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Colonialism, forced labour and the International Labour Organization: Portugal and the first ILO Commission of Inquiry

Oksana Wolfson, Lisa Tortell and Catarina Pimenta
ILO, Geneva



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1 Introduction*

The International Labour Organization ('ILO') has a complex web of supervisory mechanisms in place in relation to the system of international labour standards its Conventions and Recommendations create. The ILO Commission of Inquiry, at the apex of the system, is rarely used and in practice is reserved for investigations into the most serious cases of breach of the Organization's Conventions. The first ILO Commission of Inquiry was established in 1960 following a complaint against Portugal alleging the existence of forced labour in its African territories. The Commission held that Portugal had failed to fulfil its obligations under the forced labour convention, and issued a number of recommendations aimed at changing that situation.

At the time of the establishment of the Commission of Inquiry, Portugal was resented in the region as a coloniser after most other European countries had withdrawn, and was heavily criticized by the ILO. Now, Portugal is sufficiently respected to be referred to by the Director-General in relation to social policy. In his introduction to the International Labour Conference in 2007, the Director-General quoted a statement of the Portuguese Minister for Labour and Social Solidarity in an address to the ILO's African Regional Meeting,¹ thus emphasising the acceptance accorded to Portugal with regard to Africa and labour standards. In fact, Portugal is key to the ILO's decent work programme, with a regional office in Lisbon operating as a bridge to the Lusophone world in Africa and beyond.

Interestingly, while the ILO and Portugal both stress the significant relationship between the country and the organization, no mention is officially made of the strained relationship historically. The current ILO Portugal official website, for example, has no

* About the authors:

Catarina Pimenta: Assistant, DINÂMIA/ISCTE (Lisbon).

Lisa Tortell: Advanced Research Fellow, DINÂMIA/ISCTE (Lisbon).

Oksana Wolfson: Legal Officer, International Labour Office. We are grateful to a number of reviewers for comments on earlier versions of this paper.

¹ Director-General's introduction to the International Labour Conference *Decent work for sustainable development* (2007, ILC 96-2007/Report I (A)) 1-2.

information concerning the history of the relationship between the country and the organization, nor concerning events before the beginning of the democratic period in 1974.² This reticence appears misguided; one should not forget the past.

Despite its significance, the Commission of Inquiry into Portugal and its follow-up has never been the subject of extensive scholarly analysis.³ This paper will assess the significance of the ILO in relation to the practice of forced labour in Portuguese Africa at the end of the colonial period and, in particular, will consider the Commission's role in real terms. It will cover both the Commission of Inquiry's report, as well as the subsequent follow-up period. It will begin by introducing the ILO Commission of Inquiry. It will then describe the political context within which the first Commission was established and its report released. In the following section, the paper will set out the findings of that Commission concerning the practice of forced labour in Portugal's African territories, before turning to consider the implementation of the recommendations of the Commission of Inquiry by the Government of Portugal, followed-up by the ILO supervisory bodies. It will conclude by assessing the impact of the first Commission of Inquiry, as well as considering the reasons for its apparent success in dealing with what was, at the time, a state subjected to considerable international criticism.

2 The ILO Commission of Inquiry: An Overview

The key supervisory mechanism within the ILO structure is the requirement on Member States to periodically report on their implementation of the Organization's Conventions which they have ratified.⁴ The Committee of Experts on the Application of Conventions and Recommendations ('Committee of Experts') and the Conference Committee on the Application of Standards ('Conference Committee') were given

² See http://www.ilo.org/public/portugue/region/eurpro/lisbon/html/portugal_historia_pt.htm (last accessed 26 February 2008).

³ The lack of contemporaneous academic discussion in Portugal may be linked to the political situation at the time which made criticism of the government unlikely. The lack of attention paid to the case by lawyers was noted at the time: see G. White 'The Ploughing of Two Furrows: The International Labour Organization (I.L.O.) Commissions of Inquiry of 1961 and 1962' (1966) *The Australian Year Book of International Law* (Butterworths, Sydney) 47. See further Blamont, 'Human Rights and the I.L.O.' (1965) 11 *Howard L.J.* 413; Partan, 'Development of International Law by the International Labour Organization' (1965) *Proceedings of the American Society of International Law* 139; Vignes, 'Procédures Internationales d'Enquete' (1963) 9 *Annuaire Francais de Droit Internationale*, 438.

⁴ ILO Constitution, Art. 22

responsibility for regular supervision of the observance by Member States of their standards-related obligations.⁵ The Committee of Experts, composed of eminent jurists, monitors the conformity of national legislation and practice with international labour standards through the reporting system thus providing technical supervision. The Conference Committee is a tripartite body that considers the Committee of Experts' reports and provides 'the political weight'.⁶ It may further call individual countries to appear before it to consider in detail the implementation of a particular Convention. By including its conclusions regarding a particular country in a 'special paragraph' (previously called the 'special list'), it highlights its special and unusual concern at the observance of the particular Convention by a Member State; this is the highest form of condemnation by the Conference Committee.⁷

Parallel to this regular supervisory machinery, there are special, complaints based, procedures, which are either established under the ILO Constitution and concern the observance of all ratified Conventions⁸ or are set up by the Governing Body to examine complaints of violations of trade union rights.⁹ The ILO Commission of Inquiry, an ad-hoc body set up in the individual circumstances of a particular complaint, filed pursuant to Article 26 of the ILO Constitution, is reserved for investigations into the most serious of cases of breach of the Organization's Conventions. This rarely used procedure is at the apex of the system. Indeed, given that only eleven complaints have ever been examined¹⁰ by the Commissions of Inquiry, it is fair to say that it is a matter of last resort, used only in exceptional cases in which the Organization's other methods of pressure have not succeeded in resolving sustained breach of a Convention and in which the Governing Body is able to reach a political agreement to so institute the body.

⁵ Pursuant to a resolution adopted by the Eighth Session of the International Labour Conference in 1926, establishing both Committees.

⁶ *ILO Law on Freedom of Association: Standards and Procedures* (1995, ILO, Geneva) 166.

⁷ However, the Conference Committee can also make a finding that a country in question is in persistent violation of a particular Convention, without including it in a special paragraph, the latter often being a political decision.

⁸ That is, representations under Articles 24 and 25 of the ILO Constitution; and complaints under Article 26 of the ILO Constitution.

⁹ The Fact-Finding and Conciliation Commission on Freedom of Association and the Committee on Freedom of Association, established in 1951.

¹⁰ These are: Portugal (1961), Liberia (1962), Greece (1969), Chile (1974), Haiti and the Dominican Republic (1982), Poland (1983), Federal Republic of Germany (1985), Nicaragua (1989), Romania (1989), Myanmar (1997), and Belarus (2003).

The complaints procedure is governed by Articles 26-29 and 31-34 of the ILO Constitution. Under these provisions, a complaint may be filed against a Member State alleging non-compliance with a ratified Convention by another Member State which has ratified the same Convention, by a delegate to the International Labour Conference, or by the Governing Body in its own capacity. Upon receipt of a complaint, the Governing Body may form a Commission of Inquiry, consisting of three independent members of high standing.¹¹ The Commission is responsible for carrying out a full investigation of the complaint. There are no standing orders for the procedure of Commissions of Inquiry: the Governing Body has in each case left the matter to the Commission of Inquiry itself, subject only to the Constitution's and its own general guidance. Nevertheless, a common procedure has developed based on that established by the Commission into Portugal.¹² The Commission is required, by the Constitution, to ascertain all the facts of the case and make recommendations on measures to be taken to address the problems raised by the complaint. Notably, it may include time limits by which its recommendations should be implemented¹³ and indicate how the follow-up to the implementation of its recommendations will be undertaken.

Following publication of the report, both the Government against which the complaint has been made and, if the party that brought the complaint is a Government, then also that party, must indicate whether or not they accept the Commission's recommendations.¹⁴ There is the theoretical possibility for the matter to be appealed to the International Court of Justice,¹⁵ but this has never happened. The matter can then be reviewed regularly by the Committee of Experts, the Conference Committee, the Governing Body, and, in appropriate cases, the Committee on Freedom of Association, until – presumably – a time comes that the recommendations are deemed to have been

¹¹ N. Valticos 'Les commissions d'enquête de l'Organisation internationale du Travail' (1987) 3 *Revue Générale de Droit International Public*, 847, 856 noted that the members of the first seven Commissions were, for the most part 'de hauts magistrats nationaux ou internationaux, des professeurs d'université, quelques anciens chefs d'Etat ou de gouvernement ou d'anciens ambassadeurs ou hauts fonctionnaires'. This equally sums up the membership of the following Commissions.

¹² See discussion below, Part 4.

¹³ ILO Constitution, Art. 28. This aspect of the Commission's role goes beyond what is usual for a Commission of Inquiry: B. Vukas 'Some Remarks Concerning the Inquiry Commissions Established Under the Constitution of the International Labour Organisation' in J. Javillier et al (eds) *Les normes internationales du travail: Un patrimoine pour l'avenir. Melanges en l'honneur de Nicolas Valticos* (2004, Geneva, International Labour Office).

¹⁴ Art. 29(2): within three months from receiving the report.

¹⁵ Art. 29(2).

fulfilled. When a country fails to implement the recommendations of a Commission of Inquiry, the Governing Body can take action under article 33 of the ILO Constitution, according to which ‘[i]n the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith’.¹⁶

In many ways, a Commission of Inquiry is a unique body, differing from the traditional definition of a commission of inquiry at international law.¹⁷ For example, it is almost unique in being entitled to visit the *locus*;¹⁸ and its right to make recommendations goes beyond the role usually given to commissions of inquiry, as does its ability to set a time frame by which these recommendations should be implemented. Regardless of the theoretical considerations, ILO Commissions of Inquiry have had an important role to play in many cases of non-observance of the Organization’s conventions when the allegations of breach amount to violations of human rights.

3 Portugal and its colonies in the 1960s – political context

Portugal has been a member of the ILO since its inception in 1919. It ratified both Forced Labour Conventions, i.e. the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105), during the 1950s: in 1956 and 1959, respectively. In Portugal, a ratified Convention will be promulgated by a statute or legislative decree, with the effect of incorporating the provisions of the Convention into domestic law, without necessarily expressly repealing previous incompatible provisions. For the ILO forced labour conventions, this was done by two Legislative Decrees: Decree No. 40/646¹⁹ enacted the Forced Labour Convention, and Decree No. 42/381 enacted the Abolition of Forced Labour Convention.²⁰

¹⁶ Article 33 was invoked for the first time in 2000, in respect of Myanmar. The Governing Body asked the International Labour Conference to take measures to lead Myanmar to end the use of forced labour.

¹⁷ See Vukas (n 13 above) on the various features that distinguish this body from the usual definition of a commission of inquiry in international law. The ILO Commission of Inquiry could more properly be described as a supervisory body established by the ILO Constitution in 1919.

¹⁸ White (n 3 above).

¹⁹ Published in *Diário do Governo*, 16 June 1956

²⁰ Published in *Diário do Governo*, 13 July 1959.

With respect to its colonies, Portugal considered itself as one country, including the territories in Africa (Mozambique, Angola, Sao Tome e Principe, Cape Verde and Guinea Bissau) and Asia (East Timor and Macau) as overseas provinces²¹ of the Portuguese republic. On this basis, Portuguese continental law was the law of the colonies, thus meaning that the Government's ratification of the forced labour conventions applied equally to the African territories.²²

At the time that the complaint was brought in 1961, Portugal had been under a dictatorship since a military coup in 1926, headed by António de Oliveira Salazar from the early 1930s. The *Estado Novo*, formally created by the Portuguese Constitution of 1933, was a corporatist dictatorship, characterised by repression of dissent in continental Portugal and the maintenance of control over its colonies, despite independence movements in Mozambique, Angola and Guinea Bissau.

In terms of foreign policy, the *Estado Novo* was isolationist in nature; cooperation through international institutions was limited. While Portugal was admitted to the UN membership in 1955,²³ due to its colonial and authoritarian character, it was marginalised by the international community in terms of its access to the main international *fora*, except when geostrategic considerations overrode, which was the case in relation to NATO. When in December 1960, the UN General Assembly's 15th Session adopted Resolution No. 1542 (XV)²⁴ stressing that the Portuguese *províncias ultramarinas* were non-autonomous territories and that the Portuguese government should present regular reports on the situation in those territories, its relationship with Portugal came under a great deal of strain. Portugal voted against this Resolution, which it considered to be a 'war plan' against the country.²⁵ It refused to present, as requested, reports concerning its colonial territories and was continually condemned for its policy in every UN General

²¹ In Portuguese, the '*províncias ultramarinas*'.

²² Although note that the ILO, for example, did not accept that the colonies were part of metropolitan Portugal. Also note that slavery in the Portuguese African territories was ostensibly abolished by legislation in 1869.

²³ Portugal's entrance to the UN was delayed by the circumstances of the Cold War. The USSR blocked its entry in 1946 and only the package deal between western and eastern countries enabled the country to join the organisation, with several other countries from both political blocks.

²⁴ Entitled *Transmission of information under the article 73e of the Charter* (inserted on Chapter XI – *Declaration regarding non-self-governing territories*).

²⁵ A. Duarte Silva, 'O litígio entre Portugal e a ONU (1960-1974)', (1995) XXX (130) *Análise Social*.

Assembly session until 1974.²⁶ During this period, Portugal described itself as ‘*orgulhosamente sós*’, or ‘proudly alone’.

Unlike other European nations, the Portuguese regiment did not leave its African colonies, or the overseas provinces, during the 1950s and 1960s. Colonial wars in its African territories erupted in 1961 and lasted until 1974. Such was the context for the complaint brought, in 1961, by the Government of Ghana, which had become, in 1957, the first sub-Saharan African country to gain independence.²⁷

4 The Commission of Inquiry procedure and report

The complaint alleging breach of the Abolition of Forced Labour Convention, 1957 (No. 105) by Portugal in its African territories was brought by the Government of Ghana through a two sentence letter in January 1961.²⁸ After requesting and receiving additional comments from the Ghanaian authorities in April 1961, and observations on these documents from the Portuguese Government in May 1961, the Governing Body took the decision to establish the Commission of Inquiry in June 1961.²⁹ The Commission was chaired by Paul Ruegger, a Swiss diplomat and member of the Permanent Court of Arbitration and past chair of the ILO Committee on Forced Labour. Its other two members were Enrique Armand-Ugon, from Uruguay, and Isaac Forster, from Senegal, both of whom were judges of national courts. The Commission was assisted by a secretariat from the Office, including an Assistant Director-General, during its work.³⁰

The Commission held its first meeting in the month following its establishment. In light of the fact that this was the first Commission of Inquiry set up under Article 26 and that the ILO Constitution did not lay down rules of procedure to be followed, some

²⁶ The Revolution of 25 April 1974 did not put an immediate end to the litigious relationship between Portugal and the UN. In fact, it was only resolved five months later when Portugal applauded the admission of the Republic of Guinea-Bissau (one of its former colonies) as the 138th member of the United Nations.

²⁷ From the United Kingdom.

²⁸ Reproduced in *Report of the Commission Appointed under Article 26 of the Constitution of the International Labour Organisation to Examine the Complaint Filed by the Government of Ghana concerning the Observance by the Government of Portugal of the Abolition of Forced Labour Convention, 1957 (No. 105)* (1962) OB XLV(2) II, para. 1.

²⁹ 149th Session of the Governing Body (1961).

³⁰ *Commission Report* (n 28 above) para. 11.

preliminary examination of its scope was made. In determining its procedure, the Governing Body had indicated that the Commission should be guided by a 'general directive':³¹

The Commission shall begin its work by examining the particulars furnished by the Government of Ghana and the observations of the Government of Portugal with a view to determining on what matters it needs fuller information. The Commission will then, through the Director-General, consult the Governments of Ghana and Portugal, but without being bound by the views of either of them, concerning the arrangements necessary to ensure that it has at its disposal thorough and objective information concerning the questions at issue; in the event of any difficulty being encountered, the Commission will so report to the Governing Body.

In this connection, three basic considerations were stressed by the Commission: the procedure provided for by the relevant articles of the Constitution is of a judicial nature;³² the need to shed full light on the facts, without confining itself to examining only the information submitted by the parties; and, 'having regard in particular to the Governing Body's request that a first report be presented to it in November 1961', the procedure must 'ensure due rapidity'.³³ At this first meeting, the Commission heard separately the parties' representatives, and sought further written material from them, as well as other governments, international organizations of workers and employers, and non-governmental organizations.³⁴

The second session was held in Geneva in September 1961. This session involved examining the information received in response to the Commission's requests, as well as hearing 31 witnesses. The Commission issued certain decisions as to the procedure to be followed during the hearing of witnesses:³⁵ the hearings would be private; would be limited to factual, and not political, evidence concerning the time after the forced labour conventions came into force in Portugal (ie 1960); and witnesses would be questioned by

³¹ *Commission Report* (n 28 above) para. 9.

³² See also Valticos (n 11 above) who notes that the ILO Commissions of Inquiry have a quasi-judicial nature.

³³ *Commission Report* (n 28 above) para. 15.

³⁴ *Commission Report* (n 28 above) paras 16-20.

³⁵ *Commission Report* (n 28 above) para. 46.

both parties' representatives and the Commission. The Commission recorded that it put over 1,500 questions to the witnesses, from whom they received various documents.³⁶ The Commission submitted a report covering its first two sessions to the Governing Body in November 1961, fulfilling its requirement to do so by that date.³⁷ The Governing Body noted that the Commission would submit a further report at the following session of the Governing Body. It expressed hope that the Commission would be able to deal with the whole question and to indicate the results of the examination at that time.³⁸

The Commission visited Angola and Mozambique for a week each during December 1961.³⁹ Given the need for rapidity, the Commission had taken the decision that the visits to the countries would be short and 'should aim primarily at enabling it to gain a direct impression of the situation ... and to know the practical conditions ..., while also providing an opportunity to check the exactitude of these allegations'.⁴⁰ More in-depth inspection and judicial investigation would only have been needed if it was the sole way to reach a full appraisal of the issue. During its mission, the Commission visited workplaces in various areas of economic activity, and questioned workers, managers, recruiters, medical staff and engineers, administrators, native chiefs, trade union officials and senior authorities in the territories.⁴¹

The Commission issued its final report in February 1962, eight months after it was established, and a little less than a year after the complaint was laid. The report clarified the scope and nature of the prohibition against forced labour. For the most part, the Commission of Inquiry indicated that its examination had principally concerned the use of forced labour for purposes of economic development. The Commission noted that neither party had based its case on the technical grounds of whether forced labour existed of the types enumerated in the Abolition of Forced Labour Convention, but rather had argued as to the broader question of whether or not there was forced labour in the

³⁶ *Commission Report* (n 28 above) para. 50.

³⁷ *Commission Report* (n 28 above) para. 54.

³⁸ *Official Bulletin*, Vol. XLV, No. 1, January 1962, p. 14. By the time the first report was submitted to the Governing Body, arrangements have been made for the members of the Commission to visit the territories to which the complaint related, with a view to supplementing the information already available to it.

³⁹ *Commission Report* (n 28 above) chapter 5.

⁴⁰ *Commission Report* (n 28 above) para. 56.

⁴¹ *Commission Report* (n 28 above) para. 62.

territories. In those circumstances, the Commission of Inquiry reached its conclusions ‘on the same broad footing as that adopted by the parties during the discussion’.⁴²

The Commission made some far-reaching comments about the meaning of the constitutional obligation on Member States to ‘take such action as may be necessary to make effective the provisions’ of Conventions they have ratified.⁴³ The Commission understood the obligation as one to ‘make the provisions of the Convention effective in law and fact’.⁴⁴ In other words, considering inconsistent law to be obsolete is not satisfactory. In cases in which ratification of a convention is deemed to supersede previous inconsistent law, there is ‘grave danger that the effect of the Convention may not be fully appreciated by those familiar with and responsible for the application of the law’.⁴⁵ Obviously, in cases in which such inconsistent law is not superseded but becomes obsolete *de facto*, the risk is greater as the law could be revoked at any time there is a change in policy or a misunderstanding about the policy.

Fully consistent law, however, will not be sufficient on its own: it is necessary that the law is ‘fully and strictly applied in practice’, implying:⁴⁶

effective administrative services for the enforcement of the law, including in particular provision for thorough inspection ... [;] that the provisions of the law are made known to all interested parties ...; that effective grievance procedures make it possible for workers wishing to lodge any complaint against failure to comply with the law to do so without fear of victimisation; and that there should be adequate penalties for infractions ...

If a Member State implements a Convention in law and practice in this way, it cannot be regarded as having breached its obligations simply because of a breach of that convention by an administrative officer or by an employer.⁴⁷

⁴² *Commission Report* (n 28 above) para. 711.

⁴³ *Commission Report* (n 28 above) para. 716; pursuant to Arts 19(5) (d) and 26(1) of the ILO Constitution.

⁴⁴ *Commission Report* (n 28 above) para. 716.

⁴⁵ *Commission Report* (n 28 above) para. 716.

⁴⁶ *Commission Report* (n 28 above) para. 716.

⁴⁷ *Commission Report* (n 28 above) para. 716.

The Commission concluded that while forced labour was for many years a major factor in the economics of many African countries, recourse to it had been increasingly condemned. The Committee noted that although Portugal abolished slavery early by international standards, its actions in relation to the abolition of forced labour lagged substantially behind that of the majority of states with responsibility for Africa.⁴⁸ Nevertheless, Portugal did ratify the two relevant Conventions in 1956 and 1959, and far-reaching changes had occurred in Portuguese policy, legislation and practice in connection with those ratifications. While the Commission was fully satisfied with the good faith of the changes made by Portugal, it was not satisfied that all of the obligations of the Abolition of Forced Labour Convention were implemented upon the coming into force of the Convention.⁴⁹ The Committee noted situations in which positive changes had been made since the complaint was brought,⁵⁰ as well as other matters in which further steps were necessary to give full effect to the provisions of the Convention.⁵¹ For example, the provision creating a ‘moral obligation to work’ in the labour legislation from the *indigenato*⁵² period had not been formally repealed, although the Portuguese government had advised that a new Labour Code was in the final stages of preparation.⁵³

Consequently, the Commission made a number of recommendations concerning its wish for the Portuguese Government to ensure that legislative steps that it had begun taking were continued,⁵⁴ and that legislative change was followed by change in practice.⁵⁵ It further recommended that all regulations concerning the issues of recruitment of labour and the abolition of forced labour should be published.⁵⁶

The Commission of Inquiry found that while many of the individual companies it had visited no longer used forced labour, others had continued to use forced labour after

⁴⁸ *Commission Report* (n 28 above) para. 725.

⁴⁹ *Commission Report* (n 28 above) para. 725.

⁵⁰ *Commission Report* (n 28 above) paras 725, 727-8.

⁵¹ *Commission Report* (n 28 above) paras 725, 729.

⁵² The *indigenato* law distinguished ‘between the “colonial citizens,” subject to the Portuguese laws and entitled to all citizenship rights effective in the “metropolis,” and the indigenas (natives), subjected to colonial legislation and, in their daily lives, to their customary, native laws’: B. Sousa Santos ‘The Heterogeneous State and Legal Pluralism in Mozambique’ (2006) *Law and Society Review* 1, 16.

⁵³ *Commission Report* (n 28 above) para. 730.

⁵⁴ *Commission Report* (n 28 above) paras 729-735.

⁵⁵ *Commission Report* (n 28 above) paras 738, 741, 744.

⁵⁶ *Commission Report* (n 28 above) para. 736.

the ratification of the Convention until July 1961.⁵⁷ Equally, the majority of labour in the publicly owned railways and ports in Angola still worked ‘against their wishes’ despite instructions to the contrary issued in August 1961.⁵⁸ The Commission found one case in Mozambique where a contractor was using forced labour on road construction and maintenance, but the Government subsequently prosecuted the offender.⁵⁹ While the Commission of Inquiry generally found no forced labour in the large European plantations,⁶⁰ it recommended that the Government further examine the recruitment methods of one plantation in light of its lack of frankness.⁶¹

The Commission also made recommendations of a more general nature, recommending the Government to give a high priority to building up the labour inspection service,⁶² to consider the need for a comprehensive manpower policy,⁶³ to promote higher labour standards generally,⁶⁴ and improve personnel policies and administration.⁶⁵ While refraining from making any formal recommendation concerning the need for strong and universal trade unions in the Portuguese territories, the Commission pointed out its importance.⁶⁶ Finally, the Commission of Inquiry recommended that follow-up of its recommendations be made through the regular article 22 reports to the Committee of Experts until full adherence to the Convention was considered achieved.⁶⁷

The Commission’s concluding observations concerned ‘far-reaching considerations of general policy’ that it wished to bring to the attention of the Portuguese Government in a form other than formal recommendations.⁶⁸ The Commission considered that the abolition of forced labour – a policy ‘to which the Government is so completely committed’ – could not be achieved in ‘the context of social and cultural backwardness’ that many citizens of Portuguese Africa lived in and which made it

⁵⁷ *Commission Report* (n 28 above) para. 738.

⁵⁸ *Commission Report* (n 28 above) para. 741.

⁵⁹ *Commission Report* (n 28 above) para. 744.

⁶⁰ *Commission Report* (n 28 above) para. 748.

⁶¹ *Commission Report* (n 28 above) para. 749, relating to the Cassequel Plantation.

⁶² *Commission Report* (n 28 above) para. 756.

⁶³ *Commission Report* (n 28 above) para. 763.

⁶⁴ *Commission Report* (n 28 above) para. 766.

⁶⁵ *Commission Report* (n 28 above) para. 769.

⁶⁶ *Commission Report* (n 28 above) para. 769.

⁶⁷ *Commission Report* (n 28 above) para. 778.

⁶⁸ *Commission Report* (n 28 above) para. 771.

impossible for them to truly have free choice.⁶⁹ The Commission of Inquiry was 'satisfied' that in certain places, 'the bulk of the working force is at so backward a stage of development that freedom and economic opportunity belong to a world so wholly beyond their grasp that the question whether the labour exacted from them is forced labour becomes virtually meaningless'.⁷⁰ The Commission noted that this was a major difficulty in reaching valid conclusions in particular cases and, although it was 'impressed' by signs of economic and social development in Angola and Mozambique, it felt that a 'great intensification of measures of economic and social advancement is necessary to eliminate this element in the problem of the effective abolition of forced labour'.⁷¹

At its March 1962 session, the Governing Body noted the report of the Commission.⁷² The Commission's findings and recommendations were accepted by the parties to the complaint. In particular, the Government of Portugal did so 'in full awareness of the fact that the Commission's recommendations were to be implemented'.⁷³

5 Follow-up: implementation of the recommendations

Pursuant to the recommendation of the Commission of Inquiry, the Committee of Experts was called upon to examine the measures taken by the Government of Portugal to give effect to the recommendations contained in the report. The application of the forced labour convention was further discussed in the Conference Committee for the following nine years. Those discussions provide valuable information on how the Government was implementing the recommendations and shed light on how the constituents saw and understood the role of the ILO supervisory machinery and, therefore, the ILO itself. A close study of the minutes of these discussions illustrates three different stages of interaction between the ILO and the Government of Portugal, leading to the conclusion of the Portuguese case, but also the advancement in the use of the ILO as a legal and political forum for protection of human rights.

⁶⁹ *Commission Report* (n 28 above) para. 772.

⁷⁰ *Commission Report* (n 28 above) para. 775.

⁷¹ *Commission Report* (n 28 above) para. 775.

⁷² *ILO Official Bulletin*, Vol. XLV, No. 2, April 1962, p. 87.

⁷³ *ILO Official Bulletin* (n 72 above), p. 87.

The first stage of the interaction between the ILO and the Government occurred during the years following the Commission's report. These years were not marked by passionate debates. However, during the second stage of interactions, starting in 1965, African trade unions became more vocal⁷⁴ and went so far as to request the suspension of Portugal's membership until it revised its policy.⁷⁵ That year, while the Committee itself did not place Portugal on the special list, an amendment was tabled during the discussion of the report at the plenary session of the International Labour Conference which led to Portugal being included on the special list after all.⁷⁶ On a proposal emanating from the Conference Resolutions Committee, the Conference adopted a resolution in which, *inter alia*, it requested the Government of Portugal 'to give effect without further delay to the recommendations of the 1962 Commission of Inquiry of the Governing Body, particularly in so far as they related to forced labour practices and the sequels of forced labour'.⁷⁷ This resolution also requested the Director-General and the Governing Body to keep the matter under review and to take appropriate measures to ensure that these recommendations were or would be implemented.

Accordingly, in November 1965, the Governing Body requested the Committee of Experts 'to make a special examination of the extent to which these recommendations had been implemented and to report thereon'.⁷⁸ In 1966, the Committee of Experts presented the resulting special report on this subject.⁷⁹ The Committee concluded that

⁷⁴ The All-African Trade Union Federation was founded in 1961 and the African Trade Union Confederation was founded in 1962.

⁷⁵ The African Trade Union Confederation made the following statement: 'in view of the fact that the International Labour Organization must, within its framework of its competence, ensure the application of the resolutions of the General Assembly of the United Nations, and in particular the resolution concerning the abolition of colonialism, [...] the African Trade Union Confederation requests the solemn condemnation of Portugal and the suspension of its powers as Member of the Organization until it revises its policy which is contrary to the basic principles of the I.L.O., principles which every Member undertakes to respect as a condition of its admission'. This appeal was taken up by the Algerian Government member, who considered that the presence of the representatives of Portugal 'was not welcome and was inopportune', and by the Government member of Guinea, who invited Portugal to 'follow suit' of the Republic of South Africa, which had withdrawn from the ILO.

⁷⁶ ILC, 49th Session, *Record of Proceedings* (Geneva, 1965), pp. 465-466.

⁷⁷ ILC, 49th Session, *Record of Proceedings* (n 76 above), p. 697.

⁷⁸ *ILO Official Bulletin*, Vol. XLIX, No. 1, January 1966, p. 9.

⁷⁹ Special Report by the Committee of Experts on the Application of Conventions and Recommendations Concerning the Measures Taken by the Government of Portugal to Implement the Recommendations of the Commission of Inquiry Appointed under Article 26 of the I.L.O. Constitution to Examine the Observance by Portugal of the Abolition of Forced Labour Convention, 1957 (No. 105) in ILC, 50th Session, Report III

effect had been given to all recommendations concerning legislative changes. Both the Committee of Experts and the Conference Committee considered, however, that the application of this legislation in practice raised serious doubts and that, therefore, it was necessary to pursue certain inquiries regarding practical measures to ensure the elimination of any element of coercion in the engagement and employment of labour.

The special report resulted in debate at the Conference Committee with regard to the procedure used to examine the case of forced labour in African territories administered by Portugal. The Workers' members considered that:

the Committee of Experts' special report [...] confirmed one conclusion which had emerged from the report of the Commission of Inquiry, namely that the complaint by Ghana, its investigation by the ILO and the subsequent follow-up by the Committee of Experts and the Conference Committee had proved a useful means of obtaining changes in laws which for half a century had been receiving the reprobation of international opinion.⁸⁰

In comparison, the Government members of Guinea and Algeria considered that the Conference Committee 'should endeavour to find some new way of dealing with [the] problem' and that the Committee 'should not limit itself to examination of this case under the usual procedure but must seek special procedures which would be more effective'.⁸¹ What 'special procedures' means is not, however, clear.

Another issue raised by delegates related to the political consideration of the case: should the discussions be limited to the legal issues, i.e. application of the Convention *stricto sensu*, or should the political situation also be taken into account? In this respect, although they disagreed on the question of progress achieved by the Portuguese Government, the Employers' members, who considered that '[t]he Committee should not concern itself with the political situation, but with the observation on Convention No.

(Part IV), *Report of the Committee of Experts on the Application of Conventions and Recommendations* (Geneva, 1966), Annexe pp. 1-27.

⁸⁰ ILC, 50th Session, *Record of Proceedings* (Geneva, 1967), p. 598.

⁸¹ ILC, 50th Session, *Record of Proceedings* (n 80 above), p. 599.

105’,⁸² were somewhat supported by the Workers’ members who stated that while ‘[i]t was not easy to separate completely the legal and the political problems, ... it was not the political problem with which the Committee had to deal’.⁸³ As for the Government members of the Committee, while the French delegate pointed out that within the terms of reference of the Committee of Experts in reporting on the implementation by Portugal of the recommendations of the Commission of Inquiry there was evidence of efforts made by the Portuguese Government, ‘[t]his did not mean that, if the matter [was] approached on a more general level, further comments would not be appropriate’.⁸⁴ The Government member of Mali, considering that no results had been achieved, nevertheless understood that ‘the Committee of Experts could only act within its terms of reference and this limited the possibility of having full evidence of forced labour practices’.⁸⁵ In comparison, ‘the African members did not wish to be confined within a purely legal discussion because the problem went beyond that framework’.⁸⁶ The Government member of Senegal, supported by the Tunisian Government member,⁸⁷ considered that the ‘problem could be solved only by granting independence’.⁸⁸

The following year, however, the Committee concluded that not much progress had been made in the year of review and even noted some regression, especially as regarded Mozambique. On the proposal of the Workers’ members, the case of Portugal was included in the special list.⁸⁹ Confronted, as in previous years, with appeals to grant independence to its African colonies, the Government of Portugal considered that the discussions at the Conference Committee lacked good faith⁹⁰ and, while expressing the

⁸² ILC, 50th Session, *Record of Proceeding* (n 80 above), p. 599. Employers considered that the progress achieved by the Government should be noted with satisfaction. The Swedish Employers’ members associated himself with this statement and considered that the ‘Committee could not exceed the legal framework of the Committee of Experts’ report’: see ILC, 50th Session, *Record of Proceeding* (n 80 above), p. 601.

⁸³ ILC, 50th Session, *Record of Proceeding* (n 80 above), p. 600.

⁸⁴ ILC, 50th Session, *Record of Proceeding* (n 80 above), p. 600.

⁸⁵ ILC, 50th Session, *Record of Proceeding* (n 80 above), p. 601.

⁸⁶ The delegate from Guinea stated that ‘[t]here had been no progress, and the amendments to the legislation were of no value [...]one could not after five centuries send a commission and then make mathematical calculations of progress’: ILC, 50th Session, *Record of Proceeding* (n 80 above), p. 600.

⁸⁷ ILC, 50th Session, *Record of Proceeding* (n 80 above), p. 601.

⁸⁸ ILC, 50th Session, *Record of Proceeding* (n 80 above), p. 601.

⁸⁹ ILC, 51st Session, *Record of Proceeding* (Geneva, 1968), p. 675.

⁹⁰ The Government emphasized that, as requested by the supervisory bodies, it had always supplied detailed information along with its reports under article 22 of the ILO Constitution. That in itself was an expression of its good faith and desire to collaborate with the ILO: ILC, 51st Session, *Record of Proceeding* (n 89 above), p. 672.

intention of the Government to invite a direct contact mission to ascertain how the legislation was applied in practice, the representative of the Government of Portugal stated that if the discussions at the Conference Committee ‘could not proceed in good faith, the Government would have to review its proposition as regards the supply of reports’.⁹¹

The report submitted by Portugal in 1967 to the Committee of Experts lacked any new information and for the two following years, Portugal failed to submit its reports at all. The Conference Committee nevertheless continued to examine the implementation by Portugal of the recommendations of the Committee of Inquiry. During the 1968 session, the Government of Portugal once again expressed its disappointment at the way it was treated⁹² and stated that more than being compelled to re-examine the question of supply of the reports, it felt it had to go further and to review the question of its participation in the work of the Committee. The final statement of the Government’s representative well illustrated the *orgulhosamente sós* policy in relation to its international relations at this time: ‘With the Charter or without the Charter, with the Security Council or without the Security Council, we shall do what we want to do’.⁹³ The Committee noted with regret the statement of the Government’s representative and appealed to the Government to examine this question very carefully.⁹⁴ It did not include Portugal in the special list.

In 1969 Portugal was once again included on the special list and consideration was given to the Government’s formal request for a ‘direct contacts’ mission. Such a direct contacts mission should have particular reference to: the interpretation of the text of Convention No. 105 to determine whether its scope extended to the information previously requested by the Committee of Experts and the Conference Committee; and the clarification of the alleged discrepancies between the provisions of this Convention and its effective application throughout Portuguese territory.⁹⁵

⁹¹ ILC, 51st Session, *Record of Proceeding* (n 89 above), p. 675.

⁹² The Government representative stated: ‘whatever the Government might do, Portugal was sure in advance to be placed on the special list. Accordingly, this list had lost its meaning for the Portuguese Government’: ILC, 52nd Session, *Record of Proceeding* (Geneva, 1969), p.622.

⁹³ ILC, 52nd Session, *Record of Proceeding* (n 92 above), p. 622.

⁹⁴ ILC, 52nd Session, *Record of Proceeding* (n 92 above), p. 622.

⁹⁵ ILC, 53rd Session, *Record of Proceeding* (Geneva, 1970), p. 607.

At this stage, the third stage of interactions between the ILO and the Portuguese Government started, characterized by an increased cooperation. The Director-General of the International Labour Office accepted the proposal for a direct contacts mission and appointed Pierre Juvigny⁹⁶ as his representative for this purpose. After initial discussions with the representatives of the Government in May 1970 in Lisbon, the special representative visited Angola and Mozambique during October 1970, where he met representatives of the Government, visited a number of public and private undertakings and conducted interviews with management, workers and representatives of their organizations. In his report submitted to the Committee of Experts for its 1970 session, Juvigny concluded that there was ‘no evidence of coercion or pressure of a kind prohibited by Convention No. 105’.⁹⁷ Furthermore:

the Portuguese authorities appeared to be fully aware of the need to develop further the serious of policies which they have been pursuing in recent times. It is to be noted that, in official statements and documents, the authorities have repeatedly referred to ILO standards as reinforcing the legal basis of their decisions.⁹⁸

In light of the information contained in this report, the Committee of Experts considered it ‘appropriate to conclude that there [was] no evidence from which it could be inferred that at the present time the legislative provisions which prohibit recourse to forced or compulsory labour and any form of coercion or improper pressure in connection with the recruiting or workers [were] not being observed’.⁹⁹ In other words, the situation with regard to the observance of the forced labour conventions in Angola and Mozambique had been resolved in law and fact. Accordingly, the case was considered complete and was not further discussed by the ILO supervisory bodies.

⁹⁶ French Councillor of State, and Member and former Chairman of the United Nations Subcommittee on the Prevention of Discrimination and the Protection of Minorities.

⁹⁷ ILC, 56th Session, Report III (Part 4A), *Report of the Committee of Experts on the Application of Conventions and Recommendations* (Geneva, 1971), Annexe, para. 209.

⁹⁸ *Report of the Committee of Experts on the Application of Conventions and Recommendations* (n 97 above), Annexe, para. 212.

⁹⁹ *Report of the Committee of Experts on the Application of Conventions and Recommendations* (n 97 above), p. 164.

6 Conclusions

So complete is the rehabilitation of Portugal in a social policy sense that it is difficult to remember that only 40 years ago Portugal was a politically isolated coloniser, found to be in breach of prohibitions against forced labour in its African territories. The change in the relationship between the ILO and Portugal illustrates how political transformations can occur quickly, causing significant change in the international political landscape. Four years after the ILO Committees stopped assessing the Commission of Inquiry follow-up, having found the matter resolved, the dictatorship in Portugal was overthrown by a military coup. The 1974 end to the dictatorship is often explained as being linked to the discontent in continental Portugal caused by the great cost of the colonial wars. One of the first acts of the new government was to call home the troops from the African wars, and the colonies were granted independence in 1975.

In summary, while the complaint lodged by Ghana was very rudimentary and lacked detailed specifics, Portugal cooperated with the Commission and the ILO from the time that the complaint was laid until the matter was considered resolved in 1970, although the level of cooperation varied during the follow-up years.¹⁰⁰ The Commission of Inquiry report found that forced labour did exist in the Portuguese territories in Africa. Portugal's implementation of the Commission's recommendations was followed-up by the Committee of Experts, whose comments were discussed by the Conference Committee.

The most important outcome of the Portuguese case was, unsurprisingly, its demystification of this previously unused constitutional procedure, as well as its consideration of general jurisdictional and procedural matters. The Organization's decisions in relation to the establishment of the Commission have been confirmed by the creation of similar bodies in the future: for example, following this first Commission of Inquiry, the Commissions established pursuant to Article 26 have always consisted of three persons despite this not being set out in the Constitution. In relation to its jurisdiction, the Commission stressed the Governing Body's discretion in deciding

¹⁰⁰ In comparison, the later Commissions of Inquiry into Poland and Myanmar were denied permission to visit the country and the Government of Greece did not fully cooperate with the Commission of Inquiry.

whether or not to establish a Commission of Inquiry on the basis of a complaint, and concluded that the Commission itself ‘would appear to have a similar discretion at each successive stage of its proceedings’.¹⁰¹

Equally, the procedure followed by subsequent Commissions is not based on any constitutional provision but on the procedure developed by this Commission: the Governing Body’s guidance on the matter was that ‘the Commission should determine its own procedure’.¹⁰² In elaborating its procedure, the Commission was conscious of the ‘significance for the future of the manner in which it discharged its duties’.¹⁰³ The many procedural elements as determined by the first Commission have by and large been replicated in all the following Commissions of Inquiry, as has the format that it established for the report. Most notably, later Commissions have continued to be guided by the three elements that this Commission highlighted: its judicial and inquisitorial nature and the need for rapidity.¹⁰⁴ The judicial nature of the procedure has impacted on the way in which Commissions govern such matters as the hearing of witnesses and gathering of information. The inquisitorial nature has meant that all Commissions have to some extent approached other governments and organisations than those who are the named parties, and that missions to the country involved are a desired feature of the procedure. The need for speed has been respected in terms of the time within which the Commission is established, investigates, and reports on the matter.¹⁰⁵

The Commission’s consideration of the nature of the constitutional obligation of ILO Member States ‘to take such action as may be necessary to make effective the provisions of Conventions which they have ratified’¹⁰⁶ was another important outcome of the first Commission of Inquiry. The Commission construed this ‘as being an obligation to make the provisions if the Convention effective in law and in fact...It is therefore necessary, but not sufficient, that the provisions of the law should comply with the

¹⁰¹ *Commission Report* (n 28 above) para. 705.

¹⁰² *Commission Report* (n 28 above) para. 14.

¹⁰³ *Commission Report* (n 28 above) para. 15.

¹⁰⁴ See text accompanying footnotes 30-31 above.

¹⁰⁵ The 11 Commissions of Inquiry have taken one to two years to produce their reports from the time of their establishment, except for the 1989 Commission of Inquiry into Nicaragua, which only released its report in 1991.

¹⁰⁶ Articles 19(5) (d) and 26 (1) of the ILO Constitution.

requirements of the Conventions'.¹⁰⁷ The obligation, in other words, extends to implementation in fact as well as in law. As this was not disputed by the parties to the complaint or other Member States, it can be considered a generally applicable principle setting out Member State obligations.

It has been suggested that a significant consequence of this case 'resides in the attempt to rely on the automatic system of supervision in following up observance of the recommendations'¹⁰⁸ – that is, in this Commission's decision that the Committee of Experts should follow-up Portugal's implementation of its recommendations through the regular reporting system. This has continued to be the more usual follow-up procedures for later Commissions of Inquiry,¹⁰⁹ and has obviously operated so as to firmly position the Commission of Inquiry within the regular supervisory system. Most usually, the pattern¹¹⁰ is that a Commission of Inquiry is established subsequent to consideration of the situation by the Committee of Experts; and that the Committee will resume supervision of the matter after the Commission has issued its recommendations.

In the first Commission of Inquiry, however, this order was not respected – in this case, the complaint was brought against Portugal before it had a chance to present a first report on its observance of the Convention within the regular reporting cycle, let alone before it had time to improve its observance of the Convention in the case of a negative assessment by the Committee of Experts. The establishment of the Commission operated as an opportunity in this case for a newly independent developing country to bring a complaint against a colonising power. It is clear that this particular Commission of Inquiry would not have been established had it not been for the level of criticism directed at Portugal on the world stage – without the colonisation aspect to the case, there would have been no Commission. Obviously, the existence of a discretion on the part of the Governing Body as to the establishment of a Commission of Inquiry enables general political considerations to be taken into account in the course of the decision as to

¹⁰⁷ *Commission Report* (n 28 above), para. 716.

¹⁰⁸ E.A. Landy, *The Effectiveness of International Supervision, Thirty Years of I.L.O. Experience* (Stevens & Sons, 1966) 176.

¹⁰⁹ For those complaints concerning the freedom of association conventions, the Committee on Freedom of Association has also provided follow-up.

¹¹⁰ It should be noted that this is a matter of usage only; there is no formal procedural requirement to that effect and in fact an article 26 complaint can be filed at any time.

whether or not a particular Commission of Inquiry will be established. The political nature of the Portuguese case is evident, not least because of the enormous amount of international pressure exerted on Portugal at the time concerning its late colonisation; the Commission itself refers to the ‘public importance of the issues raised by the complaint’.¹¹¹

Nevertheless, despite the glaringly obvious political aspect to the Commission of Inquiry into Portugal, the Commission itself – as well as the Committee of Experts, Conference Committee and International Labour Conference during the follow-up phase – were astute to emphasise that in principle the Commission’s role, in common with the generally accepted role of the ILO, was not to deal with political issues, but should be confined to questions of fact and law.¹¹² The Commission and ILO are primarily technical fact-finders and guardians of the conventions in this regard.

A rich source of contemporary discussion of the Portuguese case by government, workers’ and employers’ representatives during the follow-up to the Commission of Inquiry report is found in the Conference Committee minutes. As well as the question of the political component of the discussions, the minutes show that the ILO was relatively unforgiving to Portugal – the measures taken by the country to implement the Commission’s recommendations were tracked consistently by the various Members of the Organization. The debates at the Conference Committee brought the ‘defendant’ Government face to face with a tripartite supervision; it could be argued that the International Labour Conference acted not only as a supervisory body, examining the application of the forced labour conventions in Portuguese overseas territories, but was used as a forum to discuss the politically sensitive topic of decolonization. While the ILO Committees were unwilling to allow Portugal to escape its obligations, and attention was consistently focussed on the country’s observance of the forced labour conventions for nine years, the ILO’s eventual preference for soft law, conciliatory, approaches to disputes was already evident.

¹¹¹ *Commission Report* (n 28 above) para. 706.

¹¹² See part 5 above.

It is undeniable that the ILO Commission of Inquiry had an enormous, and positive, effect resulting in the abolition of forced labour in the Portuguese territories in Africa. It not only ensured an international profile to the issue but, by doing so, created a situation where the Portuguese Government was actively engaged in attempting to fight against the existence of forced labour. This is evident in the examples of change that took place in particular industries and companies in the months immediately following the establishment of the Commission, as well as the apparent attention paid to prosecuting instances of forced labour that the Commission uncovered.¹¹³ The international shaming of Portugal in relation to forced labour was not something that the country would accept; on this matter, it clearly did not feel that it could stand ‘proudly alone’. It is, therefore, possible to categorise the story of ILO-Portugal relations during the later years of the Portuguese dictatorship as one of success: the ILO was able to balance a fine line between criticising Portugal and still retaining its cooperation.

This is in stark contrast to the relationship between Portugal and other international bodies at that time. The Commission of Inquiry was established at the beginning of the wars between Portugal and its colonies, at a time of open conflict between the Portuguese government and the UN, and when Portugal refused to cooperate with international *fora* on issues related to colonialism. Between 1961 and 1974,¹¹⁴ the UN General Assembly adopted several resolutions defining Portugal’s colonial policy and consequent war as a crime against humanity and a serious threat to international peace and security,¹¹⁵ and the country was excluded from the technical meetings of the Food and Agriculture Organization and the World Health Organization, when dealing with African issues, as well as from the Economic Commission for Africa, and African regional conferences. Such rhetoric was only used in the 1960s in relation to Portugal and apartheid-era South Africa. Despite this, Portugal remained immovable, arguing that the UN’s attitude was an unacceptable violation of the Portuguese state’s competences on internal issues.¹¹⁶

¹¹³ See part 4 above.

¹¹⁴ The institutional conflict between Portugal and the UN concerning questions of colonialism ended with Resolution No. 3205 (XXIX) of 17 September 1974 establishing the entrance of Guinea Bissau.

¹¹⁵ Eg, in 1961 Resolutions Nos. 1603 (XV) and 1699 (XVI); in 1962 Resolutions Nos. 1742 (XVI), 1807(XVII) and 1819 (XVII); in 1965 Resolution No. 2107 (XX); in 1968 Resolution No. 2395 (XXIII); in 1972 Resolutions Nos. 2908 (XXVII) and 2918 (XXVII).

¹¹⁶ See the speech of Salazar, 12 August 1963, to the UN General Assembly.

How, then, can we explain the cooperation of the Portuguese authoritarian regime with the ILO at this time, particularly in relation to the Commission of Inquiry procedure? Clearly, in the international relations context at the time, such cooperation was not to be expected.

One possibility is that it could be due to the fact that it was Ghana that presented the complaint against Portugal, rather than the ILO itself. In other words, the ILO could be categorised as having ‘clean hands’ in the matter, and taking the position of a neutral fact-finder and technical decision-maker. The Government of Portugal seems never to have disputed the role of the ILO or its Commission of Inquiry,¹¹⁷ nor to have questioned the need for its forced labour conventions to be implemented and enforced. Quite to the contrary, Portugal appears to have taken steps to ensure its own observance of the conventions, and to have resisted withdrawing from the Organization even during the period in which the Conference Committee discussion bordered on the political. Additionally, Portugal laid a complaint against Liberia, another newly independent African country and an opponent of Portugal’s colonial policy in UN bodies, for breach of the forced labour conventions in the following year.¹¹⁸ This complaint can be categorised as a retaliatory measure by Portugal against what it saw as African political interference.

A second reason for the Portuguese cooperation with the ILO at this time could be the ‘soft power’ or ‘friendly persuasion’ approach exercised by the ILO, in contrast to threats of political and economic sanctions. Constituents had understood that ‘moral pressure still [offered] the best hope for encouraging compliance’.¹¹⁹ The real, practical, power of this approach seems evident when the follow-up to the Commission is

¹¹⁷ It has been suggested that the fact that the Government of Portugal did not raise a preliminary objection to the admissibility of the complaint indicates that Portugal may have thought that an inquiry would actually absolve it: Vignes (n 3 above) p. 447; it was, therefore, in its own interest to cooperate.

¹¹⁸ See *Report of the Commission Appointed under Article 26 of the Constitution of the International Labour Organisation to Examine the Complaint Filed by the Government of Portugal concerning the Observance by the Government of Liberia of the Forced Labour Convention, 1930 (No. 29) (1963) OB XLVI(2) II*.

¹¹⁹ Landy (n 108 above) 180. Later analysis reinforced this observation, concluding in another context that ‘[i]f the ILO was to succeed, it would do so not by flashing its teeth, but by extending its hand in partnership’: S. Charnovitz ‘The International Labour Organization in its Second Century’ in J. Frowein and R. Wolfrum (eds) *Max Planck Yearbook of United Nations Law* (Kluwer Law International, 2000) pp 147-184, at p. 171-2.

considered. Then, Portugal threatened to withdraw its membership and in fact largely stopped cooperating with the ILO Committee of Experts for a number of years, in an apparent protest against what it saw as the political nature of the Committee's considerations. The impasse was broken by the quintessential soft power approach – an on-the-spot, direct contacts mission, which involved a special representative of the Director-General going to the countries involved to investigate the existence of forced labour. This purely technical mechanism found that the practice of forced labour had ended in Angola and Mozambique at this time, a matter that the Committee of Experts had been unable to discern given the political deadlock that had occurred in the wake of politicising the international labour standards.

While the possibility of bringing a complaint under the Constitutional provisions had existed since the inception of the ILO, it took some 40 years – and the struggle for decolonization in Africa – for the reluctance to use the constitutional procedure to be overcome and the first Commission of Inquiry to be established. The first Article 26 complaint had been filed in 1934 by the Indian workers' delegate concerning India's observance of the Hours of Work (Industry) Convention, 1919 (No. 1); a Commission of Inquiry was not established, as the Government undertook to ensure the rights of workers on Indian railways under the Convention 'as quickly as possible'.¹²⁰ The complaint against Portugal had the effect of instilling life into a previously unused procedure, thus providing a potentially powerful mechanism for bringing international attention to the most serious breaches of international labour law.¹²¹ This potential is evident in the use by the Organization and its Members of the Commission of Inquiry mechanism, in the years that followed the establishment of the first Commission.

¹²⁰ *Official Bulletin*, Vol. XX, 1935, p. 15.

¹²¹ This preliminary analysis obviously raises many possible routes for research, which are currently underway as part of a larger project considering all the ILO Commissions of Inquiry. In particular, it is worth noting that the Commission of Inquiry mechanism was used in combination with the regular supervisory system in terms of providing both the preliminary response to the problem, as well as the follow-up to the recommendations of the Commission of Inquiry. It is also possible to see the Commission of Inquiry as an institution that is established at the cusp of political change; whether or not it has a causative effect on that change is another matter entirely.