



SEVENTEENTH ITEM ON THE AGENDA

**Report of the Officers of the
Governing Body****Complaint concerning non-observance by
Venezuela of the Freedom of Association and
Protection of the Right to Organise Convention,
1948 (No. 87), and the Right to Organise and
Collective Bargaining Convention, 1949 (No. 98),
made by various delegates at the 92nd Session
(2004) of the Conference under article 26
of the ILO Constitution**

1. During the 92nd Session of the Conference, the Director-General received a communication dated 17 June 2004, signed by the following Employers' delegates: Mr. Daniel Funes de Rioja (Argentina), Mr. Bryan Noakes (Australia), Mr. Peter Tomek (Austria), Mr. Dagoberto Lima-Godoy (Brazil), Mr. Andrew Finlay (Canada), Mr. Costas Kapartis (Cyprus), Mr. Bernard Boisson (France), Ms. Antje Gerstein (Germany), Mr. I. P. Anand (India), Ms. Lucia Sasso-Mazzufferi (Italy), Mr. Herbert Lewis (Jamaica), Mr. Toshio Suzuki (Japan), Mr. Jorge de Regil (Mexico), Mr. Vidar Lindefjeld (Norway), Mr. Abdullah Dahlan (Saudi Arabia), Mr. Bokkie Botha (South Africa), Mr. Javier Ferrer Dufol (Spain), Ms. Göran Trogen (Sweden), Mr. Michel Barde (Switzerland), Mr. Ali M'Kaissi (Tunisia), Mr. Mel Lambert (United Kingdom), Mr. Edward Potter (United States) and Mr. Bingen de Arbeloa (Venezuela), in which they submitted a complaint under article 26 of the ILO Constitution against the Government of Venezuela for violation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The communication is reproduced in the appendix.
2. Article 26 of the Constitution provides as follows:
 1. Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any Convention which both have ratified in accordance with the foregoing articles.
 2. The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Inquiry, as hereinafter provided for, communicate with the government in question in the manner described in article 24.
 3. If the Governing Body does not think it necessary to communicate the complaint to the government in question, or if, when it has made such communication, no statement in

reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may appoint a Commission of Inquiry to consider the complaint and to report thereon.

4. The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a delegate to the Conference.

5. When any matter arising out of article 25 or 26 is being considered by the Governing Body, the government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the government in question.

3. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), were ratified by Venezuela on 20 September 1982 and on 19 December 1968; they therefore entered into force for that country on 20 September 1983 and 19 December 1969, respectively. The authors of the complaint were Employers' delegates or substitute delegates of their respective countries at the 92nd Session of the Conference on the date on which they filed the complaint. Accordingly, under paragraph 4 of article 26 of the Constitution, the said delegates may file a complaint if, in their opinion, Venezuela has not adopted measures adequately to give effect to the cited Conventions.

4. At the present stage, any discussion on the substance of the complaint filed would be inappropriate. The Governing Body is simply called on to adopt the necessary procedural decisions in respect of the complaint made under article 26 of the Constitution.

5. In this connection, it will be recalled that the Committee on Freedom of Association has recently examined a complaint alleging violation of the right to associate of employers in Venezuela presented by employers' organizations. The Governing Body has already approved the interim conclusions that were formulated by the Committee on this case. It will also be recalled that, at its last meeting, the Committee of Experts on the Application of Conventions and Recommendations commented on the application by the Government of Venezuela of the Conventions referred to in the complaint now submitted under article 26 of the Constitution, and that in 2004 the Conference Committee on the Application of Conventions and Recommendations discussed the application by Venezuela of Convention No. 87. Moreover, a direct contacts mission to the country took place from 13 to 15 October 2004. The mission's report will be submitted to the Committee of Experts at its November-December 2004 session.

6. The Governing Body has already agreed (154th Report of the Committee on Freedom of Association, paragraph 33) that, in cases such as the present one, where various complainants have had recourse to the different procedures established by the Organization concerning the application of the Conventions, and the protection of trade union rights, it would be desirable to coordinate these procedures and to take account of the role entrusted to the Committee for the examination of complaints concerning this matter. In the present case, the complaint presented by various delegates to the Conference, by virtue of article 26 of the Constitution, concerns in large part questions which are already before the Committee within the context of the special procedure concerning freedom of association. It would be useful if the Governing Body could have before it the recommendations of the Committee on the pending case and on the complaint made under article 26, so as to be able to decide on the measures that should be taken in respect of this latter complaint.

7. Accordingly, the Officers recommend that the Governing Body:

(a) request the Director-General to invite the Government of Venezuela, as the Government against which the complaint has been filed, to communicate its

observations on the complaint so that they reach the Director-General no later than 10 January 2005; and

(b) consider at its 292nd Session, in the light of:

(i) the information supplied by the Government of Venezuela on the complaint; and

(ii) the recommendations of the Committee on Freedom of Association; whether the complaint should be forwarded to a Commission of Inquiry.

Geneva, 11 November 2004.

Point for decision: Paragraph 7.