of the workday, additional determination of hours in the case of “bridges” between non-working days, and fringe welfare benefits such as catering services.

5. The case of small- medium-sized and micro–enterprises

The introduction of social dialogue into medium-sized enterprises presents special challenges, of different dimensions and nuances depending on the countries and the sectors involved.

In the United States, those enterprises are classified as productive units with less than 500 workers. In 1993, they represented 98% of the manufacturing plants and employed 40% of the workers in that sector. The approval of the Omnibus Trade and Competitiveness Act (1988) was followed by the Manufacturing Extension Partnership Program, which in turn allowed the creation of several regional technological centers to provide support and technical assistance to small and medium-sized enterprises. Initially, these centers could count on the support of trade unions, which later on promoted a project to include workers and unions in the modernization of small and medium-sized enterprises.
Notwithstanding the positive response to the need for industrial modernization to improve the competitiveness of those enterprises, and the participation of workers and unions in the decision making process, participation has been poor at the stages of design and planning. These results reflect difficulties inherent to labour relations at those enterprises (Haddad, 1998).

Canadian small- and medium-sized enterprises employ more temporary than permanent workers; moreover, there is a general lack of strategic planning in these productive units (Weber and Verma, 1998).

The development of social dialogue in Argentina’s small and medium-sized enterprises is a difficult process, mainly because legal and de facto levels of regulatory flexibilization undermine the foundations of dialogue (Corradetti, 1998).

It should be kept in mind that the 1995 Statute on Small and Medium-Sized enterprises allows these enterprises to use the various forms of contracts contemplated in the National Employment Act without previous authorization by collective labour contract. Besides, there is no need to register the contract or pay severance damages as provided for by the National Employment Act.

On the other hand, collective contracts signed by small enterprises may change the formalities, requisites, notifications and calendar of the regular annual holiday. By the same arrangement, the annual complementary remuneration may be divided in up to three quotas and the regime that governs the termination of labour contracts may be altered.

Additionally, the union delegates who signed the collective contract may agree to redefine jobs corresponding to certain categories established by the contract.

Likewise, small enterprises seeking to restructure their work force on technological, organizational or market grounds, may ask the union that signed the collective contract to modify certain applicable collective or statutory regulations. In this respect, the union has the right to receive the information that justifies the request. In the event of an agreement to modify the plant, the small enterprise may not dismiss workers for the same cause, for the duration of the changes.

Lastly, if labour contracts are terminated in order to prevent a future crisis, the National Employment Fund may assume responsibility, totally or partially, for the severance damages that are due to the workers, or finance training and retraining activities for redundant workers.

6. Correspondence between levels, subjects and participants

To ensure the efficiency and effectiveness of social dialogue, it should be conducted at more than one level. In Chile, the parties to the 1997 Agreement on Prevention of Labour Hazards agreed on the need to establish, along with a national program to prevent occupational accidents and disease, a series of regional, provincial and municipal programs, which required the initiation of dialogue at those levels.

Establishing programs at various levels is expected to contribute to the central objective of the Agreement; i.e. to reduce the incidence of occupational accidents and disease at least 10% per year, along with increased coverage of unprotected workers. To implement this agreement, the parties created an Advisory Committee headed by the Ministry of Labour and Social Security and composed by representatives of the National Confederation of Production and Commerce, the United Confederation of Workers, the Institute of Social Security Normalization and the pertinent Mutual Benefit Societies.

In other words, along with the classic participants of the dialogue –representatives of the government, employers and workers organizations–, this four-party agreement incorporated another subject: the representatives of private organizations (Mutual Benefit Societies) and a public institution (the Institute of Social Security Normalization), charged with managing insurance services against occupational accidents and disease, providing health care and monetary benefits.

7. Reflections on Latin American experiences with centralized dialogue

a) Some profiles

Centralized processes of social dialogue have produced political effects such as increasing the levels of political stability and
social legitimacy of public policy, channeling social demands and consolidating democratic institutions. Besides, they have highlighted the need to engage in certain reforms to ensure the appropriate presence of objective and subjective elements (corpus and animus) that strengthen and fecundate dialogue.

With respect to participants, when circumstances so required, participation became multipartite, beyond the scope of the tripartite relation constituted by the State, employers and workers organizations. Such is the case of the Chilean Forum on Productive Development. Previous experiences also show that the State has always been a direct or indirect presence at the processes of dialogue, and has generally played a major role in tripartite Latin American experiences, without prejudice of its weight in the context of bipartite social dialogue. On the other hand, the effectiveness of the dialogue and the resulting agreements have certainly been directly and closely related to the level of actual representativity and autonomy of the participants.

The subjects under discussion have mainly to do with labour, although associated with economic policy issues. Sometimes, the subjects agreed on have been related to political proposals aimed at consolidating and deepening democratic rule.

Although the subjects sometimes responded to contingent or short-term needs, they are generally closely related to needs of a more permanent character. In most cases, agreements were formulated as guidelines, rather than self-executing obligations, giving rise to the formulation and execution of public policies and consensual legislative and administrative reforms.

In most of these cases, social dialogue comprised the entire country, as well as the majority of the economic and professional sectors. The national dimension of the various levels is inevitably linked with supranational effects of social dialogue, considering the present context of globalization.

In terms of procedural and institutional features, most of the cases reviewed lacked previously established procedures, although sometimes they were preceded by “agreements to agree”, as in Chile (1990) and Argentina (1994). These agreements contained preliminary consensus positions about the conceptual frame, objectives and subjects, while the parties constituted working committees.

Some of the experiences under review were specifically concerned with institutional aspects and established permanent or temporary organs such as: a) a Permanent Secretariat charged with elaborating consensus proposals (Dominican Republic, 1990); b) a Permanent Tripartite Commission on Concerted Social and Labour Policy (Colombia, 1994) and its 1996 Organic Law, based on art. 56 of the Constitution, along with the Advisory Tripartite Committee of the National Council of Productivity, charged with advancing and promoting sectoral agreements (199); c) the National Commission of Mediation and Collective Negotiation (Argentina 1994), together with the tripartite agreements to constitute the National Council on Social Security, the Advisory Council on Professional Education, the Advisory Council of the National Employment Fund in the context of the National Fund for Employment, Productivity and Minimum Wages (1995), and the Tripartite Commission of the ILO Convention Nº 144 on international standards and technical cooperation activities (1995). At the same time, the parties to the 1997 Agreement created a tripartite commission to study the reform of the Labour Contract Law and d) the Forum of Productive Development (Chile), without prejudice to numerous calls to set up tripartite and bipartite working commissions, according to the national tripartite agreements achieved throughout the 1990s (Morgado, 1998a).

b) Some flaws

Adhesion to social dialogue may grow stronger to the extent that note is taken of problems and flaws detected in previous experiences carried out in this region, such as the following:

- The parties frequently lacked sufficient representativity, independence and freedom to ensure a suitable defense of the interests of their constituents. Thus, social dialogue has sometimes lacked its peculiar features and has degenerated into a form of cooptation.

- Sometimes the parties lacked, legally or de facto, the necessary power and resources to
discuss, negotiate and agree, and then administrate these agreements in a manner that would make their participation more than a formality.

- On other occasions, the subjects that were raised did not allow for an effective concerted dialogue because, by virtue of their nature, they were sometimes preceded by agreements achieved at other levels or instances.

- In certain cases, expressed motivations did not coincide with what really moved the parties.

- Parties have not always acknowledged each other’s right to participate or the legitimacy of their concerns, visions and projects. At the same time, parties were not always sufficiently convicted of the need for social dialogue and social concert, and there has been lack of good faith.

- The parties were not always sufficiently clear that consensus agreements are a suitable way of administering and overcoming controversies, rather than a means to suppress conflicts.

- On some occasions, there was a lack of concern about the institutional aspects of social dialogue, particularly with respect to the promotion, technical support, follow up and evaluation of these processes.

It has also happened that institutions and mechanisms were too rigid or, on the contrary, too informal, due to the nature, insufficiency or absence of regulatory standards.

The persons in charge of these processes lacked, on occasion, the necessary independence, experience and technical proficiency to gain the parties’ confidence in their effective leadership.

Sometimes, the established mechanisms and institutions lacked the resources necessary to perform their functions in an effective and timely fashion.

Nor were they always equipped with the appropriate faculties to request and receive the information necessary to accomplish their tasks.

Lastly, in some cases, the initial enthusiasm that usually surrounds the establishment of these kinds of mechanisms and institutions faded and gave way to formal and bureaucratic performance. This situation was partly the result of declining support by the governments or participating parties, and loss of interest in the subject due to the emergence of situations that would hamper, restrict or derail the dialogue, at least in its original form.

But none of the above invalidates the theoretical and practical relevance of social dialogue. This shows that the observed problems and flaws are not so serious as to turn back on the long road covered so far. On the contrary, those obstacles provide encouragement to stay on course and eliminate the hurdles that impair the journey.

Consequently, these preliminary observations cannot conclude without stating that the promotion of social dialogue and concerted agreements is not only desirable, but necessary and indispensable. Therefore, it is imperative to remove all the obstacles in its way. This is not an easy endeavor, but it is not impossible either.

D. Social dialogue and national boundaries

1. Bilateral, multilateral and regional environments.

Current processes of change have given rise to reorientation and revision of existing programs of integration and international trade, in particular since the 1950s. At the same time, they have instigated new agreements in which the nature and effects of these processes of change play a preponderant role.

To accomplish certain goals of regional and subregional integration, and to increase competitiveness in a global market, there presently exist in the Americas an array of bilateral, multilateral and regional integration and free trade agreements, that include commitments aimed at establishing certain levels of harmonization, proximity or uniformity on labour issues. In some cases, those commitments took the form and received the name of social clauses incorporated into the main text of the agreements or as part of accords or annexes to the principal treaty.

Such is true, for example, of the labour commitments derived from the following processes of integration or free trade: a) Central American Integration System (SICA), which includes Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama;
b) Caribbean Community and Common Market (CARICOM), which embraces Antigua, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Christopher and Nevis, Saint Vincent, Santa Lucia, and Trinidad and Tobago, whereas the British Virgin Islands and Turkas and Caicos are associated members, and the Bahamas are part of the Community but not of the Common Market; c) Andean Community of Nations (CAN), constituted by Bolivia, Colombia, Ecuador, Peru and Venezuela; the Common Market of the South (MERCOSUR), which is constituted by Argentina, Brazil, Paraguay and Uruguay, plus Bolivia and Chile as associate members; d) North American Free Trade Association, constituted by Canada, the United States and Mexico, and e) the Canadian-Chilean Free Trade Agreement, plus the Americas Free Trade Association (AFTA) process (Ciudad, 2001).

These labour commitments have been interpreted in two ways. Some argue that they guarantee that competitiveness will not be founded on practices of social dumping that violate fundamental labour rights and give way to unfair competition. But other analysts believe that the imposition of labour commitments represent a form of neo-protectionism that is severely restrictive of free trade and consolidates inequities in the international economic order.

Some of the above mentioned agreements have implemented verification and control mechanisms to ensure compliance with the commitments. Besides, in some instances, cooperation agreements support and facilitate compliance.

Thus, labour commitments derived from free trade and integration processes raise specific requirements and additional challenges to the national systems of labour relations, while extending and strengthening their international components.

This analysis can not ignore the effect on labour of the extraterritorial extension of certain national standards beyond their original jurisdictional environments. Thus, labour commitments arise that are not the product of negotiations, but are nevertheless tacitly accepted as a condition to obtain certain trade and tariff preferences. This is the case, for example, of United States regulations regarding the Caribbean Basin Economic Recovery Scheme, the Guaranteed System of Preferences and the Overseas Private Investment Corporation (Vause, 1998).

This legislation dates from the XIX Century, when the 1890 McKinley Act prohibited importation of goods manufactured by prison inmates or under conditions of forced labour (Tariff Act, 1930). Later, the 1933 National Industrial Recovery Act prohibited the importation of goods manufactured under labour conditions inferior to those in the United States, including issues concerning freedom of association, minimum wage and limitation of the workday” (Van der Laat, 2001).

The 1983 Caribbean Basin Economic Recovery Act authorizes the President to establish exemptions for goods imported from benefiting countries where workers have reasonable working conditions and enjoy the right to unionization and collective bargaining. At the same time, the 1974 Foreign Trade Act, as amended by the Trade Agreements Act of 1979 and the Tariff Trade Act of 1984, in its chapter devoted to the Guaranteed System of Preferences, states that countries that have not or are not taking measures to grant its workers “the internationally recognized rights”, i.e. freedom of association, the right to organize and bargain collectively, prohibition of any form of forced or compulsory work, minimum age for admission to employment, acceptable labour conditions, minimum salary, and occupational safety and health at work, may not become beneficiaries. Compliance with these conditions must be verified annually by the Office of the Trade Representative, through a Trade Policy sub-committee composed by representatives of the Departments of Labour, Trade, Agriculture, State and the National Security Council (Van der Laat, 2001).

In accordance with the provisions of the legislation related to the Overseas Private Investment Corporation (as amended in 1985), U.S. citizens investing abroad may not enjoy the benefits granted by this autonomous Agency subordinated to the State Department, if the investment project takes place in countries that have not taken measures to adapt and implement laws extending to the workers of the country in question the international recognized rights referred to by the Generalized System of Tariffs Act. On the
other hand, in accordance with the Omnibus Trade and Competitiveness Act of 1988, the Trade representative must report countries that maintain import barriers or unfair market practices, and determine as unreasonable acts any policies or practices that do not grant freedom of association, the right to organize and bargain collectively, allow any kind of forced and compulsory work, do not establish a minimum age for admission to employment and fail to establish minimum standards on wages, working hours, and occupational safety and health at work.

Under the pressure of these norms, the government of Costa Rica amended the Nation’s Labour code in 1993, incorporating a chapter devoted to the protection of labour rights that establishes provisions against unfair labour practices, updates the system of penalties with regard to violations of labour standards and amends the Solidarity Associations Act that prohibited their direct or indirect participation in collective bargaining on labour conditions. In November 2000, Costa Rican trade unions approached once again the AFL-CIO to file a claim before the U.S. Trade Representative, arguing the lack of union freedom in the private sector and the absence of collective bargaining in the public sector. Following another claim raised on the same matter by the Freedom on Association Committee of the ILO, the government drafted a Statute for the Negotiation of Collective Conventions in the Public Sector, that was adopted by Decree issued in May of 2001. One month later, the above mentioned claim before the U.S. Secretary of Commerce was eventually filed.

In April 2001, under the pressure of possible application of these social clauses, Guatemala amended its Labour Code with regard to the functions of the Labour Ministry, in order to guarantee freedom of association, protect the right to unionization, establish the quorum required to qualify the legality of a strike, and issues regarding the shut down of establishments as a result of a strike. The following norms were adopted, among others, to guarantee and protect freedom of association: the Ministry of Labour and Social Security must outline a national policy to ensure the development of unions, guaranteeing freedom of association, protecting the right to unionize, maintaining a free service to provide legal advise to the workers who wish to unionize, and promoting consultations and cooperation activities along with workers’ and employers’ organizations, and disseminating labour and social security legislation. Besides, regulations on the organization and functioning of unions were made more flexible (Van der Laat, 2001).

On the other hand, the social clauses incorporated into U.S. legislation not only affect countries, but also enterprises that fail to abide by them, as was the case in El Salvador with “El Mandarín Internacional”; BANDECO in Costa Rica and Kimi in Honduras (Van der Laat, 2001).

To this must be added the treatment of social dialogue in the documents that establish and regulate the mentioned treaties and complementary agreements on integration and free trade.

a) Social dialogue in the context of the Central American Integration System

While the legal instruments of the Central American Integration System do not specifically mention social dialogue, they do mention and regulate various labour and social security issues and may be used as guidelines for processes of dialogue that are being carried out in the Member States.

These issues include, among others, non-discrimination, remuneration, employment promotion, work force mobility, professional training and social security.

It is fairly evident that the Member States of the Central American Integration System need to engage in social dialogue, given their ongoing processes of political democratization, and in particular the longstanding democratic tradition of Costa Rica.

However, long standing traditions stand in the way of social dialogue, such as “State intervention in the labour relations area; an apparent preference for conflict; poor integration of the work force into the formal system of labour relations; high levels of poverty and meager social investment” (Bronstein, 1999a).

Yet, following the end of the grave civil wars that affected several Central American nations, the various peace processes showed
that social dialogue was not only necessary but possible and desirable.

An example of this trend is the 1994 revision of the Salvadoran Labour Code, which was carried out “on the basis of an ILO project submitted one year earlier to a Tripartite Forum of Economic and Social Concerted Action...”. This reform “emphasized in particular collective labour relations, but also made important amendments in the area of individual labour relations, such as improving maternity protection, elimination of anachronistic restrictions to women’s work, higher severance damages for unjustified dismissals, and extension of the Code’s scope to apprentices” (Bronstein, 1999b).

Besides, it should be remembered that following a Meeting on Democracy, Economic Development and Social Dialogue in the Central American Political Process, held in Madrid in February 1997, Spain’s Economic and Social Council (CES) developed a variety of activities to support the Central American processes of social dialogue, such as a Meeting on Social Dialogue in Spain and Central America (Antigua, March 2000). The Final Declaration adopted at this meeting states that “social dialogue is a means to achieve concerted responses and constitutes an effective way of resolving the economic and social problems affecting our societies (...).”

Social dialogue is also a practice that may help the whole region to face successfully the challenges emerging from the need to consolidate peace and democracy, “which require strong, well prepared and independent social actors willing to shoulder the responsibilities imposed by current social realities” (CES).

b) Social dialogue in the context of the Andean Community of Nations.

The participation of workers’ and employers’ organizations in the context of the Andean Integration System of the Member States of the current Andean Community of Nations has taken two different forms: one is regulated by standards generated by the Community’s organs–including some adopted by the original organs of the Agreement of Cartagena- and the other by the “Simon Rodriguez” Convention on Social and Labour Andean Integration, which is currently under review.

The Labour Advisory Council and the Entrepreneurial Advisory Council belong to the first body of norms. Both were established in 1983 and empowered to cast opinions about the programs and activities of the integration system, either on their own accord or at the request of the Andean Council of Foreign Ministers or the General Secretariat of the Community. They can also be called to participate in the meetings of the Commission, working groups or groups of governmental experts linked to the elaboration of Decision projects.

The Councils are composed of delegates directly chosen by the pertinent organizations, according to their statutes.

Starting at a meeting on Social Dialogue held by the European Union and the Andean Countries (Madrid, November 1997), and up to the present, Spain’s Economic and Social Council has fostered and participated in important activities to support processes of social dialogue and concerted action in the Andean countries. One of those activities was the Second Joint Meeting of the Entrepreneurial and Labour Advisory Councils (Arquipa, July 2000), which approved a joint declaration urging, among other matters, to assign priority to the permanent education of the work force and promote respect of workers’ fundamental rights (CES).

The social and labour objectives of Andean integration include, among others, the sustained improvement of the people’s standards of living, generation of new jobs, eradication of poverty and full participation in the integration process. To this end, the process is equipped with a variety of means of action, such as harmonizing economic and social policies, gradual legislative uniformity, productivity improvements, efficient use of productive factors, labour professional training, and improving both the levels of production and productivity in the rural areas.

The “Simon Rodriguez” Convention, which was signed in Caracas in October, 1973 by the Labour Ministers of the then members of the Cartagena Agreement, derives from the Declaration of Quito, signed by those same Ministers in April, 1973. Among other objectives, the Declaration of Quito promoted the participation of workers and employers in
the processes of development and subregional integration.

With different levels of intensity and effectiveness, representatives of entrepreneurial and union organizations have joined in the meetings of the Ministerial Conferences, the Delegates Commission and the Andean Commissions on Professional Training, Social Security, Promotion and Cooperative Integration and Labour Migration.

In the context of this Convention, the competent organs of the Cartagena Agreement adopted decisions on issues such as labour migration, social security and labour administration. With regard to the latter, it was determined that one of the objectives of the labour administration would consist in achieving the effective participation of employers and workers in the elaboration and implementation of social and labour policy at the largest possible scale, by implementing advisory and cooperation mechanisms to strengthen tripartism (Aparicio and Morgado).

On the other hand, the X Period of Sessions of the Andean Parliament adopted the Andean Charter at the conclusion of the first Social Andean Summit.

Subsequently, in the Protocol of Trujillo, the Chiefs of State of the Andean countries agreed to reshape the social dimension of integration, updating the area’s social conventions, promoting democracy and strengthening respect for human rights. In 1998, the Andean Presidential Council, meeting in Guayaquil, requested the Andean Parliament to make proposals towards the establishment of a Communitarian Social Agenda.

Welcoming this invitation, the Andean Parliament called the Second Social Andean Summit, which was preceded by five mini summits with the purpose of studying amendments to the 1994 Charter. The new Social Andean Charter was approved in Lima in December, 1999.

The Andean Social Charter consists of sixteen chapters: democracy and human rights; social integration and eradication of poverty; the family; women; the young; childhood and adolescence; old age; Indigenous peoples; Black and Afro-Andean peoples; health and nutrition; the environment; housing; education; science and culture; economic solidarity; work and social security and application of the Andean Social Chart (ASC).

The Andean Social Charter commits the States Parties to forge a more representative, participatory and efficient democratic system of government, and to strengthen social organizations in order to “build a participatory culture in the perspective of regional integration”.

Regarding work and social security, the Charter commits the State Parties to ratify and guarantee compliance with the fundamental conventions contained in the ILO Declaration of Fundamental Labour Principles and Rights at Work. The Charter also establishes a non-exhaustive list of twenty-four rights related to non-discrimination, women and maternity, sexual harassment, employment, professional training, freedom of movement, occupational safety and health at work, labour law and administration, and social security. Moreover, the same instrument establishes the right to be “informed about, protected from and trained for any changes in the labour conditions as a result of industrial conversion and the incorporation of new technology. To this end, the Charter will guarantee worker consultation and participation”.

An advanced draft of an Andean Charter of Human Rights has been submitted to the consideration of the Chiefs of State of Bolivia, Colombia, Ecuador, Peru and Venezuela. This project was prepared in response to recommendations made by a Subregional Andean Seminar on Democracy and Human Rights (Quito, August 2000), following a request by the Presidents of the Andean countries to the Council of Foreign Ministers, contained in the Declaration of Machu Picchu (July, 2001).

The draft Declaration reiterates “the commitment of the Member States of the Andean Community to the duties and obligations established in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration of the Right to Development and other international instruments to which the Andean States are party”.

In the event of approval of this project, the labour contents of the already mentioned international human rights instruments would
be incorporated into the agenda of social dialogue in and between the Andean countries.

With regard to developments related to social dialogue in the Andean Community of Nations, there have been attempts to coordinate action in Bolivia since October, 1996, when a tripartite meeting was held in La Paz as part of a technical cooperation project of the Inter-American Development Bank, aimed at analyzing issues such as “the improvement of employment levels and quality and the establishment of modern and participatory labour relations.” A National Dialogue called “Bolivia towards the XXI century” took place in October, 1997 at the request of the President of this Nation. Four working groups, called: “opportunity” (economic development), “dignity” (fight against drug trafficking), “justice”/”institutional make-up” (State and society), and “equity” (human development), achieved consensus in areas such as social exclusion, poverty, “equity, fair income distribution; non discrimination in professional training and qualification of human resources; more and better quality employment; productive capacity and promotion of the participation of civil society in policy making”. In July 1998, a “Declaration of Santa Cruz”, which is considered the “first concerted action that proposed various policies in the area of labour relations and professional training, on the basis of a plan for the development of basic agreements”. A month later, an attempt to amend the 1939 General Work Act failed. (Sepulveda and Vega Ruiz, 2000a and 2000b) and (Martinez and Vega Ruiz, 2001).

In Colombia, the Union Confederations did not support the adoption of a new social pact that would replace a previous accord approved in 1994, in spite of the importance that was bestowed on the approval of a Tripartite Agreement for the Development of Organized Labour, achieved by a Tripartite Commission created for the 1994 Pact. A broad program of dissemination and training was carried out as part of project UNDP/ILO around a “new culture of labour relations” (Sepulveda and Vega Ruiz, 2000a).

Significant is also the adoption of Act 278 which, in elaboration of art. 56 of the National Constitution, determined the structure and functions of the Permanent Commission of Concerted Action on Labour and Trade Union Policies. This commission was charged with fostering good labour relations, guarantee union rights, contribute to the solution of collective conflicts, elaborate labour policy and establish, on a consensus basis, social and minimum wage policies. On this subject, it should be kept in mind that the Constitution determines that the State is mandated to promote concerted action, establish the above mentioned Commission and “contribute to the organization, promotion and training of professional, civic, labour, communitarian, youth and benevolent organizations”, in the context of a National Planning Council created for this purpose (Martinez and Vega Ruiz, 2001).

After the short-lived State Labour Agreement, which was signed after numerous strikes in the public sector in 1997, as well as the working groups that were constituted following the labour conflicts that took place in 1999, an agreement achieved in August 2000, to launch a process of social dialogue around the following five issues, continues to be considered a specially important development: “a) policies and programs that generate urban and rural employment, emphasizing emergency plans; b) social security regime, in particular the Social Insurance Institute, health and pension schemes and issues related to Family Compensation Funds, the Colombian Welfare Institute; c) professional training and education; d) labour legislation and development of art. 56 of the National Constitution, and e) wage policies and determination of the minimum wage” (Sepulveda and Vega Ruiz, 2000a) and Martinez and Vega Ruiz, 2001).

In Ecuador, the tripartite dialogue was hampered by the momentous political events that took place in the 1990s and the delicate economic situation of the country, along with the persistence of a confrontational style in the area of labour relations (Borja, 2001).

In 1994, with the support of a UNDP/ILO project, labour concerted action was promoted, specially with respect to wage unification. A 1995 plebiscite rejected governmental attempts to reform social security and privatize the Ecuadorian Institute of Social Security. The following year, Congress rejected a proposal for statute on wage unification
proposed by the government. However, in 1996, tripartite working groups on labour concerted action assigned priority to wage unification and social security reform.

In September, 1996, the Government of Ecuador (represented by the President, the Vice-president, the Ministers of Labour, Finance and Social Welfare, and the President of the Monetary Board), the workers (represented by CEOSL, CTE, CEDOC AND CEDOC/CUT) and the employers (represented by the Chambers of Industry, commerce, Agriculture and Live stock, Construction and Small- and Medium Enterprises of Quito and Guayaquil) signed a Protocol on the Process of Concerted Labour Action, in order to achieve a Social Pact. In the month of November, this initiative approved the Statutes of the Plenary of Social Concerted Action and the Working Groups of social dialogue. After the overthrow of President Bucaram in February 1997, President (a.i.) Fabian Alarcon ratified the above mentioned Protocol (March, 1997) and subscribed, in the month of October, a fifteen point document about a reform of the social security system on the basis of tripartite consensus (Martinez y Vega Ruiz, 2001) (Borja, 2001).

A National Constitutional Assembly was called in January 1998, that remained in session during four months. The new Constitution entered into force in the month of August. Articles 55 to 61 of the Constitution regulate social security matters. According to social interlocutors, the finally established norms deviated from previously reached agreements.

During the government of President Jamil Mahuad (August 1998 – to January 2000), the 1996 Protocol was solemnly ratified, but the concerted social dialogue hardly advanced. Under the government of current President Gustavo Noboa, it was decided to establish separate contacts with Union and entrepreneurial sectors (Borja, 2001)

Although the social dialogue failed to reach its initial objectives, it was nonetheless able to generate the following important effects, among others: a) raise increased interest in its potential and feasibility, and call attention to procedural and behavioral aspects that should be observed in future attempts; b) a considerable decrease of labour conflicts; c) a tripartite consensus was achieved on a document called “Point of Convergence of the three social interlocutors in the Dialogue related to Social Security”; d) consensus over a document called “Policy guidelines for the creation of a National Labour Training System and the pertinent draft project”; e) a tripartite agreement called “Employment Plan for Ecuador”, which failed to be approved by the Plenary, which in turn adopted an economic, legal and social analysis on the employment problem (Borja, 2001).

Throughout 1995, political developments and the grave consequences of terrorism and economic crisis put an end to the progress achieved in the context of concerted social dialogue in Peru under the 1980 Constitution, which was specially promoted during the government of President Belaunde.

Yet, in that period, certain modalities of tripartite participation, such as the National Council of Concerted Action and the Tripartite commission on Dialogue and Social Concerted Action, managed to subsist (Martinez and Vega Ruiz, 2001).

Democratic restoration under the government of President Valentin Paniagua (November 2000 to July 2001) recreated the necessary conditions for the implementation of social dialogue. Particularly important in this respect is the reactivation of the National Work Council, a tripartite institution created in the 1980s. This body was mandated to engage in social dialogue and concerted action around employment, professional education and work. As a result of these activities, the Council recommended to reform compensation based on seniority, maternity leave, and the special contract for youths. Additionally, the Council was consulted about the new Labour Inspection Act passed by the Government by virtue of prerogatives delegated by Congress. Lastly, in February 2001, the Council adopted a tripartite Declaration stating, among other things, that “the social actors and the Government commit themselves to establish in the country a social climate based on human rights, respect for national and international labour regulations, social dialogue, productivity and competitiveness, and cooperation and respect between the parties; additionally, the Declaration confers to the Ministry of Labour the task of supervising labour relations” (Martinez y Vega Ruiz, 2001).
The Government of President Toledo has called for a broad movement of political concerted action that includes labour issues. At the same time, an ongoing process to amend the 1991 Constitution includes labour regulations and social security, by means of coordinated efforts between Congress and the Executive Branch. On the other hand, the Congressional Labour Commission studies amendments to labour legislation, with the support of an advisory group constituted by prominent specialists and academics linked to Union and entrepreneurial sectors. Meanwhile, the Labour National Council has intensified the tripartite dialogue on reforms of labour regulations and social security, with the active participation of academics and representatives of Trade Unions and entrepreneurs.

Venezuela, which has a longstanding tradition to recur to social and political pacts, signed a Tripartite Comprehensive Agreement on Social security (ATSSI) in March, 1997, and a Tripartite Agreement on Employment Stability and Wages (ATES) in July, 1997 (Sepulveda and Vega Ruiz, 2000a and 2000-b).

Thanks to ATSSI, it was possible to reform benefit delivery systems and wages. These reforms include the issue of salary-like benefits, along with the determination of the minimum wage and compensation for unjustified dismissals. Besides, consensus was reached with respect to the social security system, including the participation of social interlocutors in the organization, financing and administration of the system. It was also agreed to reform the health subsystem, inject funds into the Involuntary Unemployment Insurance Fund and undertake its financial and administrative separation from the Venezuelan Institute of Social Insurance. Norms related to the labour relations systems, tripartism and the ILO were incorporated into ATSSI. At the same time, the parties to ATES agreed on proposals in the areas of employment policy, professional training, employment stability and massive layoffs (Martinez y Vega Ruiz, 2001) and (Morgado, 1998-4).

c) Social dialogue in the context of the CARICOM.

The Preamble of the Treaty of Charamaguas (July, 1973), which established the Caribbean Community and Common Market (CARICOM), states the shared purpose of achieving full employment and improve the standards of living and labour. At the same time, the Treaty created a Permanent Committee of Labour Ministers as an organ of the Community, with a mandate to elaborate appropriate labour policies for the integration process. The functions of this Committee were taken over later on by the Council of Human and Social Development, in accordance with Protocol I of the Treaty, which amended the Treaty of Charamaguas (Ciudad, 2001).

On the other hand, the ‘Charter of the Civil Society of the Caribbean Community’ calls for, among other objectives, promotion of and respect for freedom of association; collective bargaining; adequate resolution of conflicts, free choice of employment; eradication of forced labour, right to security; occupational safety and health; maternity protection; appropriate social security benefits, prohibition of arbitrary layoffs; right to reasonable work hours and remuneration.

The XIII Meeting of the Permanent Commission of Labour Ministers adopted in April 1995 the “Declaration on Labour and Industrial Principles”, incorporating objectives such as non-discrimination in employment, employment policy, regulation of the termination of labour relations and dismissals on economic, technological, structural or similar grounds; eradication of labour by children under 15 years of age; right to appropriate rest periods; wage protection; labour administration, tripartism and consultation.

The Declaration states that the promotion of tripartism and consultation, along with collective bargaining, are essential elements of the labour relations system in the Caribbean, specially in the face of financial difficulties. At the same time, the Declaration warns that consultation and tripartism should not substitute collective bargaining.

Besides tripartism and consultation, the Declaration contains numerous references to social dialogue. For example, in the area of collective bargaining, this document recognizes the right of workers to receive from their employers all the necessary information with respect to the economic and financial conditions of the pertinent negotiation unit.
With regard to the termination of the labour relation on economic, technological, structural or similar grounds, the employer must provide the workers or their representatives pertinent information about its justification, the number of categories that may be affected and the period during which the termination of labour relations will take place. Besides, the employer must give workers the opportunity to consider measures that may avoid or minimize terminations, mediate their adverse effects or identify alternative employment. The Declaration also stipulates that workers and employers must establish, on a common basis, appropriate procedures for the recruitment of workers and termination of labour relations, in order to protect the interests of both parties.

Moreover, the Declaration establishes that organized labour and employers associations may agree to promote the implementation of incentives to share the benefits of increasing productivity between workers and employers.

The Declaration also encourages social parties to promote training, productivity and development of career opportunities. Likewise, the Declaration emphasizes that the Labour administration system should be based on consultation, cooperation and negotiation between public authorities and the most representative organizations of employers and workers, at the most appropriate national, regional or local levels.

Lastly, with respect to labour conflicts, the Declaration invites the parties to use previously agreed means of resolution, and not go on strike or close down enterprises before having exhausted all means of negotiation, conciliation, mediation or arbitration. Parties are called not to recur to direct action in conflicts generated by the interpretation or application of collective contracts, and not to engage in unfair or intimidating actions.

The 1997 Protocol to amend the Treaty of Chaguaramas created the Council of Social and Human Development, which was charged, among other things, to foster the development of harmonious labour relations. The year after, the Protocol included commitments on matters related to small and micro-enterprises and development of human resources to improve competitiveness. The Council invites representatives of social organizations to its meetings.

The projects of the above mentioned regulatory instruments are complemented by valuable experiences with dialogue in Barbados, Trinidad and Tobago, Guyana and Jamaica.

A recent study on Barbados points out that social dialogue was to a major extent promoted in this country in the late 1980s, when the government took measures that responded to demands by multilateral financial institutions, in order to overcome a severe economic crisis. The creation of CTUSB in 1995, which unified labour organizations, strengthened social dialogue and made it possible for entrepreneurial and labour organizations to undertake joint action against the measures announced by the government.

That process was preceded by the favorable results derived from a social dialogue that gave rise, in 1993, to a “Protocol for the application of price and income policies,” which included important agreements on monetary parity, economic reforms and the promotion of productivity.

In 1994, that Protocol was followed by another document that substituted a wage stop by wage restrictions. The Protocol also established a Sub-commission of Social Interlocutors to set up a system of consultation about the application of this document, which resulted in meetings presided by the Prime Minister every three months.

In the Third Protocol (1998-2000), tripartite agreements centered around macroeconomic issues gave way to agreements about the responsibilities and duties of the social interlocutors with respect to “employment, professional training, abatement of social inequalities, reform of the public sector, crime and the disabled.” The government made commitments on “consultations regarding the elaboration and implementation of fundamental economic and social policies; compliance with its role as “model employer”; increasing professional training and representation of workers at the labour councils; non-discrimination nor excessive delays in making nominations; reform of national capital markets; granting contracts to small enterprises and providing previous information to foreign investments about practices and conventions on labour relations”. Meanwhile, employers’ organizations committed themselves to “avoid
the use of detrimental practices with respect to the work force; control prices to prevent inflationary tendencies; develop progressive management policies, guaranteeing consultation and full worker participation in decision making processes; fostering profit sharing schemes and supporting local providers of goods and services”.

Trade Union organizations committed themselves to comply with their contractual obligations, provide quality work, develop a culture of productivity and encourage initiatives to take advantage of all the available opportunities in the areas of professional training and consultation.

The Declaration recognized that every single enterprise should make a commitment founded on “the knowledge and understanding of the basis of social cooperation; mutual respect in terms of rights and interests; willingness to share profits fairly; willingness to provide productive work to guarantee sustained competition and viability of the enterprise” (Greaves, 2000).

In Trinidad and Tobago, the tripartite dialogue derived from the activities of the Tripartite Commission established in accordance with ILO Convention N° 144 about tripartite consultation (international labour regulations) of 1976, led to the adoption of an agreement on social cooperation aimed at favoring competitiveness and increasing productivity (October, 2000).

The agreement, which was named “Compact 2000 and Beyond: Declaration of Social Partners to Address Economic and Social Issues”, was signed by the Advisory Association of Employers and the National Trade Union Federation (NATUC) (Greaves, 2000).

Meanwhile, in Guyana, social dialogue has manifested itself basically through collective bargaining and a Tripartite Commission that was established in accordance with the above mentioned ILO Convention N° 144.

At the initiative of Guyana’s Union Congress (GTUC) and with the cooperation of the ILO, a tripartite meeting was held in the year 2000 to establish a Protocol on Social Cooperation (First Protocol for the Implementation of a Social Partnership – 2000), which contemplated possible consensus on subjects such as tripartism, tripartite consultation, mutual respect and cooperation on the part of social interlocutors; unemployment; elaboration of policies to administer the process of change and social development; productivity and unemployment (Greaves, 2000).

On the other hand, Grenada saw the failure of a governmental initiative aimed at approving a Memorandum of Understanding to establish a Tripartite National Consultation Commission, whose purpose would have been to hold periodic meetings to prepare reports on aspects of national development that might be subject of consensus, including its own perspective; an examination and evaluation of the conditions of the economy and the social sectors, and a definition, on a consensual basis, of pertinent policies and programs.

Lastly, in Jamaica, the government promised Parliament to table a “Draft Agreement for the Implementation of a National Economic and Social Understanding-Social Partnership 1996-1997”. The Trade Union Confederation of Jamaica (JTUC) and the Federation of Employers of Jamaica rejected the agreement, in whose elaboration they had not participated.

However, this did not affect the elaboration of bilateral memoranda of understanding between Trade Unions and employers in the bauxite and aluminum sector, the National Water Commission, and the shipping and sugar industries. These direct agreements privileged consensus in matters such as investments, modernization, productivity and professional training, and their relation to improved productivity (Greaves, 2000).

\[d) \text{Social dialogue in the context of the MERCOSUR.}\]

The 1991 Treaty of Asuncion mentioned the harmonization of the process of economic integration with social justice. Yet, social and labour issues were not incorporated in any of the Subgroups in charge of specific integration matters.

Therefore, the 1991 Declaration issued in Montevideo by the Ministers of Labour of the Member States of MERCOSUR held that in order to improve labour conditions through integration, it would be necessary to take into account pertinent social and labour variables.
The Declaration also proposed the constitution of a tripartite technical Working subgroup in charge of these matters.

The Common Market Group, which is the decision making organ of the MERCOSUR, responded by creating Working Subgroup Nº 11 on Labour Affairs, with tripartite commissions in charge of eight subjects:

- Individual labour relations.
- Collective labour relations.
- Employment.
- Professional training.
- Occupational safety and health.
- Social security.
- Specific sectors.
- Principles.

These Commissions carried out valuable studies and issued important recommendations and proposals on a consensual basis.

In accordance with a decision made by the Common Market Group, starting on January 1, 1995, Subgroup Nº 11 became Working Subgroup Nº 10, on Labour Affairs, Employment and Social Security.

Its deliberations resulted in the Multilateral Agreement on Social Security of the MERCOSUR, signed in Montevideo in 1997, and the Social and Labour Declaration of the MERCOSUR, which was signed at Rio de Janeiro in December, 1998.

The Multilateral Agreement on Social Security recognizes the right to social security of all workers who provide or have provided services in any of the State Parties, along with their dependents and cooperators. This recognition is also extended to workers of any other nationality who reside in the territory of one State Party, provided that they are working or have worked in any of them.

The following year, the Presidents of the Member States approved the Social and Labour Declaration of the MERCOSUR, an important instrument that originated from studies by the then Subgroup 11, which made room for several proposals and important contributions on the part of the Trade Union organizations of the Member States.

The Declaration establishes and guarantees the following rights:

- Effective equality of rights, treatment and opportunities in employment and occupation, without distinction or exclusion on grounds of race, national origin, color, sex or sexual preference, age, creed, political or union opinions, ideology, economic position or any other social or family condition.
- Dignified and non-discriminatory treatment of individuals with special needs, favoring their social and labour reinsertion.
- Equality of treatment and opportunities for women and men.
- Equal protection and labour conditions for migrants in the receiving country.
- Elimination of all forms of work or services demanded under coercion from an individual who would not perform the work voluntarily.
- Eradication of child labour and special protection of minors.
- The employer has the right to organize and conduct its enterprise economically and technically, according to national legislation and practice.
- Employers and workers have the right to establish any organization they may deem appropriate and join these organizations in accordance with national legislation; workers shall enjoy adequate protection against any act of discrimination.
- Employers or their organizations, and the organizations or representatives of workers have the right to negotiate and stipulate conventions and collective agreements to regulate labour conditions in accordance with national legislation and practice.
- Workers and their unions enjoy the right to strike, in accordance with national legislation. Conflict prevention or resolution mechanisms may not prevent the exercise of this right or distort its purposes.
- Self-resolution of labour collective and individual conflicts, fostering and developing preventive and alternative forms.
- Promotion of dialogue between the representatives of the social sectors, in order to guarantee social consensus.
- Promotion of economic growth for the purpose of fostering employment for the benefit of the people.
- Creation of mechanisms to protect the unemployed.
- Labour orientation, formation and training.
- The right to work in a safe and healthy environment.

Article 13 of the Declaration establishes the commitment of the State Parties to foster
social dialogue at the national and regional levels and establish effective and permanent consultation mechanisms between governmental representatives and delegations of employers and workers, in order to guarantee, by means of social consensus, favorable conditions for sustainable economic growth and social justice in the region, along with improved standards of living.

To oversee the application of the provisions of the Declaration, this document established a tripartite Social and Labour Commission as an auxiliary body to the Common Market Group. There is no doubt that the tripartite composition of this body makes room for new forms of social dialogue.

Its mandate is promotional, not punitive, and consist in:

- Examining, commenting and delivering the reports prepared by the State Parties with respect to the commitments incorporated into the Declaration.
- Elaboration of plans, programs of actions and recommendations to further application of and compliance with the provisions in the Declaration.
- Examination of observations and consultations regarding any difficulties or flaws in the application of and compliance with the Declaration, providing relevant clarifications.
- Elaboration of analysis and minutes regarding the application of and compliance with the Declaration.
- Examination and elaboration of proposals to amend the Declaration.

The procedure consists of two instances and is entrusted to the National Commission and the Regional Commission.

The provisions of the “Charter of Buenos Aires on the Social commitment of the MERCOSUR, Bolivia and Chile” are additional to the “Social and Labour Declaration of the MERCOSUR”.

This Charter was approved and signed in June, 2000 by the Chiefs of State of Argentina, Bolivia, Brazil, Chile, Paraguay and Uruguay.

In accordance with the provisions of the Charter, the four State Parties of the MERCOSUR and the two associated States (Bolivia and Chile) committed themselves to overcome the most urgent social problems, outlining possible areas to coordinate actions on matters such as employment, child work and social exclusion.

With respect to the institutional aspects of the MERCOSUR, the Economic and Social Advisory Forum, a permanent body added to the organizational structure of the Mercosur through the 1994 Protocol of Ouro Preto, which amended the 1991 Treaty of Asuncion, has undoubted potential for social dialogue.

The Forum is composed of nine representatives of each Member State. Following a decision made by their respective National Sections, four unions and four entrepreneurial delegates are part of those delegations. The recommendations of the Forum Plenary must be adopted by consensus in the presence of all the National Sections that are represented in this body, unless the Plenary takes action in response to an inquiry of the Common Market Group or other organ of the MERCOSUR.

Out of thirty-three subjects incorporated in the 1996 Agenda, ten are entirely devoted to labour issues, such as employment promotion; social and labour aspects of employment and unemployment; national standards and international labour conventions; labour relations; occupational safety and health; labour migrations; training and occupational certification; social security; human rights and the Charter on Social Rights.

The obligation to adopt its recommendations on a consensual basis strengthens expectations in the sense that the Forum will fortify dialogue and concerted action, by means of its plenary meetings within the National Sections. As a matter of fact, its effective functioning may favor the establishment of Fora or Economic and Social Councils in each Member State.

It should be added at this point that, in the frame of MERCOSUR, a regional collective convention was signed in 1998 between Volkswagen and the Trade Unions of the Argentine and Brazilian metalworking industries, to “extend the relationship between work and capital to the whole area of MERCOSUR, establishing an exchange of information and mechanisms of conflict prevention and resolution, as well as the recognition of union representation along with the representation of internal plant commissions”. A prominent labour law specialist has described this convention as a
product of “an informal and inorganic social dialogue”, resulting in the “first and sole regional collective convention”. The same source held that this convention “confirms the expectation that the labour relations in the MERCOSUR will, necessarily, develop their own kind of collective negotiation that might take the form of a collective negotiation typical of a multinational enterprise, the format of a branch or activity negotiation, a frame agreement, or a social pact generated at the top, not unlike EU precedents (Ermida, 2000).

e) Social dialogue and the labour cooperation agreement annexed to NAFTA

Along with the 1993 North American Free Trade Association (NAFTA), the Governments of Canada, the United States and Mexico adopted a Labour Cooperation Agreement whose Preamble recalls, among others, the objectives of NAFTA to encourage the competitiveness of their enterprises in the global markets, create new employment opportunities, improve labour conditions and standards of living, and protect, extend and enforce workers’ basic rights. At the same time, the Preamble affirms permanent respect for the Constitution and legislation of each party and recognizes that mutual prosperity depends on innovation and growing levels of productivity and quality. It also states that the free trade area seeks to complement the economic opportunities created by the Treaty through the development of human resources, worker-employer cooperation and a continuous training system characteristic of highly productive economies. At the same time, it recognizes that protection of worker basic rights will foster the adoption of high productivity and competitive strategies on the part of the enterprises.

Keeping in mind these declarations and commitments, the free trade area decided to promote, through domestic laws, a process of economic development based on high levels of training and productivity by means of: a) investing in the permanent development of human resources, including investments aimed at incorporating workers into the labour market during periods of unemployment; b) promoting employment stability and career opportunities through employment exchanges and other employment services; c) strengthening worker-employer cooperation to further more intense dialogue between the organizations of workers and employers, as well as encourage creativity and productivity on the work site; d) promoting higher standards of living tied to increasing productivity; e) encourage consultations and dialogue between labour organizations, employers associations and governments in each of the North American countries; f) promoting investment by paying due attention to the importance of labour law and principles, and g) encouraging employers and workers alike to comply with labour laws and work jointly to maintain a progressive, fair, safe and healthy work environment.

In terms of this Paper, points c), e) and g), mentioned in the previous paragraph, deserve more detailed examination.

The first stimulates the bipartite dialogue between social subjects (organizations of employers and workers), with the double purpose of strengthening mutual cooperation and heightening creativity and productivity at the work site.

The second stimulates tripartite dialogue and consultations (labour organizations, entrepreneurs and governments) at the national level and the level of the North American region. At both levels, the dialogue requires the existence of mechanisms to promote and make possible its continuity and compliance with the agreements achieved in the process.

The third point encourages employers and workers at the national level to comply with labour law and work jointly to maintain a good labour environment.

The issues related to social dialogue have been incorporated into different standards of the Agreement and its Annexes. Such is the case, for example, of the objectives contained in Art. 1 and the obligations established in Art. 2-7. With respect to the latter, we must highlight the commitment of the governments to encourage the establishment of worker-employer commissions to address labour regulations at the work site. Moreover, social dialogue is one of the cooperation areas between the Parties that are mentioned in Art. 11, which refers expressly to modalities of tripartite cooperation between workers, employers and governments.
The participatory dialogue is also favored in Art. 17, which holds that each Party may call for a National Advisory Council formed by social actors, including representatives of their labour and entrepreneurial organizations, in order to gain advise on the application and further development of the Agreement.

Lastly, the determination of the possible Agenda of the dialogue process requires the important contribution of the labour principles contained in Annex 1: freedom of association; the right to strike; eradication of forced labour; restrictions to labour by minors; minimum labour conditions; equal pay for men and women; elimination of discrimination in employment and occupation; professional accidents and occupational disease, compensation of the victims of such events, and protection of migrant workers.

f) Social dialogue in the context of the Labour Cooperation Agreement annexed to the Canada-Chile Free Trade Agreement, and ALCA.

The Free Trade Agreement between Canada and Chile is accompanied by a Labour Cooperation Agreement not unlike the Agreement Annexed to NAFTA, except for some matters such as the commitment of the parties to promote, as far as possible, the labour principles established in Annex 1.

On the other hand, the present preparatory stage of the Americas Free Trade Area (AFTA) raises a situation similar to that indicated in the previous paragraph, according to the agreements established since the First Summit of the Americas (Miami, 1994), whose initial milestones are the Declaration of Principles for the creation of AFTA, the Plan of Action of the First Summit of the Americas, the Cartagena Ministerial Declaration (1998), the Ministerial Declaration of San José and the Declaration of Santiago de Chile, which was adopted by consensus at the Second Summit of the Americas (1998).

Lastly, it should be taken into account that in spite of its special character, APEC (Asia-Pacific Economic Cooperation) has established a Working Group on the improvement of human resources.

2. Beyond national boundaries

Social dialogue in transnational enterprises has special meaning. Although their local subsidiaries have autonomy to deal with the full range of subjects pertaining to labour relations, under the present circumstances this autonomy has declined to the extent that local decisions must match the strategic decisions and rationalization programs adopted by the mother enterprise that address the global international context, but not necessarily the national situation. For example, in the case of Canadian subsidiaries of the Mannheim based enterprise Asea Brown Boveri (ABV), all issues concerning labour depend in part on rationalization policies adopted by ABV. Yet, these policies also consider subjects such as: a) local social dynamics, particularly with regard to unionization and collective bargaining, links between wages, production standards, external mobility and the distribution of supplementary working time; b) corporate supply policies, working time and total quality management, and c) national and international labour institutions, specially with respect to the levels of collective bargaining.

“The disparity between the mobility of transnational enterprises and the mobility of workers may undermine the social basis of existing labour relations institutions, whose scope is essentially restricted to national boundaries.” Decisions such as “those related to investment and disinvestment, that may have extremely grave consequences for the workers beyond the borders, are usually adopted at the location of these enterprises, while the trade unions are kept at a distance in terms of the creation of inter-union transnational coordinating mechanisms” (Osaki and Rueda).

Taking into account these considerations, some have argued that effective transnational negotiations call for transnational negotiators and structures (Bélanger, Giles, Grenier and Trudeau, 1998).

Hence, the proper implementation and functioning of unions in transnational collective negotiations require unions to adapt their coverage and functioning to the structures
and functions of the corresponding market. To this end, the establishment of multinational unions is being advocated. These unions should also have access to necessary global sources of information to adequately represent their members. As a matter of fact, such a multinational union would require a centralized and, at the same time, decentralized structure, in order to ensure the efficiency of its operations (Leftwich).

For that purpose, the International Brotherhood of Teamsters (IBT) launched in 1995 an international campaign to secure from Royal Ahold NV, a transnational enterprise, the recognition of this union as the representative of all of Ahold’s workers to exercise their basic rights and carry out collective bargaining. In 1996, IBT decided that it was necessary to establish a World Council to deal with the affairs of Ahold. Soon after its creation, the Global Council proposed Ahold, among other things, to create a World Committee on Consultation and Information, along with a consultation system involving all issues pertaining to the situation of Ahold’s labour relations at a global level, specially with respect to decisions on subcontracting, outsourcing or terminating labour relations.

This attempt to internationalize collective bargaining, consultation and information was taken up by the International Federation of Employees and Technicians (FIET), which tried to organize the workers of “Toys R Us”, a transnational manufacturer of toys and games, in 20 countries. FIET is one of the International Secretariats of the International Confederation of Free Union Organizations (CIOSL) (Russo).

Thanks to globalization, enterprise councils that function within European transnational companies have gained in importance and significance as worker participatory bodies. A study that examines the impact of globalization on 20 European enterprise Councils concluded that the effects of those bodies are also being felt by their Argentine, Brazilian, Mexican and U.S. subsidiaries (Koch, 1998).

Other important aspects of labour relations within the subsidiaries of transnational corporations that determine both the agenda and the climate of possible processes of social dialogue, have to do with issues such as the applicability of national legislation (Costa Rica); the special situation of workers under temporary contracts (Peru); higher benefits in areas such as transport, health care for workers and their children, special training programs and governmental intervention with respect to special procedures before closing down enterprises (Brazil, Costa Rica, Ecuador and the Dominican Republic); lower benefits regarding overtime, including holidays; women’s night work; retirement plans; automatic renovation of fix term contracts; special provisions in the event of the termination of labour relations (Ecuador and Panama); de facto restrictions to the right to unionization; mandatory arbitration and suppression of the right to strike (Panama); consultations with public authorities with regard to all aspects of the operations of transnational enterprises, including labour conditions (Nicaragua); respect for environmental regulations and protection of the ecosystems (Dominican Republic); expansion of relations with national enterprises; application of different procedures to close enterprises and improved training (Costa Rica); reduction of personnel and severance compensation in the frame of privatizations and deregulation (Colombia, Panama, Peru); hyper activity of collective contracts following privatizations (Peru); dissolution of unions before privatizations and disputes over the right to build up new unions (Dominican Republic); equal treatment of national and transnational enterprises (Brazil and Canada) (ILO, 2001).

It is interesting to note that a recent study devoted to foreign direct investment (FDI) and transnational enterprises in Costa Rica found out that, in the second half of the 1990s, such investments were concentrated specially in high technology areas of the manufacturing sector that produced electronic parts and components, software and hardware, and provided technical assistance services. These investments corresponded to new entrepreneurial initiatives, rather than to privatizations of public enterprises. These developments had significant macroeconomic impacts, but did not create new employment. Nevertheless, transnational enterprises and the government enjoy good cooperation relations with respect to the objectives of the tripartite Declaration of Principles about national enterprises and social policy (ILO, 1997),
including mechanisms to achieve sectoral coordination of labour relations (Van der Laat, 2001).

3. Fundamental rights

The social dialogue is being promoted and, at the same time, conditioned by ethical and legal imperatives derived from the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the American Declaration of the Rights and Duties of Men, The American Convention on Human Rights and its Additional Protocol on Economic, Social and Political Rights, as well as the Constitution of the ILO, the Declaration of Philadelphia on the Purposes and Objectives of the International Labour Office, the ILO Declaration on Labour Fundamental Principles and Rights at Work and their Follow Up, ILO Conventions and Recommendations and the Agreements adopted at the Inter-American Conference of Labour Ministers.

The interaction between International Labour Law and International Human Rights Law has generated guidelines, definitions and tasks which direct the social dialogue that addresses social and labour issues in the context of present processes of change at national and supranational levels (Morgado, 1991).

Given the above mentioned dimensions and supranational expressions of social dialogue, dialogue that takes place or that is being intensified in this environment must involve the right subjects, participants, levels and structures to be effective and efficient, both with respect to national and international issues.

This necessarily means that dialogue mechanisms must be flexible enough to adapt to the various and changing needs they should address. Subjects such as more and better quality employment; wage policies and their suitability; and flexibilization of individual and collective labour relations require innovative approaches and creative practices.

The XI Inter-American conference of Labour Ministers of the Organization of American States, after analyzing the social and labour dimension of economic globalization, the requirements and challenges of the modernization of the State and the Labour Administration, adopted the Declaration of Viña del Mar, pointing out that the policies that provide the foundations for growth, necessary for social development, must be designed such as to produce more and better quality jobs, in accordance with basic internationally recognized labour standards. Therefore, those policies “must be implemented within the framework of individual and collective labour norms consistent with workers’ fundamental rights consecrated by the International Labour Office (ILO), and reiterated in the Declaration on fundamental Labour Principles and Rights at Work and their Follow Up, adopted by the constituents of the ILO at the 1998 International Labour Conference (OAS).

Through this Declaration, the ILO responds to the challenges raised by economic globalization, starting from the conviction that social justice is essential to guarantee global and permanent peace, and that economic growth is essential but not enough to ensure equity, social progress and the eradication of poverty.

Economic growth must be accompanied by a minimum of social rules in order to accomplish, as part of a global strategy of economic and social development, mutually reinforcing social and economic policies that create a sustainable development process on a solid basis.

Therefore, the guarantee of the fundamental principles and rights at work acquire special importance and meaning by ensuring the interested parties the possibility of claiming freely and without discrimination a fair share of the wealth that they contributed to create, as well as the opportunity to fully develop their human potential (ILO, 1998).

Describing the background of this declaration, Michel Hansenne, the then Director General of the ILO, stated that the World Summit on Social Development (Copenhagen, 1995) made commitments and adopted a Program of Action addressing workers’ fundamental rights: abolition of forced or compulsory labour, eradication of child labour, freedom of association, right to unionize and collective bargaining; equal remuneration and non-discrimination
in employment. In 1996, the Ministerial Conference of the World Trade Organization held in Singapore renewed the commitment of the States to respect internationally recognized labour rights, while reaffirming the role of the ILO as the organ competent to ensure their application.

The Declaration of Viña del Mar recalls that by their free incorporation into the ILO, the State Parties have accepted the principles and rights enunciated in its Constitution and the Declaration of Philadelphia. Thus, they are committed to make all efforts to achieve, as far as possible, the general objectives of the Organization, taking into account their specific conditions. The Declaration also establishes that those principles and rights have been expressed and developed in the form of specific rights and obligations, in the context of conventions that have been recognized as fundamental, both within and outside the Organization.

At the same time, the Declaration states that “all its Members, even when they have not ratified certain conventions referred to, are bound by their mere membership to respect, promote and put into effect, in good faith and in accordance with its Constitution, the principles related to the fundamental rights that are the object of those conventions: - Freedom of association and effective recognition of the right to collective bargaining. - Abolition of all forms of forced or compulsory work. - Effective eradication of child work. - Elimination of discrimination in employment and occupation.

On the other hand, the Declaration underlines that “labour standards should not be used for protectionist purposes in the trade area, and that nothing in this Declaration and its follow up may be invoked or used otherwise to those ends; besides, the comparative advantages of any country should not be questioned by any means whatsoever on the basis of the present Declaration and its follow up” (ILO, 1998).

There is no doubt that the global validity of the fundamental principles and rights at work is one of the objectives of national and international social dialogue. In both cases, it requires the presence of suitable subjects and procedures.

As far as the subjects are concerned, coordination and support mechanisms are increasingly available within the Trade Union and entrepreneurial sectors alike.

Important international activities are being carried out by labour organizations such as the International Professional Secretariats of the CIOSL, and national confederations such as the AFL-CIO of the United States. Similar activities have been implemented in the entrepreneurial sector, specially those carried out by the International Organization of Employers (OIE) and affiliates such as Spain’s CEOE.

Next to official procedures –bipartite and tripartite-, there are voluntary private initiatives such as “codes of conduct, social labeling, certification, license granting, social audits and control, guiding economic activities throughout a chain of production…” (ILO, 2001)

Those mechanisms are complemented by others, such as the application of the concept of socially responsible investment (SRIs), which extends the criteria for investors by including social, ethical and environmental factors.

In the United States, where this kind of approach to investment originated, “SRIs constitute 13% of the total volume of institutional investment (i.e. investment made by financial institutions and pension funds), of a total of over 2 billion USD. This represents a rate of growth twice the market rate between 1997 and 1999. The total number of mutual funds selected in the United States that follow social criteria grew from 55 in 1995 to 195 in 1999”(ILO, 2001).

U.S. organized labour organizations control an important percentage of these mutual funds. The larger among such funds – California Public Employee Retirement System- is very important in the area of SRIs (ILO, 2001).

E. Environments

1. Political and economic environments

Dialogue does not take place in isolation. It is part of a system of labour relations that shapes it in part, while being at the same time
influenced by the effects of the dialogue experience. The contents, urgencies and demands derived from the political and economic environments importantly condition the nature and effectiveness of social dialogue.

As much as the other components of the system of labour relations, social dialogue takes place in a social and political frame “constituted by historic, economic, social, cultural and even religious elements, whose evolution conditions not only the behavior of the system’s actors, but also has repercussions on its own regulation” (Bronstein, 1997a).

In the Central American region, both social dialogue and the efforts to promote concerted action take place against a background of a changed economic model, along with national peculiarities related to peace processes and the transition to democratic rule in the countries that went through civil wars or authoritarian regimes. A common interest in these countries was the achievement of political stability (Cerdas, 2001).

In Costa Rica, efforts were made to promote concerted action since at least 1978. In 1998, attempt were made to implement a global process of concerted action, but this failed due to lack of consensus around some of the subjects on the Agenda. This country’s efforts to carry out concerted actions were certainly affected by economic and technological changes, without prejudice of the political developments in neighboring countries, as a result of their peace and democratization processes. The 1998 process of concerted action was preceded, among other things, by a call made by Francisco Morales, the then Minister of Agriculture (1986), that was initially supported by employers and union organizations alike. The commitments made in the frame of the First Program of Economic Adjustment narrowed the available room for negotiations between the government and the social sectors. In 1994, the Government of President Figueres organized a Forum called “A Reasonable National Agreement”, aimed at resolving the problems derived from a fiscal deficit with the support of the social sectors.

Soon after his election in 1998, President Miguel Rodriguez created a Commission on Concerted Action that presented a proposal concerning the agenda, some working procedures and the participants in the process. In June of the same year, a dialogue was officially established with the participation of governmental representatives and delegates of the employers and trade unions. A Coordinating Board coordinated the work of the Forum, while technical support was entrusted to an Executive Secretariat. Besides, a Board of Mediators was constituted that would offer alternatives in the event no consensus could be reached. Additionally, a Commission was charged with verifying the Agreements.

As was mentioned earlier, this experience produced, by consensus, over 150 agreements around the subjects submitted to the Forum; two agreements had to be put to a vote. The controversy generated by the adoption of two agreements without consensus derailed the whole experience (Rojas, 2001).

The Peace Agreements that put an end to the civil war in El Salvador contemplated the implementation of a Forum for Economic and Social Concerted Action aimed at achieving consensus on policies and programs in areas that are strategic for development, such as employment and vulnerable segments of the population. Its main result was the adoption of a New Labour Code. At the same time, the Higher Labour Council, headed by the Minister of Labour, was charged with ensuring the continuity of the process of dialogue.

Social concert gained new strength in 1998 through the inception of a new dialogue experience that was triggered, to a certain extent, by a controversy caused by the privatization of ANTEL and the national pension system. Complying with its mandate, the National Development Commission established by President Calderon Sol and formed by six independent citizens, tabled eight months later a proposal called “Foundations of the Nation’s Plan”. Said proposal was subsequently submitted to a process of citizen consultation in order to achieve a shared perspective on seven major national challenges and thirty-one commitments structured in five main areas, including social and economic issues.

Those challenges and commitments explored relevant aspects with regard to social exclusion and poverty, strategic branches of insertion, pending sectoral reforms and new labour and entrepreneurial cultures.
Citizen consultation lasted a year and took three different forms: Territorial, specialized and intersectoral. The first organized workshops and participatory, open, pluralistic and flexible meetings. The second invited over 200 national experts around some twenty working groups, including three international ones, to involve Salvadorans living in Costa Rica, Los Angeles and Washington, D.C. The intersectoral mode incorporated labour and the entrepreneurial sector.

The outcome of the consultations make possible, in October 1999, the presentation of “Initial Actions of the Nation’s Plan”, a new proposal offered by the National Development Council which was welcomed with reasonable optimism (De Barraza, 2001).

Meanwhile, there is little optimism in Nicaragua, a country where social dialogue was generally circumscribed to politics. However, a process of dialogue was launched in 1990 at the National Autonomous University of Nicaragua, called “National Policy Forum: A Possible Nicaragua” under the motto “A Debate on Unity in Diversity”. This effort failed to achieve a single agreement, but was, nevertheless, an interesting educational and methodological experience. One of its strategies was to generate the will to establish concert as a necessary mechanism for the exercise of democracy, conceptualizing concerted action as a global, sectoral, extended and continuous process. Other strategies considered relevant aspects of the market economy, the role of the State, social policy on employment, extreme poverty and labour relations.

Almost at the same time, the government sponsored a dialogue with entrepreneurs and workers. Although no tripartite agreements were reached, partial bipartite accords were accomplished between the State, and the trade union organizations and the Superior Council of Private Enterprises (COSEP) respectively. In any case, this experience also helped to produce pedagogical and methodological effects that are favorable to social dialogue.

Later on, in 1998, the President called for a “National Dialogue” resulting in 111 unanimous agreements and one agreement adopted by majority vote. Among the agreements analyzed by the Group on Economic and Social Affairs, the most important are related to employment, development and sectoral agreements to promote employment (Serrano, 2001).

2. Legal and institutional environments

In the United States, where the institutional and regulatory regime of labour relations is not as restrictive and rigid as in the other countries in the region, major adjustments to change can be achieved, since the innovation of the labour relations system is preferably left to collective autonomy (ILO, 1997).

Yet, this flexibility frequently fails to generate easier acceptance of the effects of trade liberalization on employment, at least in the short term. As a matter of fact, in the U.S. manufacturing sector there have been severe displacements of poorly qualified workers (Erickson and Mitchel).

With regard to the legal nature and binding effects of possible agreements derived from social dialogue, Latin American legislation generally recognizes two legal effects. First, as a requirement for the adoption of preliminary agreements, established by labour law, without which certain institutions are not binding on the parties, mainly in the area of individual labour relations. Such is the case, for example, of the individualized determination of the content of the clauses of individual labour contracts, specially with regard to issues such as minimum wage and additional remuneration tied to performance. Second, as a requirement for the adoption of agreements applicable to a collective of workers.

The first case represents a singularized bipartite dialogue, while the second is an example of bipartite collective dialogue. The first reflects individual autonomy and the second expresses collective autonomy. Hence, social dialogue implies collectivity, and its potential results form the regulatory framework for singularized dialogue. The legislative regulatory mechanism of collective dialogue is collective bargaining, and its outcome is a collective labour agreement.

Therefore, social dialogue generally takes the forms and effects of collective bargaining, although this does not exclude other modalities of collective action, specially when
the regulation of collective bargaining is inappropriate or too restrictive to those ends. 

The lack of flexibility usually lies in the determination of the levels of the dialogue, the negotiators, the subjects of negotiation and the procedures; all these aspects may not coincide with the requirements of social dialogue. Thus, sometimes these processes start, are carried out and produce their effects outside the legal and frequently rigid regulation of collective bargaining. 

Generally, prevailing labour relations systems in Latin America are strongly decentralized, with the exception of Argentina, Brazil, Uruguay and, to a lesser extent, Mexico and Venezuela, where extension procedures are in place. Consequently, the regulatory-institutional framework reflects those conditions and most of the time excludes or interferes with the manifestation of those relations at centralized levels. 

Hence, it is not unusual that labour law should regulate collective bargaining at the enterprise or establishment level with binding legal effects on the resulting contracts. Therefore, in most cases in which social dialogue takes place at that level, it is usually followed by collective bargaining in order to provide solid backing to agreements that may come out of the process. The resulting agreements take the legal form and condition of some of the existing modes of collective contracts. In this fashion, collective bargaining becomes a necessary condition to generate self-effective legal consequences through dialogue. 

If legislation recognizes collective bargaining in decentralized environments only, it becomes more difficult to conduct social dialogue at a “supra-entrepreneurial” or intersectoral level. Their results will only have the ethical force of a gentlemen’s agreement, unless they are granted binding effect through the ex post facto adoption of legal rules or concerted administrative acts that validate them. 

If the legislation makes room for centralized collective bargaining, social dialogue may use this space, at least formally, although not necessarily its procedures or other aspects regulated by law. 

Interesting in this respect is the already mentioned frame agreement signed in the Argentine insurance sector in 1992, which the parties agreed to grant the character and title of collective contract in order to enhance its legal importance. This decision fits the tendencies of the thematic content of collective bargaining in that country, through the increasing presence of subjects that are directly linked with the labour expressions and effects of the current global processes of change. 

According to a specialized publication, in the 1991-1994 period, a high percentage of collective negotiations contained clauses related to the following aspects of the adjustment of labour organizations to the processes of change: a) increased effective working time; b) cut down of remuneration costs, including habilitation of special hiring arrangements and reduction of additional payments; c) reduction of other costs and better use of the available capacity, including rewards for presence and attendance, reorganization of working schedules, annual distribution of vacation time, labour rotation and treatment of labour conflicts, d) incentives, specially by means of rewards that depends on performance standards; e) reorganization of labour, including multifunctionality, team work, reassignment of functions and categories, and selective criteria for promotions, filling of vacancies and negotiations on labour standards and methods and, f) increased productive capacity through training, improving the quality of services and investments with substantive technological innovations, both in terms of processes and products (RELASUR, 5).
SECTION III

SOCIAL DIALOGUE IN THE PUBLIC SECTOR

In the public sector, social dialogue has different characteristics, forms and contents, depending on the country in question, the period under review and the nature of the existing labour relations system. Its presence within public enterprises is almost self-evident, whereas a first analysis reveals with sufficient clarity that social dialogue has not such easy presence within the public administration.

This distinction derives from the different nature of labour relations and their regulation in the private and public sectors, and within the latter. While work relations in the private sector are generally described as labour relations and, therefore, are regulated by labour law, in the public administration those relations have a statutory character and are governed by special rules.

However, there is a growing tendency to admit, in the public administration, that the relations between workers and the administration have characteristics of labour and therefore constitute labour relations. There is also a clear tendency to emphasize the similarities between labour regimes in the public and private enterprises.

At the same time –and favoring that similarity-, it is accepted that labour regulation must necessarily take into account peculiarities that derive from the different structure, means of operation and roles existing in the public administration (Morgado, 1998b).

Thus, it is reasonable to claim that there is a basic labour relation that embraces private and public labour relations alike. While the basic relation comprises principles that are common to both relations, specific labour relations at the private and public sectors show the differences that characterize the nature of these sectors.

In turn, labour regulations in both sectors tend to develop a uniform shape or strongly emphasize their similarities. This has led to a clear tendency to “labourize” relations within the public sector; i.e. reduce the role of traditional statutory rules. On the other hand, it should be noted that statutory rules tend to reproduce - sometimes with certain adjustments- labour regulations of the private sector (Morgado, 1998b).

A. “Labourizing” labour relations in the public sector

Considering the above mentioned conceptual framework, we should distinguish between the modes and dimensions of “labourizing” public labour relations at public enterprises and within the public administration.

1. “Labourizing” labour relations at public enterprises

In general terms, public enterprises are property of the State, either because the State is the sole owner or because it possesses a majority share. In most cases, labour relations at these enterprises are regulated by the same rules that apply to the private sector. As cause and effect at the same time, this dual regulatory environment responds to the equivalent character of the practices and tendencies of these relations in the private and public sectors.

2. “Labourizing” labour relations in the public administration

With respect to labour relations in the public administration, in some countries the differences with respect to the private sector are increasingly diminishing, although in many cases the classic notion still prevails that the rules, practices, content and peculiar tendencies of human labour carried out within the State administration must correspond to the special interests and conditions of public administration.

From this point of view, some argue that proper consideration of this different nature justifies the continuing existence of a statutory system for civil servants that regulates their work and their labour relations with the State.
differently. It is also argued that dependent and
subordinated work within the public administration must be conducted in accordance with the role of the State, its structure and functioning, as well as with the demand to take proper care of public needs. However, the similarities between both modalities of human labour are becoming increasingly clear and extensive. In both cases, work is performed under alienating and dependent conditions. Thus, the goods or services produced do not become part of the patrimony of their producer, but rather increase the wealth of the person who contracts labour to accomplish objectives defined by him/her, and the work is carried out under conditions of subordination and dependence; i.e. subject to the supervision and control of the contractor, who concentrates the powers of organization, management and discipline. Consequently, the legal, technical and economic variables of the corresponding dependent relations are similar to those of the private sector (Morgado, 1998b).

In fact, there is no reason why some of the so-called “public needs” or goods “of public interest” should not be provided by the private sector. It is interesting to observe that in these cases the regulation of labour relations usually incorporates special rules to ensure the continuity of the services. These rules are mainly linked to the exercise of certain collective labour rights, such as collective bargaining and the right to strike. On the other hand, pertinent restrictive institutes apply almost identically to both sectors, with the common purpose of harmonizing the exercise of said rights with the proper and continuous satisfaction of public needs. As a result, the above mentioned similarities are once again increased through rules of exception.

B. The impact of processes of change on the work in the public sector

The similarities between labour relations in the private and public sectors increase to the extent that the latter also adopts ongoing adjustments due to the processes of globalization and technological innovation. Both processes of change are taking place while the economic role of the State and its ties to civil society is under review, and the State must be downsized without impairing its effectiveness and efficiency. In such a context, the number of public workers shrinks, their functions are redefined and their work is reorganized. At the same time, the State restructures public services, introduces management changes, privatizes public enterprises and the coverage of certain public needs. Briefly, the public sector is becoming the target of major changes to achieve appropriate adjustments to ongoing changes.

These changes are generally applied by public authorities without the intervention of a process of dialogue that would provide them with legitimacy at the social level. This approach tends to generate opposition, not only to the measures that are being adopted, but also to the processes of change that made them necessary. Thus, in order to avoid or mediate resistance and ensure the effectiveness of the changes in question, different forms of social dialogue are being incorporated, whose nature and contents have been modified in accordance with the nature of the changes, the measures proposed to deal with their possible negative impacts and the changing nature of the national systems of labour relations in question.

In Canada, labour relations in the public sector are regulated through collective bargaining. However, there are few examples of cooperative relations between parties, because contentious relations continue to prevail. Yet, although 75% of public sector workers have the right to strike, their inclination to exercise this right is lower than in the private sector. Since labour relations in Canada are decentralized, the representation of employers and workers is fragmented. In fact, there are separate unions at the federal, provincial and local levels. Such is the case for teachers and nurses, who do not have a national but a provincial union (Thompson).

A comparison between the restructuring of the public sector in certain developed and developing countries (EE.UU, Canada, Mexico and Jamaica) has shown that while there are similarities with respect to the reasons for restructuring -which are mainly associated with cutting down public expenditures and downsizing the economic role of the State-, there are also differences regarding the environment and the modalities of these differences. They derive, essentially,
from the nature and peculiarities that characterize their respective political, economic and labour relations systems (Rose, Chaison, De la Garza).

The same comparison showed that restructuring was more profound in Mexico and Jamaica than in the United States and Canada, where it was gradual, focusing mainly on improving the efficiency of public services through a variety of measures, such as external contracting. The reduction of public employment was basically achieved by voluntary means, rather than through firing workers. In this respect, it is important to stress that in Canada the public administration lost 45,000 jobs between 1995 and 1998 (Lemire and Saba).

To the extent in which collective bargaining and union activities have not been eclipsed by restructuring, trade unions and associations of civil servants have been able to participate in their respective adjustment processes, restricting unilaterally adopted adjustments. Union participation in these activities consisted mainly in efforts to minimize the adverse effects of the adjustment process. Conversely, wherever the unions failed to take the lead and collective bargaining was not the usual tool for reconciling the various interests, restructuring of the public sector was generally affected by labour conflicts and political clashes.

Among a variety of experiences, it is worth to underscore those related to forms of external flexibilization—linked with the beginning and termination of the labour relation—and internal flexibilization, as well as those associated with working time, remuneration, the work place and the content and organization of work.

1. External entry flexibilization

A higher frequency of fix term hiring under the form of “specific services”, even in central administrative bodies of the State, obeys to several purposes, such as: a) the possibility to attend to intrinsically temporary needs; b) the convenience of being able to count on the services of qualified persons to cover certain temporary or permanent needs, avoiding the barriers and restrictions imposed by the existence of rigid employee rolls and, c) the advantage of agreeing on remuneration that is different from that established in fix wage scales.

These “external consultancies” tend to “delabourize” labour, in the sense that workers appear as formally independent, while in fact they are not. Besides, they usually cause two types of problems. On the one hand, the rest of the workers notice forms of discrimination that delay their promotions and access to higher level positions, and on the other hand they perceive the introduction of blatant direct and indirect wage discrimination. Besides, workers under contract want their contracts to be converted into permanent ones, and see their “delabourized” condition compensated with arrangements that enable their access to social security benefits, specially in the health care area and pensions.

2. External exit flexibility

a) Reduction of personnel

Taking into account that in many countries public service workers are granted “quasi absolute job stability”, either de facto or de jure, it is difficult to claim that the adoption of measures aimed at flexibilizing the termination of labour relations in the public sector could be the outcome of dialogue or negotiations. On the contrary, experience has shown so far that those measures have generally been established by the State on a heteronomous basis, derogating totally or partially the guarantee of stability.

Social dialogue has frequently been recurred to in order to reach agreement upon certain measures that limit or regulate personnel reductions, for instance by facilitating early retirement; determining the number of redundancies, and establishing the order in which these will affect the workers involved. Besides, additional severance damages have been established, along with measures that facilitate the reinsertion of dismissed workers in the labour market, for instance by retraining and geographic mobility.

b) Privatizations

Changes consisting in the privatization of public enterprises, as well as the transference
of certain public services to the private sector, call for special attention.

There is no doubt that these privatizations have had special incidence in countries where the State used to play a central economic role as producer of goods and provider of services. This is the reason why in Canada and the U.S. privatizations had a lower impact. In Canada, privatizations involved mainly transport and communication enterprises, along with the subcontracting of public services devoted mainly to maintenance and support, which reduced union representation, lowered salaries and decreased employment security (Thompson, 1998).

In this respect, we should note the privatization of EMOS, the municipal waterworks enterprise in the Chilean capital. The initial opposition of the workers was overcome through an agreement that mainly provided additional compensations; facilities to buy shares of the purchasing company; regulation of labour conditions applicable to rehirings by the buyer; maintaining valid labour conditions at the time of the transfer; regulation of the determination of responsibilities of both the former and the new employer. At the same time, regulations were adopted that stimulated training to gain access to new jobs, including interview and job seeking techniques.

In Paraguay, the collective contract on labour conditions signed between the National Electric Power Administration (ANDE) and its Union in April, 1993, established that the enterprise or persons who execute work with materials provided by ANDE, or perform services for ANDE, should have a staff whose training must be equivalent to that of ANDE’s technicians. It was also agreed to consider the opinions of the union with respect to the contracting of private enterprises or labour contractors to perform services that correspond to the permanent administrative and technical staff of ANDE. Likewise, it was agreed that ANDE’s workers shall have a preferential option to the transference of establishments and exploitation rights. It was also agreed that in the event of the total or partial sale of ANDE to private enterprises, the latter shall incorporate into their work force any workers that lose their relation with ANDE as a result of the transference; ANDE shall take the necessary contractual measures to that effect.

Uruguay went through the privatization of its national airline (PLUNA) and a gas utility located in the country’s capital (Montevideo Gas Company). This enterprise was abandoned by their owners in 1970, subsequently incorporated into the public area and eventually re-privatized 20 years later. A collective contract signed in 1995 between GASEBA URUGUAY S.A. and the Autonomous Union of Workers and Employees of the Gas Company (U.A.O.E.GAS), addressed important labour aspects, such as maintaining acquired rights; employment stability; career mobility; retraining; wage regime and labour relations, international standards, union privileges, credit hours, bipartite meetings and conflict resolution.

With respect to the preservation of acquired rights, the agreement established that having incorporated the complete staff of the former Gas Company into the work force of GASEBA URUGUAY S.A., rights regarding seniority, category, acquired social and economic benefits would remain in force, as well as the current Bylaws, which may be revised in the medium term.

With respect to employment stability, during a term of 36 months counted from January 19, 1995, the enterprise committed itself to guarantee the stability of its dependent staff, with the exception of those who voluntarily decided to withdraw from the enterprise by resigning their position or going into pension, and those who were fired for disciplinary reasons incompatible with the labour relation, even if the facts do not constitute notoriously bad conduct. In the latter case, the enterprise will gather all information necessary to clarify the facts and will give the worker the opportunity to defend himself and avail himself of appropriate assistance.

3. Internal flexibilization

The rearrangement of labour and productive processes was carried out not only at public enterprises, but in the public administration as well, as a means to increase the effectiveness of the State, in spite of the reduction of its functions, size, budget and personnel.
Just as the private sector, the public sector goes through a process of “reengineering” of its objectives, structures and procedures, in order to improve its levels of productivity and quality. Hence, the emergence of external forms of intermediation and subcontracting, such as outsourcing or “contracting out”. At the same time, the content and exigencies of work tend to reduce the occupational categories and entail the existence of professional multi-functionality to take care of multiple tasks and changing contents.

As part of a strategy to deal with some of the aspects of internal flexibility, Canada recognizes the need to change career service management which, being unable to offer employment security, should favor perfecting of skills and continuous development of civil servants. To this end, Canada proposes to combine old performance practices with alternative practices, such as task enrichment and expansion; working groups; acquisition of knowledge on new subjects, rotation, changing responsibilities, and research practice at institutions of higher education (Lemire y Saba).

**a) Productivity and quality**

It is not easy to reconcile new demands created by economic and technological change with the often stratified ways of producing and working in the public sector. However, many approaches have been tried out for this purpose, both at public enterprises and within the public administration. In general, they are applied to meet demands for higher effectiveness and efficacy in the public sector, generating important structural and operational changes in the public service area.

It is expected that these changes will lead to the introduction of new attitudes towards the users, favor work by multidisciplinary teams and, in general, increase personnel performance. This final objective is necessary, due to the reduction of the work force in the public sector, caused by dismissals and voluntary retirements as part of restructuring and rearranging processes, as well as the process of downsizing the State.

Given these new circumstances in the public service area, Canada has underlined the importance of giving workers the appropriate organizational support to successfully develop their tasks and overcome the professional and personal difficulties inherent to the adjustment. This organizational support includes measures to re-evaluate human resources and assist towards the execution of the tasks; role performance and the motivation of competition. These measures include, among others, adequate information mechanisms, consultation, workers participation and the use of their experience; reducing bureaucratic excesses and work risks; existence of suitable educational programs and performance evaluation tools, with the corresponding feedback effects. Everything appears to indicate that the issue of organizational support has attracted the attention of the Unions (Larivière, 1998).

In Chile, agreements have been reached to increase efficacy and effectiveness as a means to achieve certain productivity and quality goals, and to ensure the existence of appropriate levels of competitiveness and an adequate attention to the development needs of enterprises. Interesting are the experiences associated with the National Copper Corporation (CODELCO) since 1990. CODELCO designed a modernization program involving, among other matters, the promotion of participatory management through information procedures and consultation in the area of labour relations. At the same time, the Federation of Copper Workers elaborated several proposals on issues such as the implementation of changes in the area of work organization; externalization; adjustment of the work force; training and its ties to multi-functionality, and union participation with respect to the determination of job categories.

Interaction between the enterprise and the unions gave birth to a so-called “strategic alliance” which has manifested itself in multiple agreements that have deepened and extended participatory management.

In Paraguay, on the occasion of the 1995 Agreement between the Government, entrepreneurs and labour federations, the Government committed itself to pass a Code for public servants, and to study the amendment of regulations regarding trustworthy public officials and collective bargaining contracts in the public sector. The Government also promised to accept the participation of public servants in the National
Council of MERCOSUR and maintain a dialogue on issues that affect public servants.

By means of a statute passed on December 1994, Paraguay regulated collective bargaining on labor conditions between the State and its employees. The regulation holds that: a) collective bargaining shall have a general or sectoral scope; b) wages and economic subjects must be subordinated to budget law; c) the agreement resulting from the negotiations shall be implemented and its contents shall also benefit officials and employees who are not affiliated to the negotiating Union. Collective bargaining in the public sector will be regulated by the combined provisions of administrative and labor law, if applicable.

The Canadian public sector has recurring to bipartite committees to revise, establish, implement, manage and evaluate work practices. For example, in 1995, the Canadian Union of Public Employees (CUPE) reached several agreements to form working committees around three subjects: Telework, shared work and flexible work (ILO, 1999).

Public administration is not unfamiliar with these processes based on compromise. Public bodies such as Ministries, General Directorates and Services have employed them to establish quantifiable objectives and goals to improve productivity and quality levels. In turn, they receive higher budgetary allocations for items such as materials, equipment, transport, the creation of a number of permanent and temporary jobs, and the establishment of monetary incentives. These compromises go under a variety of names and represent, in general, agreements on strategic organization.

Chile, for example, has established so-called Management Improvement Programs (PMG) for public services. These set quantitative and qualitative goals that must be achieved by State services, as well as individual and collective incentives should the established goals be reached. The results of these programs are the product both of individual work and work in cooperation, performed by teams. PMGs involve the assumption of the collective management of the Programs, both in their conception, execution and evaluation. Besides, Chile has also created the so-called Modernization and Redesign Tables (MRT), with the participation of the Office of the Minister of the Presidency and the National Association of Public Servants (ANEF).

b) Remuneration

In Chile, since 1990, the annual adjustment of wages within the public administration is the object of a dialogue between the government, represented by the Minister of the Treasury, and the National Association of Public Servants (ANEF). The factors considered for the wage increase include the levels of productivity of the employees and user satisfaction. Whenever the dialogue fails to reach agreement, the Government files a draft law before Congress; the last time the Government had to do so was in the year 2000.


In this particular case, the main purpose of the dialogue consists in bringing down the percentage of growth requested by ANEF vis-à-vis the percentage offered by the government. Thus, the agreed wage increase is the result of dialogue as a means to conciliate the initial positions of the public servants and the budgetary realities. Between 1996 and 2000, ANEF has requested wage increases of the following magnitudes: 12.9%, 14.1%, 7.3%, 7.5% and 8.5%. In those years, they were granted the following increases: 9.9%, 6.0%, 5.0%, 4.9% and 4.3%. In the current year, ANEF settled for 4.5% against an initial demand of 7.0%.

Usually, wage provisions are complemented with some stipulations in the area of social security, the establishment of issues and procedures regarding dialogue, or subjects such as professional training aimed at improving productivity and providing better quality services in the public sector.

In Canada, dialogue around wages in the public sector may count upon the effective support of the “Institute de Recherche et d’Information sur la Rémunération” (I.R.I.R.), an impartial body created in 1985 by the National Assembly of Quebec. Its mission consists, among other things, in providing information about the remuneration of public sector workers and other important areas of the
economy of Quebec, and in particular issues such as labour conditions associated with wages, employment security, flexible remuneration, purchasing power, wage tendencies among unionized and non-unionized workers, and organization of work. I.R.I.R. forms working groups of employers and union representatives around some aspects of its research activities, organizes seminars and deals with their requests regarding specific research undertakings.

As a facilitator, the I.R.I.R. does not make recommendations to the parties, but rather helps to facilitate their negotiations (Poupart, 1998).

In Uruguay, procedures to determine wages and other labour conditions differ from those of the majority of the countries in the region. The Uruguayan system of collective labour relations is characterized by a strong legislative detachment, both in the private and public sectors. In this frame, there is a clear shift of public labour relations from Statutory Law to Labour Law, resulting in an increasing number of collective negotiations between public enterprises and their employees. It should be kept in mind that the employees of the public enterprises are legally public officials governed by Administrative Law rules.

This tendency gained strength following the adoption, in 1993, of a law authorizing autonomous public enterprises and decentralized services to negotiate collective contracts, including wage issues, provided previous approval by the Office of Planning and Budget.

In 1993, the State signed a Frame Agreement with eight public enterprises operating in the following areas: railroads, ports, telecommunications, waterworks, fuel, alcoholic beverages and cement, electric power, gas and land settlement.

The parties to this agreement were the unions that represented the workers at the autonomous public enterprises and decentralized services, the Office of Planning and Budget and the Ministry or Labour and Social Security, on behalf of the State.

Along with determining wage adjustments, the Frame Agreement stipulated that workers shall abstain from any measures entailing stoppages or disruption of regular operations (Mila, 1994).
SECTION IV
CENTRALITY OF THE DIALOGUE

A. Social dialogue as an element of and point of reference for public policies

Social dialogue may manifest itself both as an integral part of, and point of reference for, public policy.

As an integral part of public policy, social dialogue may be present in the process of elaboration and determination of the contents (subjects, participants levels and procedures) of public policies, as well as in the development of the responsibilities and functions assigned to the means of action that are available for their implementation.

As a point of reference, social dialogue may be one of the work variables that are taken into account at the conception and application of public policies. These may establish, as one of their tasks, the promotion of social dialogue by removing obstacles and implementing measures that strengthen its potential.

B. Performance and suitability of social dialogue

Social dialogue plays an unquestionably positive role in dealing with the labour issues of economic globalization and technological change, both with regard to the insertion of national economies in a global and ever changing economy, and with respect to relationships between these changes and work organization and production.

Major changes such as the ones we are presently living through, usually generate opposition among parties who are affected or fear being affected by them. This opposition has considerable power to multiply and deepen adverse reactions, and may supersede the measures that are meant to overcome adversity. Therefore, resistance generates a negative image and leads to public demonstrations such as those that have been taking place in the last few years in connection with some international meetings around the world.

Due to the strong impact of changes, they are sometimes perceived as policies aimed at other objectives than those officially announced. In this way, some have held that the current processes of change are a cover assault on certain institutions, values, principles and segments of the population that in the end are being affected by them. From this point of view, globalization and technological transformation appear as components of a plot, meant to create a vicious circle. As a consequence, any positive effect is denied or the pernicious effects are thought to diminish or wipe out their possible virtues.

Since the 1980’s, these significant processes of change have brought to light new social problems and many unanswered questions. The challenges they raise are different with regard to the social problems derived from the so-called “social question” generated in the XIX century by the rise of industrialization.

The new problems tabled by the current processes of economic and technological change involve causes, manifestations and modes that do not necessarily match those of the XIX century.

However, their magnitude, importance and transcendence allow us to say that we are witnessing the birth of a “new social question” whose shape, dimensions and depth are not yet totally established, on account of the unpredictability of the changes that our societies continue to experience (Morgado, 1997a).

The interaction between the processes of change and labour relations raise a series of challenges, such as the re-dimensioning and re-evaluation of labour; reconciling change and labour objectives; determining the nature of flexibilization and revitalizing dialogue and concerted action.

It is essential to establish a suitable balance between the meaning and weight of labour and quality of labour relations in the productive process on the one hand, and the achievement of certain goals, such a increasing levels of productivity, quality and
competitiveness, along with objectives of social peace, political stability and the consolidation and deepening of democracy, on the other.

It is also necessary to device formulae to ensure equitable compatibility between the labour objectives and the objectives inherent to the processes of change, keeping in mind the pertinent relations of interdependence and interaction that exist between them.

It is equally necessary to strike the proper balance between the objectives of flexibilization and social protection. This requires elimination of the pejorative consequences of labour flexibilization, such as deregulation and loss of protection, which can no longer be postponed. This entails a redefinition of what should be protected, who is to be protected, to what extent and by whom. On the other hand, such a redefinition must take place in an environment where flexibility is not synonym to deregulation and threat, but where re-regulating and protection can go together.

An authoritarian or paternalistic imposition of changes does not necessarily produce durable and efficient results. Parties should agree upon the participation of social agents in the costs and benefits of the changes, as well as upon the implantation of changes.

Concerted social dialogue generates, at all levels, two main effects: it helps to legitimize the processes of change and establishes the foundations that facilitate a transition to new processes of change (Morgado, 1997a and 1999).
SECTION V
INSTITUTIONALIZATION OF SOCIAL DIALOGUE

Since the beginning of the XX century, there have been many different forms of participation in Latin America; representatives of social agents have been part of tripartite labour bodies with general competency, such as national labour councils, or with limited competency, circumscribed to specific functions in specific matters, such as the determination of the minimum wage, professional training, social security, occupational safety and health at work, employment, labour justice, labour relations and conflict resolution.

Furthermore, social agents in the area of labour have participated in national intersectoral organs vested with general competency, such as State Councils, Economic and Social Councils and Planning Councils.

The competency of these organs may embrace the whole national territory or just some regions. In most cases, their area of competency was intersectoral, without excluding the existence of organs with specific competency in one or more economic and professional branches, as in the case of some joint and tripartite commissions.

Founded on constitutional, legal or statutory norms, tripartite participation becomes specially relevant when responding to decisions made in the processes of social dialogue, which tend to make the advisory or executive functions assigned to the pertinent participatory mechanisms more effective.

Tripartite participation was an early subject of legal regulation. In 1915, the State of Yucatan established a Conciliation Council and a tripartite Arbitration Tribunal. Subsequently, this tripartite modality was incorporated into Constitutional Law, when paragraph XX of art. 123 of the Constitution of Queretaro (1917) established that “the differences between capital and labour shall abide by the decision of a conciliation and arbitration Board constituted by an equal number of workers’ and employers’ representatives, and one representative of the government” (Villasmil, 2001).

Although all the countries in the Region are equipped with tripartite participatory organs, some experiences carried out in Central America are especially interesting.

The Superior Labour Council is a tripartite organ regulated by the Organic Law of the Ministry of Labour Social Security (1995 and amendments) and a 1998 Statute. It is constituted by three representatives of the government (the Ministers of Labour, Justice, Economy, Industry and Commerce), and employers’ and workers’ representatives (3 each), appointed by the Executive Branch from rolls submitted by their most representative organizations. A quorum of five is necessary for the Council to meet; at least one representative of every sector must be among these five members. The agreements must be approved by consensus and are mandatory to the parties.

The Council includes a Technical Secretariat coordinated by an Executive Director appointed by the Ministry of Labour.

The Council must discharge the following functions, among others: a) study the economic and industrial progress of the country, living and labour conditions of the workers and social legislation; b) elaborate draft laws and statutes as determined by the Ministry and the Council; c) study governmental proposals to submit Conventions and Recommendations to the Legislative Assembly and other matters related to ILO Convention 144 and d) “implement any process of tripartite social concerted action deemed necessary about labour and social and productive matters, and function as a working group within national concerted processes.”

In accordance with the last mentioned task, it should be noted that in 1998 the Council was entrusted with labour subjects included in the National Forum of Concerted Action (unemployment, freedom of association and wage policy). The results of their work facilitated the adoption of a Workers Protection Act, and specially the signature of a tripartite agreement to improve
the mechanisms to protect freedom of association. By virtue of this agreement, it was decided to implement immediate measures in the area of labour legal procedure, to accelerate ordinary labour procedure; give processes involving labour law violations actual effect and provide effective protection to labour privileges. To this end, art. 368 of the Labour Code was amended, the application of Law 7.360 was regulated in order to ensure due process to dismissed workers protected by union privileges, and the necessary mechanisms to guarantee effective compliance with pertinent legal resolutions that order the reinstatement of the dismissed workers.

It was also agreed to eliminate, as appropriate, any legal and administrative restriction of the operations of union organizations, the free election of their leaders, the autonomous definition of their internal statutes and plan of action and, at the same time, facilitate the individual and collective representation of unionized workers (Castells-Arrosa, 2001).

Meanwhile, the Occupational Health Council—a tripartite organ—is both an advisory and technical body ascribed to the Ministry of Labour and Social Security. Some of the Council’s activities, such as training and dissemination, are independently implemented by other institutions, such as the National Insurance Institute and the entrepreneurial Chambers. Besides, the National Council on Wages, created in 1949, is a permanent technical organ charged mainly with the establishment, revision and interpretation of agreements related to the determination of the minimum wage, and with the carrying out of pertinent studies. The Office in charge of wage issues at the Ministry of Labour functions as the Secretariat of the Council, and addresses issues related to wage statistics, information on the cost of living index and various conditions and aspects related to the determination of the minimum wage, purchasing power and the economic possibilities of the different productive activities. Moreover, the Secretariat is also a consultation organ for employers and workers.

In El Salvador, a Decree Law passed in 1996 created the Labour Superior Council as an advisory organ to the Executive Branch charged with the institutionalization of social dialogue and promotion of social concert between public authorities and employers’ and workers’ organizations. To this end, the Council “is empowered to make recommendations about the elaboration, implementation and revision of social policy; contribute to harmonize the productive sectors; foster a better relationship between the social and economic aspects of development...” (Villasmil) The Council replaced the National Forum for Economic and Social Dialogue established in compliance with the Peace Agreements that put an end to the prolonged civil war (Arrigo, 2001).

On the other hand, the Nicaraguan Council of Economic and Social Planning has established a tripartite sub-commission on labour subjects (CONPES).

In Honduras, a National Forum for Social Dialogue was established following the devastation caused by Hurricane Mitch (Arrigo, 2001).

Additionally, a Decree Law that approved an Executive Agreement signed in the year 2000, led to the creation, as a matter of urgency, of an Economic and Social Council (ESC), conceived as a tripartite advisory organ to the Executive Branch in its areas of competency. This Council will be a joint body of government representatives, delegates of the Honduras Private Enterprise Council (COHEP) and representatives of Trade Union Confederations. COHEP is charged with analyzing and forging consensus around proposals related to “the dimension, continuity and shape of wage and employment policies”, in order to promote and increase entrepreneurial competitiveness at the international level, professional training and improved labour and living conditions (Villasmil, 2001).

In 1999, the Dominican Republic established a tripartite Advisory Labour Council charged with counseling the Minister of Labour about the development and coordination of capital and labour relations (Villasmil, 2001).

The above mentioned experiences, added to many others carried out in the Region, warrant some preliminary conclusions about certain basic aspects of the institutionalization of social dialogue, specially with respect to the choice between assigning responsibilities to existing institutions or creating new ones, and about the advantages or disadvantages of
assigning those responsibilities to temporary, permanent, formal, informal, ad hoc or multiple-competency organs or mechanisms.

A. Assigning responsibilities and creating institutions

Social dialogue is usually favored by the existence of some degree of institutionalization; i.e. structures, means and procedures to promote and accompany the process. The question is, how much institutionalization is needed and of what kind? There are no universally valid answers, but some indications may be given.

It is important to pay respect to national traditions; the creation of new institutions, therefore, generates little sympathy. It is also important to promote the substitution or updating of a given institution, while some favor a combination of both extremes.

A second question is whether the responsibility of promoting and accompanying social dialogue should be assigned to an existing institution or to a newly created institution, specially designed for this purpose.

The answer depends on three types of considerations. Firstly, the degree of suitability and coherence already present in some established institutions vis-à-vis social dialogue. Secondly, the nature and exigencies of the pertinent tasks in terms of promotion and support. Thirdly, the budgetary resources available for the creation of new institutions.

As already said, there are no universally valid recipes in this field. Thus, choosing how to proceed will depend on each nation.

It is in any case advisable that a newly created institution should be submitted to the competence of the Ministry of Labour. If this is not possible, the Ministry should be present at the core of the new institution.

B. Temporary, permanent, formal, informal, ad hoc or multiple-competency organs or mechanisms?

Along with the questions posed in the previous paragraph, there are others tightly associated with the characteristics of temporality, formality and specialization of institutionalized social dialogue. Institutionalized social dialogue plays a fundamental role as an active subject or collaborator; besides, it is particularly important and effective for the promotion of dialogue by fortifying factors that facilitate dialogue or overcoming those that obstruct or prevent it, specially those related to the social agents, their recognition or independence.

With respect to temporality, some parties hold that it is not necessary or convenient to create permanent institutions, arguing that ad-hoc institutions must be established to satisfy specific needs, every time that dialogue is required or called for. These ad-hoc institutions would be more effective than a permanent one, as they would be especially designed to deal with the specific and peculiar features of each dialogue.

Those who advocate permanent institutionalization, argue that this would not only allow to deal with all subjects specifically related to dialogue, but also makes the clear statement that there exists a public policy to recur to dialogue on a permanent basis. Besides, some hold that the appropriate promotion and support of dialogue requires the permanent backing of a body charged with such functions.

If the decision to promote social dialogue is made, there should be some institution in charge of studying its potential and weaknesses, in order to elaborate proposals to favor the former and overcome the latter. An important task for this institution would be to identify the means that ensure the existence of free and autonomous social subjects.

To fulfill these tasks, a more permanent institution is needed, and not only ad-hoc institutions for the sole purpose of addressing particular cases.

As a matter of fact, any institutions that may be established, regardless of their continuity in time, cannot act in isolation from the rest of the private and public social structure. It is therefore necessary to create or strengthen the most effective intercommunication and cooperation networks.

As far as formality is concerned, prevailing opinion holds that social dialogue should be as informal as possible. Any formalities that are strictly necessary should not disenchant the parties to the dialogue nor
create any obstacles for them. Formality should exist only to the extent that it contributes towards the implementation of dialogue and keeps a faithful record of the resulting agreements.

Lastly, with regard to the specialization of dialogue, it is convenient to avail of *ad hoc* bodies or mechanisms, exclusively or preferably devoted to the promotion, development and follow up of social dialogue. Assigning these functions to existing bodies vested with general competencies may entail two possible effects: first, that the additional functions might not be effectively taken care of, and second, that their possible results might be perverted, impregnated or contaminated by actual or alleged negative aspects of the responsible body, due to its previous actions that, while unrelated to the social dialogue, may nevertheless affect it.

As an illustration, we will present recent experiences with institutionalization in Chile, Colombia and Panama.

By the end of the government of President Patricio Aylwin (1994), the restoration of democracy in Chile had consolidated to a considerable extent. Hence, the possibility of institutionalizing concerted social dialogue was raised; social dialogue had proved its effectiveness, given the existence of social peace, and in spite of apprehensions and predictions about the possible effects of political change on the labour relations system.

Thus, the next government, headed by President Eduardo Frei Ruiz-Tagle, made an attempt to institutionalize dialogue through a Productive Development Forum established in June, 1994. The Forum became an advisory body to the President and was formed by 18 representatives of the Frei Administration, 15 delegates of the Chilean Labour Federation (CUT), 15 representatives of the major entrepreneurial Confederation, 10 entrepreneurs, 10 workers, Members of Congress, political parties, the Armed Forces, Church dignitaries, intellectuals and experts. The Forum was supported by a tripartite Council and an Executive Secretariat. The Council met periodically, prepared the agenda and followed up the recommendations adopted by the Forum. The Secretariat was charged with implementing the agreements achieved by the Council.

The meetings held by the Forum between 1994 and 1997 were highly significant and led to several agreements aimed at more fair economic development and improvement of international competitiveness. With respect to the first of these purposes, the Forum reviewed and formulated proposals linked mainly to the relationship between wages and productivity, collective bargaining as a tool to prevent and settle conflicts; the effects of economic globalization; safety and occupational health; protecting the unemployed; minimum wage and protection of maternity. With regard to the second purpose, the forum agreed to make proposals about issues such as innovation and technological transfer, including the development of qualified human resources; modernization, adjusting professional training to the global economy, increasing competitiveness and regulatory capacity.

For different reasons, the activities of the Forum slowed down and eventually came to a halt. At the beginning of the government of President Ricardo Lagos, a tripartite social dialogue was installed that participated at the inception of a series of analysis, meant to reach agreements on legislative proposals on specific matters such as unemployment insurance and reforms of labour legislation. Although no agreements were reached, the parties agreed on their intention to establish a Social Dialogue Council. However, at the time of the elaboration of this Paper, there is no indication that this may materialize in the short term. Yet, social dialogue may be resumed, and the possibility to institutionalize this process studied, in the light of statements made by social actors at a meeting called by the Secretary General of the Presidency in the year 2000 to review European experiences in this field, specially with respect to Social and Economic Councils and their positive evaluation.

In 1996, in compliance with a commitment made by the Government of Colombia in the context of the 1994 Social Pact on Productivity, Prices and Wages, a law was passed that regulates the Tripartite Permanent Commission to Seek Consensus on Wage and Labour Policy, ascribed to the Ministry of Labour and Social Security. The Commission is permanent and tripartite and constituted by sub-commissions at the Department-level and by sectoral advisory
committees yet to be established. Decisions must be adopted by consensus between the three sectors, and within each sector by majority vote of the appointed members (five representatives of the government, 5 representatives of entrepreneurial organizations and 5 representatives of union organizations).

The functions of the Commission include:
a) fostering good working relations and guarantee union rights; b) helping to settle labour collective conflicts by acting as a “friendly” conciliator at the request and with the participation of the parties when the latter fail to reach an agreement; c) establishing wage policy and minimum wage by consensus; whenever there is no consensus on the amount of the minimum wage, the government settles the case; and, d) establishing labour policy by consensus, adopting plans on subjects such as welfare, labour training, employment, improving productivity and production; industrial conversion and professional retraining; universality of social security; workers’ participation at the enterprise level; guaranteeing workers rights and fair income distribution.

A comparison between the Chilean and Colombian experiences with those of other countries in the region shows sharp differences regarding the institutionalization of social dialogue in terms of permanence and results. Yet, those experiences coincide in that institutionalization had been promoted and installed by the governments and then ascribed to some Ministry or other State body.

Thus, it is worthwhile to study the current experience of Panama, where social dialogue has been institutionalized within the Labour Foundation, a private, non-profit institution formed by the major union and entrepreneurial organizations. These created the Foundation as a de facto association and subsequently filed for legal status (July, 1993).

The Foundation has a joint Board: Two Co-Presidents and two Co-Vice-presidents represent the two sectoral organizations. Their main institutional objectives are establishing closer relations and understandings between the productive sectors at all levels; promoting employment generation; fostering comprehensive development of human resources and helping the nation’s economic and social development.

Regarding the first of those objectives, the Labour Foundation organizes national fora to host social dialogue, concerted action and elaboration of national and sectoral policies.

As far as the second objective is concerned, the Labour Foundation runs a Labour Electronic Exchange (BET) that provides important services by registering and classifying available human resources and the needs of the enterprises in this area; selection and placement; vocational and professional training; information services, studies and research and employment promotion. Some of their activities have been extended across the borders, specially to Central American countries.

With regard to the development of human resources, the Labour Foundation examines and elaborates training, professional education and retraining policies that are closely associated with the objective of improving employability, professional mobility and increasing levels of productivity, and with educational processes in general. On the other hand, the Foundation is in charge of a project on labour training and insertion. The Foundation plans to establish a Labour University, for which purpose an agreement has been signed with the University of Panama.

The fourth institutional objective is taken care off through different actions, such as the participation of the Foundation at meetings devoted to the elaboration of public policies related to development. A related objective consists in carrying out feasibility projects to establish a Workers’ Bank, whose purposes would include financial contributions to small- and medium-sized enterprises.

The results achieved through concerted social dialogue at the Labour Foundation are numerous and of considerable effect:
- Establishment of a dual professional training system.
- Submission of a draft law to modernize education.
- Submission of the draft of a General Statute on Occupational Safety and Health, and a draft Statute on Unhealthy and Dangerous Work and Activities.
- Implementation of an Electronic Labour Exchange (1995) and continuous expansion of
its services as a result of its participation in and promotion of numerous national and international meetings and activities, such as: a) Seminar on Labour Reinsertion Directed to the Scholarship Program of CASS (International Development Agency), b) First Labour Conference, which was organized by the Central American Parliament (PARLACEN) in August of 1997, and, c) Technical Meeting of Central America (Belize, Panama and the Dominican Republic) devoted to the Electronic Employment Intermediation System. The incorporation of Honduras to the Labour Electronic Exchange in 1998 was an additional manifestation of the extension of the activities of the Foundation.

- Participation and presentation of initiatives at tripartite meetings such as, a) the 2020 National Vision Project, b) Challenges of the Labour Administration in the Face of Modernization, c) Prices and Wages and the 1997 Labour Outlook, d) Elements of an Educational Strategy for Work in the Central American Isthmus, e) Child labour in Panama f) Professional guidance for the youth, g) 5th Fair of Professional Orientation, h) Program of action on social and economic integration, i) Employment, the future challenge, j) Education as a strategy to overcome poverty and unemployment, k) Seminar-Workshop on globalization and employment (Group of Rio) and, l) Establishment of the Panamanian Council on Health, Safety and the Environment (COSSMAP) (FDT-a).

Besides, the Foundation called two important National Conventions to promote full employment, a three-day Convention organized on the basis of a central working group of tripartite concerted action, to table and discuss presentations of national and international experts; three working groups to discuss, draw conclusions and issue recommendations about employment measurement and diagnosis; employment policy and programs, and training, education and employment.

A second Convention met in November 2000, focusing on “Labour Education” through four tripartite working groups devoted to the following subjects, a) labour and entrepreneurial training to strengthen and implement change, b) new self-management paradigms for small- and medium-sized enterprises as an alternative to tackle the problem of unemployment; c) educational programs and their tuning to the requirements of productive labour and, d) the situation and perspectives of the State with regard to the promotion of employment generation faced with globalization and national development.

I wish to quote the following recommendations and proposals adopted through a tripartite consensus: “To use social dialogue as a suitable method to generate consensus on professional education and training, and issues such as workers’ rights as well as the needs of the entrepreneurs; establish a new role for the State as an engine to promote local employment initiatives, rather than as a restricting factor; study common problems; discuss the effects of globalization at the enterprise level and their needs; change the mindset of workers and entrepreneurs; increase the remuneration of the workers who improve their competencies at the work place; encourage entrepreneurs to invest more resources to provide professional training; generate a new culture at the of entrepreneurial organizations, where workers may be trained and qualified on a technical basis”.

With regard to employment policies, it was recommended that they be founded on strategic planning, identifying investment opportunities and comparative advantages in the frame of globalization, taking into account the existing potential at the regional level and possible links between economic activities.

The validity of the Pact of Commitments for Development, signed in 1994 by the Government and the Labour Foundation, was reiterated, as well as the Bambito 3 Accords, and the creation of a State Fund for Modernization and Development of the Agricultural and Industrial sectors was proposed, which would offer training, specialization and retraining programs. The implementation of consistent public policy was requested, to support modernization of small and micro-enterprises to promote employment generation under dignified labour conditions.

Besides, it was stressed that public policy to promote investment and employment must be founded on notions of social equity, equal opportunities and non-discrimination.

On the other hand, several proposals were presented to ensure the effective tripartite participation of social interlocutors in the
design of the objectives and coordination of the programs of the General Employment Directorate, by creating a National Employment Commission charged, among other things, to establish an efficient coordination of the current training efforts in the labour sector.

All parties were called to work together to effectively implement political employment proposals and programs promoted by the government with the participation of major trade unions and employer’s organizations.

In the educational area, the conclusion was that a national project is necessary to provide guidance towards the achievement of the country’s strategic objectives; education is considered a State responsibility that involves society as a whole and whose modernization must be a continuous process, regardless of changes at the head of the State. Therefore, all sectors of society must participate in the creation and practical application of an educational model, keeping in mind that concepts such as labour education, education for development and education for living are not exclusive but inclusive and must guarantee equal opportunities.

With respect to training as a tool for changes in the labour and entrepreneurial sectors, the conclusion was that “training is not enough to resolve the issues of unemployment and decent labour; economic growth, development, clear rules and legal security are needed”.

The Convention emphasized the need to establish mechanisms to certify labour competencies and foster workers’ continuous training, in order to improve and ensure their employability. It was considered necessary to coordinate training and educational supply and demand, to ensure polyvalent and multifunctional training that facilitates professional conversion.

Lastly, the Convention reached the following conclusion: “with respect to productivity, the goal is to seek equity for those who produce and generate productivity; i.e. approach productivity not only as something that benefits the employer, but also as something that benefits workers. Training to increase productivity must provide fair benefits to entrepreneurs and workers alike” (FDT-b).
SECTION VI
LABOUR MINISTRIES AND SOCIAL DIALOGUE

A. The central role of social dialogue in labour public policy

There is no doubt at all that the Ministries of Labour play a key role with respect to the definition, implementation, development and evaluation of labour and social security public policy.

In this context, social dialogue should be the backbone that encourages public policy and helps to ensure its viability and effectiveness.

By virtue of its functions and closeness to the direct subjects of labour relations, the Ministries of Labour could and should be a central part of governmental efforts related to social dialogue.

As was indicated in the Introduction of this Paper, the constitutional elements of labour public policy are nowadays strongly influenced by the dimension and social effects of economic globalization, the requirements and challenges of the modernization of the State and the labour administration, as well as the imperatives of intensifying, extending and consolidating democracy. All these factors acquire special features in countries that have insufficient levels of development or find themselves on the road to recovery or improvement of their democratic institutions.

The experiences recalled in this study reveal that the appropriate response to the demands derived from these economic, institutional and political factors is to recur to social dialogue.

This is not only one of the components of labour policy, but also one of the means to define and formulate its other components, as well as oversee compliance and evaluate results.

Hence, dialogue has two faces, both as an element and a means of action of labour public policy.

B. Tasks

1. General tasks

While the central tasks assigned to the Labour Ministries have been historically linked, in a special way, to the establishment and application of legislation that sought to protect individual labour rights and regulate collective labour rights, it was only in the 1950s that both tasks began to be accompanied and influenced by other elements tightly bound to economic processes such as growth, inflation and recession. With the implementation of some processes of economic integration and, subsequently, the expansion of the process of liberalization of international trade and the introduction of huge economic and technological changes, social dialogue came to be recognized as an effective means to achieve objectives such as wage restraints and reduction of open labour conflicts. At the same time, the social dialogue that was already part of existing representative mechanisms gained significance, in terms of the degree of actual commitment to the objectives and goals contained in general public policies.

With the growing conviction that social dialogue is useful and necessary, it also became clear that some factors that hinder and weaken dialogue had to be removed, while other factors that vitalize and enrich it had to be strengthened (Morgado, 1997b).

Since then, the main tasks assigned to the Labour Ministries with regard to social dialogue include the elimination or reduction of institutional, de facto, substantive and adjective obstacles that prevent or impair dialogue, along with enhancing factors that encourage dialogue and make it possible.

To the extent necessary and by taking the appropriate measures, the Ministries of Labour should devote an important part of their
activities to the objective of tackling the above mentioned tasks in an effective manner.

Regarding the eliminating or reduction of any factors that impair social dialogue, it is pertinent to distinguish institutional and de facto obstacles from substantive and adjective ones.

In turn, with regard to the second task, the institutional, de facto, substantive and adjective factors that may facilitate and strengthen social dialogue should be identified.

As a matter of fact, to fulfill the tasks of identification and removal of obstacles and strengthening of existing positive factors, social dialogue should preferably be incorporated, as a way of showing its strengths (Morgado, 1997b).

2. Tasks derived from the Declaration of Viña del Mar

The Declaration of Viña del Mar expressly established social dialogue as one of the eight priorities of the policies that Member States of the Organization of American States choose to promote, in order to attend to both economic globalization and its social dimension, as well as to the modernization of the State and the Labour Administration.

Therefore, one of the central tasks of the Ministries of Labour is to enable social dialogue as a component of labour public policies and as a resource to secure the objectives of its other seven central tasks identified in the Declaration of Viña del Mar: employment and the labour market; professional training; labour relations and basic worker rights; occupational safety and health at work; labour inspection at a national and international levels, and labour justice administration.

Both as an objective and a means of action, social dialogue matches the goals enunciated in the Declaration of Viña del Mar with regard to the consolidation and deepening of democracy, as well as the ethic; social and political objectives of the policies of growth, modernization and economic integration.

Hence, by promoting and facilitating social dialogue, the Labour Ministries hope to achieve the generation of more and better jobs and remuneration, consistent with productivity and the exigencies of social and human progress. At the same time, The Labour Ministries must make sure that policies established with the input of social dialogue promote the incorporation of the unemployed, specially women, the youth, migrants, the disabled and members of other minorities or vulnerable groups, as well as those who are affected by processes of productive conversion or form part of the informal and precarious sector of the economy.

With the support of social dialogue, the Labour Ministries must make sure that national labour norms correspond to the labour fundamental principles and rights established by the International Labour Office (ILO), and reaffirmed in the Declaration of Fundamental Labour Principles and Rights at Work, approved at the 1998 International Labour Conference.

To summarize, it is fair to conclude that by means of the provisions in the declarative and operative paragraphs of the Declaration of Viña del Mar, the general tasks of the Labour Ministries with regard to social dialogue have acquired contents, meanings and projections whose specificity have further strengthened the political mandate of those Ministries. Besides, they have given labour public policy a participatory profile and thereby a central position in democratic practices.

3. Tasks derived from the Decent Work Program

In the formulation of the Decent Work Program, social dialogue is defined as both a means and an end in itself. As a means, dialogue is a factor that helps to promote opportunities for men and women to find decent and productive jobs in freedom, equity, safety and human dignity. Social dialogue is also one of the four strategic objectives of the Program, together with the promotion of labour fundamental rights, employment and social protection.

When the International Labour Conference approved the Decent Work Program at a meeting held in June, 1998, the Member States of the International Labour Office kept in mind that access to the opportunities offered by the new economy...
requires the existence of social institutions based on participation, in order to legitimize and ensure the permanency of pertinent social and economic policies. In this view, “social dialogue is an indispensable element of the adjustment”.

Thus, the task of the Labour Ministries consists in ensuring that social dialogue may accomplish its central objective of achieving equity in the allocation of necessary resources and in the distribution of results. The Labour Ministries must facilitate and promote all forms of social dialogue, respect for freedom of association and collective bargaining.

Therefore, the Labour Ministries have the special task to promote and make possible tripartite and bipartite social dialogue at centralized and decentralized levels, in a variety of institutional structures and with formal or informal procedures, with significant participation by free and independent workers’ and employers’ organizations.

The Labour Ministries must also remove all obstacles in the way to dialogue, as a result of poor levels of employment, inadequate social protection, poor representation and lack of organizational, institutional and behavioral skills.

The role of social dialogue merits special mention in connection with the tasks of the Labour Ministries derived from the commitments made by the State Parties to the ILO, following the adoption of the Declaration of Fundamental Labour Principles and Rights at Work. These concern freedom of association and the effective recognition of the right to collective bargaining; abolition of all forms of forced or compulsory work; effective eradication of child labour and elimination of discrimination in employment and occupation.

Lastly, with regard to the general and specific tasks of the Labour Ministries, the Technical Advisory Entrepreneurial Commission on Labour Affairs (CEATAL) and the Technical Advisory Union Council (COSATE) take part in the implementation and evaluation of the means of action used to accomplish these tasks.

CEATAL and COSATE, in their functions of advisory organs representing the entrepreneurial and organized labour sectors respectively, issued a joint Declaration on the occasion of the XII ICLM (Ottawa, October 2000), laying down their principal conclusions, after an exchange of opinions on the current status of the social and labour dimension of regional integration. In this Declaration, they made the following recommendations:

- Cooperation between the ILO and the OAS to ensure “that the consensus achieved by the social co-participants (…) are duly taken into consideration in the integration process of the Americas”. Both advisory organs reiterated their commitment with the ILO Declaration of Labour Fundamental Principles and Rights at Work and their Follow Up, “which should be the common response in the context of the Decent Work Program, for developing and giving context to the labour dimension of regional integration”.

- Labour administrations, in cooperation with the organizations of employers and workers, should play an active role in “promoting a climate conducive to the creation of productive and sustainable employment, through the development of the entrepreneurial sector”. To this end, those administrations “shall strengthen their capacities to face the new challenges and participate in an active manner in the formulation of policies in their areas of intervention, and foster compliance with labour legislation through labour inspection services”.

- Governments should make “real efforts to consult with the social partners about the social and labour dimension of regional integration, and work with them to achieve decent work based on freedom, equality, safety and human dignity”. They base their recommendation on the conviction that “the stability and legitimacy of change in the labour sector will depend, to a great extent, on the consensus forged between governments and social co-participants”.

Lastly, CEATAL and COSATE requested the support of the State Parties, the OAS and the ILO.

C. Means of action

The choice of means of action is conditioned by factors such as national traditions, the nature of the environment where the dialogue takes place, as well as the available human and material resources.
Previous experiences indicate that the most frequently chosen means include studies and publications, dissemination and promotional activities, advisory services, training and catalyst activities, regulatory actions and international technical cooperation.

1. **Studies and publications**

   It is especially important to sponsor or produce studies and publications that analyze the dialogue dimension, focusing on national and foreign experiences; dialogue components such as subjects, participants and elements that condition the viability, convenience and efficacy of the dialogue.

   By virtue of its own functions, the Labour Ministries are in a condition to gather background material that is vital to the development of such studies and publications.

2. **Dissemination and promotion**

   The Labour Ministries should be charged with disseminating their own studies and any studies that may be commissioned of third parties, specially academic institutions. They could also share successful experiences with dialogue in the country and abroad.

   Dissemination has the clear purpose of promoting recourse to social dialogue, not only as an advisable tool, but rather as an indispensable instrument in a modern system of labour relations.

   At the same time, the Labour Ministries should warn about the objective and subjective conditioning factors that affect dialogue, in order to avoid possible distortions that might denaturalize, impair and even damage its prestige. Therefore, the promotional and dissemination tasks of the Ministries should be focused on derailing incredulity and preventing distrust.

3. **Advice**

   The disposition to engage in dialogue and its further evolution frequently face difficulties derived from deficiencies that restrict the implementation and effectiveness of dialogue. These deficiencies, which may present themselves in a variety of ways, should be set aside or diminished by means of advisory services directly provided by the Ministries and/or third parties.

   Such services should be requested and accepted by the parties and, in any case, should not deviate from their specifically advisory role. This will reassure the parties in the sense that they do not feel coerced or deprived of their condition as dialogue partners.

4. **Training**

   Whenever necessary and in the most appropriate way, the Ministries of Labour should facilitate the access of employers and workers to adequate dialogue training, provided approval by the social parties.

5. **Support and follow up catalyst facilities**

   Propensity to dialogue —whether pre-existing or promoted— and the determination to participate in a dialogue process may require certain catalyst functions performed by a third party which, without affecting the independence, autonomy and freedom of the social parties, may facilitate the inception and development of the dialogue, while also providing the necessary support, along with accompanying them through follow up tasks if the parties so agree.

   There is no doubt that those third parties should be the Ministries of Labour, whenever the dialogue has a tripartite character. In the event of a bipartite dialogue, the Ministries may also take care of this task or cooperate in it, if it were decided to entrust these tasks to other bodies or mechanisms, such as academic institutions.

6. **Regulatory actions**

   If need be, the Ministries of Labour should elaborate projects to amend current regulations, possibly in consultation with the social subjects, in order to remove or reduce regulatory obstacles that impair or prevent social dialogue or its effectiveness.

   The Labour Ministries may also take administrative measures to promote and enable social dialogue, for example by distributing memoranda and directives that guide the activities of its employees or facilitate the
access of the parties to labour administration services.

7. International technical cooperation

The Declaration of Viña del Mar is accompanied by a Plan of Action whose execution has been assigned to two Working Groups with the support of the Organization of the American States (OAS), in its role of Technical Secretariat of the ICLM, with the possible participation of the national counterpart, COSATE, CEATAL, the ILO, the IDB, ECLAC and other regional and sub-regional bodies.

In this Plan of Action, the Labour Ministries committed themselves to two kinds of issues: a) economic globalization and its social and labour dimension, and b) the requirements and challenges raised by the modernization of the State and the labour administration.

As far as the first set of issues is concerned, the Ministries decided to promote the objectives of the Declaration of Viña del Mar by undertaking actions in the employment and labour market areas, labour relations (including social dialogue), and social security. Regarding the second set of issues, the Ministries of Labour made commitments with respect to their own functions and tasks, and the inspection of national labour standards and social security.

The specific subjects have been presented in the Introduction to this Paper. However, they may be summarized in fourteen topics that will receive technical cooperation concerning the role of social dialogue in the fulfillment of the objectives stated in the Declaration of Viña del Mar.

Since social dialogue is an important theme in the Declaration, the topics that directly address it will be presented at the head of the list:

- Establishment or reinforcement of the most diverse environments for tripartite or bipartite social dialogue at the national, sectoral or territorial levels.
- Call to instigate various processes of social dialogue and promotion of areas and subjects for economic, social and labour concert.
- Promotion of employers’ and workers’ organizations.
- Participation in the labour inspection area;
- Extent of the coverage of collective bargaining, including the public sector.
- Resolution of labour conflicts.
- Structuring and functioning of the labour markets.
- Income, productivity, quality and professional training.
- Training, guidance, information and professional certification.
- Economic support for the unemployed.
- Labour jurisdiction and procedures.
- Reform of Social Security.
- Social Security and migrant workers, and Participation of the Labour Ministries in economic and social policy matters.

To implement the aims and criteria established in the Declaration of Viña del Mar, the XI Inter-American Conference of Labour Ministers of the Organization of American States constituted, in an Annex to the Plan of Action of the Conference, two Working Groups coordinated by two Ministers appointed by the Plenary. The First Group, called “Economic Globalization and its Social and Labour Dimension”, was charged to address, in two sub-groups, the following subjects: a) social dimension of the integration processes; b) changes in the structure and functioning of the labour markets and labour regimes; c) professional education, and d) assistance systems for the unemployed. The second Group, called “Modernization of the State and the Labour Administration”, was charged with addressing the following subjects: a) modernization of the Labour Ministries; b) modernization of the supervisory functions of the State in terms of worker fundamental rights; c) modernization of Labour Justice and, d) social dialogue, concerted action and collective bargaining.

To develop these groups and sub-groups, the Ministers also agreed to request the institutional support of the OAS for coordination and Secretariat tasks, as well as
the permanent and direct cooperation of the ILO, the IDB and other international agencies.

The list of major topics that require technical cooperation related to the Declaration of Viña del Mar should be complemented with the technical cooperation that is specifically related to the ILO Declaration of Labour Fundamental Principles and Rights at Work, whose objectives are part of the Declaration of Viña del Mar, specially by virtue of point 6.

Although the XI Inter-American Conference of Labour Ministers was closed in October, 2001, the Chiefs of State and Government of the Americas, meeting at Quebec in April 2001, directed the Ministers of Labor to “make further progress on the basis of the Declaration of Viña del Mar…”.

The Ministers of Labour made a similar statement on signing, in October 2001, the Ottawa Declaration: “Our contributions are founded on the Declaration of the XI Inter-American Conference of Labour Ministers held in Viña del Mar in October 1998…”.

Besides, Group I on the “Labour Dimensions of the Process of the Americas Summit”, and Group II on “Development of the Capacities of the Labour Ministries” were mandated to consolidate and strengthen the progress achieved at the XI Conference.

The ILO Declaration on Labour Fundamental Principles and Rights at Work recognizes the obligation of the ILO to “help its members in response to the needs they may establish and express, offering technical cooperation and advisory services aimed at promoting the ratification and application of the fundamental international conventions; providing assistance to members that are not yet ready to ratify all or at least some of the conventions, in its efforts to respect, promote and materialize the principles related to the fundamental rights that are the object of those conventions (…) and help them in their efforts to create a favorable environment for economic and social development”.

Additionally, technical cooperation aimed at the implementation of the Decent Work Program is also tightly associated with social dialogue which, as much as in the Declaration of Viña del Mar, is both an objective and a means to achieve the other strategic objectives of the above mentioned Program.
intertwined and generate direct and indirect interactions that influence the level of achievement of the objectives consecrated in each of those international agreements.

Hence, technical cooperation concerning social dialogue is highly significant, even in those cases where the projects in question are not mainly or exclusively directed to social dialogue.

Technical cooperation extends or has extended to national, subregional or regional environments; it has or has had a sectoral or intersectoral character, and is or has been directed to the Governments and employers’ and worker’s organizations, either jointly or separately. Moreover, technical cooperation is or has been financed, sponsored and executed by agencies such as the OAS, ILO, IDB, UNDP, SIECA, US/AID, US/DOL and a variety of cooperation agencies from European countries such as Spain and Norway.

On the other hand, technical cooperation has focused on social dialogue per se, as well as on key aspects of the subjects of dialogue.

It is fair to say that issues concerning the subjects, participants, levels and procedures of social dialogue are or have been incorporated in ongoing and already completed cooperation projects.

Lastly, in the declaration of Viña del Mar, the Labour Ministers expressly stated that “the legitimacy of the regional and international process of economic integration, as well the processes of institutional and labour modernization derived from them”, have their most solid foundations in social dialogue. Moreover, the Ministers added that “instances such as the Social and Economic Advisory Forum of the MERCOSUR and other similar venues that may be promoted in the context of ongoing continental or subregional integration processes, should be actively supported at the regional level”.

This resolution confirms the decision by the Ministers of Labour to complement national projects of technical cooperation with regional projects adapted to the actual multinational dimension of social dialogue, and capable of making a contribution to the achievement of the objectives established in the national projects.
Conclusions

1. Social dialogue, economic and technological change in the Americas: Current presence, nature, objectives, levels, subjects, conditioning factors and results.

The nature of current economic and social changes in the general context of globalization and their effects on labour and labour organization, raise the need to adopt measures that harmonize the protection of human labour carried out under conditions of dependence with the existence of competitiveness, productivity and quality.

Those measures may be established by the legislator on a heteronomous basis, determined unilaterally by the employer or through consensus between the organizations of employers and workers.

The third modality is the outcome of bipartite and tripartite social dialogue.

With a variety of forms and results, social dialogue has been present in the Americas since the 1940s. Starting in the 1990s, social dialogue has generally encompassed matters that were strictly related to the labour features of the process of economic and technological change at different levels of centralization and decentralization within each country, along with a variety of supranational expressions such as those derived from the activities of multinational enterprises and the free trade and/or integration agreements.

Direct participants in these processes of dialogue are the organizations of employers and workers. Dependent on the nature or purpose of each process of dialogue, the State participates either as a party on its own right or in a facilitating role.

The existence of dialogue and its effectiveness depend on the characteristics of the objective and subjective factors that condition the process. The former include factors related to subjects, participants, levels and the environment in which the dialogue takes place, while the latter include the disposition and suitability of the participants. These two elements are influenced by the presence of factors such as good faith, tolerance and conviction of the appropriateness of dialogue.

The results of dialogue may come in different shapes. In the absence of a regulatory framework that would ensure its appropriate legal efficacy, dialogue generally takes place as part of collective bargaining, even if not entirely in accordance with existing rules of procedure. On the other hand, keeping in mind the generally decentralized character of collective bargaining, supra-entrepreneurial dialogue and its results require specific validation, which sometimes consists in the adoption of legal rules by consensus.

2. Necessity, viability, scope and forms of social dialogue in the Americas with respect to the extending and ever changing effects of global change

The need to recur to social dialogue increases to the extent that current changes acquire permanency, due to their acceptability. Given that changes continuously follow upon changes, dialogue creates the conditions for flexible adaptation.

Dialogue is feasible to the extent that the objective and subjective factors mentioned in Section II under A and B of this Paper are present.

The range and forms of social dialogue have no other limits than possible restrictions derived from the labour regulatory framework, and are strengthened by the existence of favorable labour public policies that foster and respect freedom and the autonomy and independence of the collective representatives of workers and employers.

By the way, the effects of social dialogue gain force in so far as they embrace the interests and views of independent workers or unemployed workers who are excluded from the formal labour relations system as a result of the current process of change.

3. Possible promotion, support and follow up actions on the part of the Labour Ministries in the sectoral and intersectoral environments, and at the appropriate national, subregional and regional levels

The tasks, means of action and activities reviewed in Chapter Six under B and C of this Paper, may be totally or partially included in a
general program of national, subregional and regional character. Besides, sectoral and intersectoral programs may be formulated at each of those levels, both in decentralized and centralized environments.

Correlations between those specific plans notwithstanding, each of them would be independent. Thus, the Member States could associate themselves to one or more of them, according to their particular circumstances and priorities.

Tentative topics encompassed by each of those plans may include:
- A description and analysis of the current situation, specially with respect to the necessity, functionality and feasibility of social dialogue, and identification of the needs for action to make possible and strengthen social dialogue and its results.
- General and specific objectives, specially with regard to the goals of national labour policy.
- Identifying the means of action, coordination, assignment of responsibilities and schedule of execution. Special importance would be given to the development of studies and research, the establishment of document centers, publications, dissemination and promotional programs, seminars and conferences at the appropriate levels, development of advisory services and exchanges and internships by public officers and specialists.
- Expected results, follow up and evaluation.
- Available national and international resources.
- Inter-agency coordination to improve the inputs and results of technical cooperation activities by the bodies indicated in the Declaration of Viña del Mar and other national and international interested agencies.

The formulation and implementation of the Social Dialogue and Change Program would include the appropriate national, international and inter-agency coordination mechanisms, and of course the participation of employers’ and workers’ organizations.
BIBLIOGRAPHY

Aparicio V., L. and Morgado V., E. 1999 Estudio sobre la integración sociolaboral andina (Lima).

Arrigo, G. 2001 Social dialogue and economic development in Central America, informe presentado al proyecto RELACENTRO.

De Barraza, S. 2001 “Podemos ponernos de acuerdo”, in Espacios N° 12 (San José, FES/FLACSO/CEDAL).


Bronstein, A. 1997a Elementos para un diagnóstico de las relaciones de trabajo en Centroamérica, documento sometido a la Primera Conferencia Centroamericana del Trabajo (Guatemala, PARLACEN).


Campero Q., G. 1997 La concertación social: Una política de gobernabilidad democrática en los procesos de cambio. La experiencia de Chile, “Coloquio Tripartito de Bogotá. Diálogo y Concertación Social” (Bogotá, OIT/Ministerio de Trabajo y Seguridad Social).


Cerdas, R. 2001 “Negociación colectiva y concertación en Centroamérica”, in Espacios, N° 12 (San José, FES/FLACSO/CEDAL).

Ciudad Reynaud, A. 2001 Las normas laborales y el proceso de integración en las Américas (Lima, OIT).


Diario Oficial de Costa Rica 1998 “Alcance de la Gaceta Nº 50 a la Gaceta Nº 155”, in Diario Oficial, (San José), 11 de agosto.


- 1997-2001 Informes anuales (Panamá, FDT).


Leis, R. 2001 “Panamá: los canales de la participación ciudadana”, in Espacios, N° 12 (San José, FES/FLACSO/CEDAL).


Meléndez A., I. 2001 Diagnóstico sobre la situación del empleo en Nicaragua, informe presentado al Proyecto OIT-RLA/98/MO2/NOR.


- 1997b “Reseña histórica de la evolución de la administración del trabajo en Latinoamérica”, in Administración Laboral y Ministerios de Trabajo en el Siglo XXI (OIT).


- 1999 “Las perspectivas del Derecho del Trabajo en un mundo globalizado”, in El Derecho del Trabajo ante el nuevo milenio (Santo Domingo, Secretaría de Estado de Trabajo).

OIT 1998 Declaración de la OIT relativa a los principios y derechos fundamentales en el trabajo y su seguimiento, Conferencia Internacional del Trabajo, 86ª reunión (Ginebra, OIT).

- 1999a Trabajo decente. Memoria del Director General, Conferencia Internacional del Trabajo, 87ª reunión, (Ginebra, OIT).


- 2001 Reducir el déficit de trabajo decente. Un desafío global. Memoria del Director General, Conferencia Internacional del Trabajo, 89ª reunión (Ginebra, OIT).


Peña, M.; Barboza, R. n/d Diálogo social en el Paraguay, informe a la OIT (Mimeo).


Van der Laat E., B. 2001 “Cláusulas sociales y reformas normativas en la región”, in *Relacentro*, N° 1, Año 1 (RELACENTRO).

