



Eighth item on the agenda: Measures recommended by the Governing Body under article 33 of the Constitution – Implementation of recommendations contained in the report of the Commission of Inquiry entitled *Forced Labour in Myanmar (Burma)*

Fourth report of the Selection Committee

1. In accordance with the decision of the Conference at its second sitting (30 May 2000, *Provisional Record* No. 6-1(Add.1)), the Selection Committee met on 7 June to decide how it would proceed in its examination of this item. It then met on 8 and 9 June to consider the item in detail. The Government of Myanmar took part in these meetings without the right to vote.
2. The Committee had before it (*Provisional Record* No. 4) a document describing the background to the Governing Body's decision at its 277th (March 2000) Session to include this item on the agenda of the present session of the Conference, including various points of information and in particular the resolution adopted on that occasion by the Governing Body. That resolution contains the measures recommended to this Conference.
3. The Committee also had before it (*Provisional Record* No. 8) the report of the ILO technical cooperation mission to Myanmar which took place from 23 to 27 May 2000, which included (Appendix 2) the text of a communication dated 27 May from the Minister of Labour of Myanmar to the Director-General of the ILO.
4. At its 7 June meeting, the Committee decided to invite members of the Committee to hand to the secretariat any written proposals they might wish to make in relation to this item. The 8 June meeting would then begin with a general discussion of the documents before the Committee, which might first lead to explanations or information from members concerning such proposals and presentation of them to the Committee, but without discussion of their substance. Any proposals received would then be discussed in a second phase of the Committee's proceedings.

General discussion

5. At the 8 June meeting, the Chairperson indicated that one proposal had been submitted the previous day and duly distributed to the Committee. An extract from the Governing Body resolution containing the measures it had proposed to the Conference had also been circulated. He reminded the Committee that no decisions would be taken during the current sitting, which was for a general discussion only.

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6. Mr. Brett (Workers' delegate, United Kingdom; Worker Vice-Chairperson of the Committee) said that there would be no value added in discussing the contents of *Provisional Record* No. 4, which contained all of the relevant background information, because its contents had been the subject of extensive previous discussion and were familiar to all. What must now be considered was the conclusions of the technical cooperation mission in *Provisional Record* No. 8, along with the response of the Burmese Government in the form of a letter to the Director-General of the ILO dated 27 May 2000.
 7. He offered his congratulations to the mission for a scrupulously fair report. He raised two questions for which his group sought full and frank responses. What did the ILO mission seek? What, in turn, did it receive? The mission sought concrete, specific, tangible, precise, and credible measures to implement the recommendations of the Commission of Inquiry as set out in paragraph 539 of the report and reproduced in *Provisional Record* No. 4. These were clear words to remind the Burmese authorities of what is required of them to fulfil their now long-standing obligation to the Commission and its findings. The mission had received an absolute denial from all, including at the highest level, that forced labour even existed. The Colonel who was the Home Minister "denied there are any such practices". Referring to forced labour, the Minister of Foreign Affairs "rejected the accusations of forced labour" and again at the highest level, when the ILO Mission met Secretary-1, he acknowledged that while forced labour might have been used in the past, it had ceased before the ILO report had been completed.
 8. The only tangible result of the mission was the letter to the Director-General presented by the Burmese authorities to the ILO mission upon its departure, and reproduced in *Provisional Record* No. 8. Accordingly the Committee needed to test that letter against the recommendations of the Commission of Inquiry, and the Governing Body resolution before the Committee. Were there concrete, specific, tangible, precise and credible actions taken to implement the Commission of Inquiry's recommendations? There were three points of substance in the letter of 27 May 2000. The first was that the Government of Burma expressed the hope that it had demonstrated its sincerity in the efforts to resolve the issue of "allegations" of forced labour. The Commission of Inquiry had established the truth of the previous allegations, which now ceased to be allegations and rather became confirmed facts.
 9. The second substantive point was the claim that Burma "has taken and is taking the measures to ensure that there are no instances of forced labour in that country". The Workers' group considered that proof was non-existent. Burma had not taken the administrative and legal action required to satisfy the conclusions of the Commission of Inquiry. Finally, the letter from the Burmese Government said, "Allow me to say that Myanmar would take into consideration appropriate measures ...". This could not be construed in any way as a binding commitment; rather, the words had the effect of underlining that such a consideration, placed in the future tense, could not be considered by any retrospective examination as being a binding commitment to the acceptance of any legal, executive or administrative course of action. The Government maintained that there was no problem in the first place. While they might wish to continue technical cooperation, they were still rejecting the Commission of Inquiry's findings.
 10. Mr. Brett reminded the Committee that the requirement of the mission was clear, "as the sole object of such a mission would be to provide direct assistance to implement immediately the recommendation of the Commission of Inquiry under the terms of the resolution adopted on this subject by the ILO as its 87th Session (1999)". The judgement of the present Committee had to be that even now the Government remained in total dereliction of the obligations under Convention No. 29 and in defiance of the Commission of Inquiry, the ILO Governing Body and the resolution of the 1999 International Labour

Conference. The Workers' group therefore called for the passing of the Governing Body resolution *in toto*, along with an explanatory resolution of the Conference, and asked the Conference to endorse all of the points therein.

11. Mr. Thüsing (Employers' delegate, Germany, speaking on behalf of the Employers' group) stated that the Employers had not submitted any form of resolution because they wanted to keep the deliberations open, in the hope that the final result could be supported by everyone. He believed that the task before the Committee was not and should not be a confrontational one, and that no form of antagonism should be displayed against any country, including the Government of Myanmar. The Workers' Vice-Chairperson had already described the background to the discussion. Convention No. 29 had been ratified by Burma-Myanmar. There was a complaints procedure which had been followed. The Commission had filed a report containing recommendations. This was a regular procedure, and it was the duty of the Office and all concerned to do everything in their power to ensure that these recommendations were complied with – no less and no more.
12. The Governing Body had discussed the report of the Commission of Inquiry in November within the regular procedure. It had taken considerable trouble in March to produce a resolution addressed to the Conference, with recommendations based on article 33 of the Constitution. It was a very extensive decision, but one which the Governing Body had considered very carefully. The Committee must now discuss the resolution of the Governing Body, a task which was assigned by the International Labour Conference. The considerations which would motivate the Employers in their decision were fully consistent with the stance which the group had taken throughout the procedure, in particular in connection with the resolution adopted at the 1999 session of the Conference. The foremost principle which would guide the Employers was that the ILO must remain true to its objectives and be credible in going about attaining them. If the ILO failed in this, it would risk losing its *raison d'être* and its political significance.
13. The Employers supported the recommendations of the Governing Body at the time, but the decision was now whether to act on them, and the Conference must base itself on what is happening today. If the circumstances today were different, the recommendations of the Governing Body might not necessarily be correct. The report in *Provisional Record* No. 8 was very careful and serious and was worthy of serious consideration, as was the Government's letter of 27 May. The latter showed some degree of change which necessitated a fresh look at the Governing Body's recommendations. Though Mr. Brett thought the situation in Myanmar had not changed, there were different ways to evaluate the situation. The report should be read in the context in which it was generated: the Government had for the first time participated openly in the talks. In the past, the Government maintained there was no problem, or that there had once been a problem and steps had already been taken to solve it. The minister's letter at least recognized that certain measures still need to be taken. This was a change on a point of principle. How significant was this change? In such a serious matter, the Employers wanted to recognize even slight change.
14. As for credibility, the past had been discouraging, and the reaction of the Government had not been conducive to building trust. Surely this was in contradiction to the spirit in which the ILO usually approaches problems. Aims could be achieved only through working together. The basis of all work here must be trust, perhaps giving the benefit of the doubt: only then would it be possible to arrive at truly constructive solutions and enjoy the support of all. One could be sceptical but test the trust later. There were good reasons to doubt the justification for developing such trust in the current context, but that should not prevent the building of constructive approaches, and the Employers must favour such a development.

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15. The Employers' group did not favour deferring the matter until November 2000, as this would in effect defer the decision until June 2001, because the Governing Body cannot itself take decisions under article 33 of the Constitution. On the other hand, it would not be wise to adopt and implement all of the recommendations out of a sense of obligation. The Committee did not have enough trust for the first alternative, or enough distrust for the second. A solution must be found somewhere between the two poles. The Committee must investigate each measure and adopt only those with which it felt comfortable. A little more time could be allowed because, as stated by the Workers' group, everything did not have to be done immediately. A lot of the recommendations contained in the conclusions of the mission report in *Provisional Record* No. 8 could be fulfilled between now and November, with the support of the ILO and the full cooperation of the Government. If something were left undone for solid technical reasons, surely a framework could be created with Myanmar and the ILO for its successful completion. The Employers would like to follow the recommendations of the Governing Body and decide on one or several of the measures recommended, so that the Conference could adopt its own resolution. The Conference could decide that an implementation plan for the measures decided by the Conference would be decided in November. That would give the Governing Body in November the flexibility to assess the situation and on the basis of that assessment decide whether the measures must be implemented or not. If there were good reasons, it could defer a decision until after November. This would leave open the way towards a good faith solution.
 16. The Chairperson noted that the representative of the Government of Myanmar should have the right to be heard on the present matter, although Myanmar was not a Member of the Committee.
 17. The representative of the Government of Myanmar noted that the responsibilities of the Committee were onerous and the challenges before it daunting, since it had a task unprecedented in the history of the ILO. It was the first time in 80 years that article 33 might be invoked against a Member that had voluntarily, and in good faith, become a party to an important ILO Convention. Such course of action would be unfair and unjustified, particularly when Myanmar had demonstrated its willingness to cooperate with the Organization to resolve outstanding issues. The invocation of article 33 was unprecedented and would create a dangerous legal precedent. Its application to Myanmar would create a legal precedent without the support of legal authority or commentary.
 18. In the view of the representative of the Government of Myanmar, legal analysis showed that the application of article 33 was a dangerous precedent not only for Myanmar but for all member States. First, article 33 could be interpreted to have wide-sweeping powers namely "the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith". One need only look at the recommendations that the Governing Body had made to the Conference to note how sweeping they were. No authority or commentary existed. This could lead to unfair and unjust measures and sanctions. If such measures and sanctions were applied, their application could form a precedent by itself and thus be a legal yardstick against other states. Second, drastic measures and sanctions were contrary to the spirit of the ILO Constitution as mentioned in its preamble and their legal competence was questionable: only the United Nations Security Council had the legal competence to adopt political and economic sanctions under the Law of International Institutions. Third, it would be a double penalty: the 87th Session of the Conference had already adopted a resolution for the cessation of ILO technical assistance to Myanmar and prohibiting any invitation to it to attend meetings, symposia and seminars organized by the ILO. This was the first penalty, and even in domestic law double penalties were not permissible. Fourth, the facts of the case showed that Myanmar had acted in absolute good faith. Its promulgation of Order No. 1/99 barred exercise of the offending provisions of the Village Act and Towns Act of

1907, putting domestic legalisation in line with Convention No. 29. In receiving the ILO Technical Cooperation Mission, Myanmar had proved its good faith wish to comply with the Convention in cooperation with the ILO. If domestic law could grant the benefit of the doubt, why could the ILO not give the benefit of good faith to a member State? Such good faith of Myanmar did not deserve the application of article 33.

19. The Government representative observed that some might contend that the Governing Body had made the recommendations and there was no turning back from applying article 33. But, the ILO and indeed this Committee were masters of their own house and they could accept, reject or defer the recommendations should circumstances warrant it. Others might say that the Selection Committee was composed of the members of the Governing Body and therefore should go along with its recommendations; but the Selection Committee was legally speaking a separate entity and its *locus standi* was different from that of the Governing Body. More importantly, events had overtaken the recommendations and measures envisaged against Myanmar under article 33 were not now justified, prudent or necessary.
20. The Government representative said the report of the technical cooperation mission underscored that the Myanmar Government authorities fully honoured their commitment to give the mission the necessary freedom of action to make contacts. The responsible officials of the Ministries of Labour, Home Affairs, Foreign Affairs and the Offices of the Attorney-General and the Supreme Court had explained the steps taken by Myanmar under its legal system to bring its domestic legislation in line with Convention No. 29 and had taken practical measures to comply with the recommendations of the Commission of Inquiry. The mission had met Secretary-1 of the State Peace and Development Council as well as the Ministers of Labour, Home and Foreign Affairs. That the mission was received by Myanmar's leadership underscored the seriousness with which the Myanmar side viewed the importance of promoting cooperation and dialogue with the ILO. The mission had sought from the Government tangible proof of its intentions and before its departure from Yangon was given a letter from the Minister of Labour to the Director-General of the ILO in which he stressed the fact that Myanmar had taken and was taking necessary measures to ensure that there were no instances of forced labour in the country. The Director-General of the ILO was assured that Myanmar would take into consideration appropriate measures including, administrative, executive and legislative measures, to ensure the prevention of such occurrences in the future. The minister also requested the Director-General of ILO to continue the process of consultation and technical cooperation within the framework of the ILO's recommendations. Myanmar had shown the political will to comply fully with Convention No. 29 in law and in practice, as shown by the mission report and the letter from the Minister of Labour. Myanmar wanted to cooperate with the ILO to ensure that there were no instances of forced labour in the future. As stated by the Minister of Labour, Myanmar would take into consideration appropriate measures – administrative, executive and legislative – to ensure the prevention of such occurrences in the future. The mission had provided the breakthrough that both the ILO and the Myanmar side desired. It provided Myanmar with a golden opportunity to choose the path of cooperation – a path that would see the full implementation of the Convention, both in law and in practice. Myanmar was resolute in its desire to promote the cause of labour, including the full implementation of the Convention. At the same time Myanmar, as a sovereign nation, was equally resolute to protect its national interest and the interests of its citizens. This cooperative approach was the main thrust of the draft resolution in the form of an amendment tabled by ASEAN States Members of the Selection Committee. Myanmar fully supported this draft resolution.

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21. On a point of order, Mr. Brett noted that the only item under discussion was the text containing the Governing Body's recommendations. The Chairperson requested the Government representative to confine his remarks to that text.
 22. The Government representative of Myanmar said cooperation was the approach and the main thrust of his presentation. He asked the Committee to walk away from the path of confrontation and set aside the weapons of sanction. They were neither justified nor necessary. He suggested that members choose instead the path of cooperation and assured the Committee that they would find in Myanmar a resolute partner in the common desire to promote the cause of labour. The text of the draft resolution did not reflect this spirit. This text invoking article 33 of the ILO Constitution to impose sanctions upon Myanmar was totally unacceptable.
 23. The representative of the Government of the United States noted that the question before the Committee was clear: whether or not to proceed with the recommendations of the March Governing Body relating to seeking the implementation of the Commission of Inquiry's recommendations that would lead to a cessation of forced labour in Burma. Since the Commission of Inquiry in July 1998, every effort had been made to ensure the appropriateness of the path taken. In February, the Director-General had confirmed that forced labour had not ceased in Burma. The representative of the Government of the United States read two paragraphs of his statement contained in *Provisional Record No. 4* and stated that the Government representative of Burma in the Governing Body had said that Burma had totally rejected the 1999 resolution and the Commission of Inquiry's report. Burma had rejected the findings of the Committee on the Application of Standards and the Committee on Freedom of Association since 1988. It refused to accept the findings of the Commission of Inquiry and dissociated itself from the activities and the effects derived therefrom. The Government of Burma said that this was not an extreme case, but this was belied by paragraph 535 and the final paragraph of the Commission of Inquiry's report. Since the Commission of Inquiry's recommendations, a last-minute invitation of unclear phrasing was sent to the ILO and the Director-General agreed to undertake a mission, no doubt with a view to exhausting all possible efforts. Four ministers of the Government – Labour, Interior, Foreign Affairs and Secretary 1 – had denied the existence of forced labour and only disagreed as to whether it might have ever existed. Mr. Brett had effectively proved that a last-minute letter was in substance nothing more than a softer version of previous Burmese failures to accept the findings and recommendations of the Commission of Inquiry. The issue was a difficult one but not one that allowed the Committee to look away. To believe that a letter constituted sufficient action to obviate the need to move forward on the recommendations of the Governing Body was not credible. No matter how difficult or how grave the matter, the Committee should proceed to put forward these recommendations to the Conference and ask for their adoption.
 24. The representative of the Government of Portugal indicated he spoke on behalf of the member countries of the European Union and underlined that the EU considered that grave violations of human rights were systematically committed in Burma-Myanmar and the Government of Myanmar had taken no steps towards democracy or national reconciliation. In response, the EU had taken restrictive measures since 1996 and these had been recently enhanced. The EU had also taken several initiatives within the United Nations system to denounce these violations and persuade the Government to take concrete measures to end these violations of fundamental rights, particularly those relating to forced labour. The recent ILO technical cooperation mission produced a balanced and constructive report. Three matters were still in issue: first, the continuity of the practice of forced labour in Myanmar; second, the ways and means of solving the problem were and had always been in the hands of the Burmese authorities; and third, no significant progress had been made to implement the recommendations of the Commission of Inquiry. Therefore, the EU

believed that specific and clear measures under article 33 should be adopted by this Committee and by this Conference.

25. The representative of the Government of Japan noted that the issue of forced labour in Myanmar deserved the serious attention of the international community. His Government commended the attempts of the ILO to improve labour standards in that country, and urged the ILO to carry through its efforts in the spirit of dialogue and cooperation. It welcomed the positive response of the Government and the final dispatch of an ILO technical mission. The fact that the Government had received the mission for the first time was clear proof of its sincerity. The report of the mission showed that there were differences of views between the two parties but the mission provided the starting point from which the two parties could take the next step through technical cooperation. It would be counterproductive to adopt the ultimate measures immediately after the Government had demonstrated its sincerity. The burgeoning bud of possible dialogue must be seen in full bloom. A clear commitment of the Government to compliance with the recommendations was also indispensable. The Government should continue constructive dialogue with the ILO so that improvements could be seen without delay.
26. The representative of the Government of India emphasized that India was strongly opposed to the practice of forced labour, which was prohibited in her country. She advocated the path of dialogue and cooperation between the ILO and the Government of Myanmar. The report of the ILO technical cooperation mission showed the Government fully honoured its commitment to give the mission the necessary freedom of action to make contacts, and it had had meetings at the highest echelons of government. In his letter of 27 May, the Minister of Labour stated that Myanmar had taken and was taking the necessary measures to ensure that there were no instances of forced labour and would take into consideration appropriate measures, including administrative, executive and legislative measures to ensure the prevention of such occurrences in the future. The mission was assured that any forced labour practised would be dealt with and punishable in accordance with law and Myanmar had shown its openness to continue the process of consultation and cooperation to resolve the matter. Article 33 was an extreme provision and should be used with the utmost caution. Punitive measures could be counterproductive. The process of dialogue and cooperation initiated by the recent mission should be carried forward and consideration of the present matter deferred. Dialogue and cooperation between the ILO and the Government of Myanmar should continue.
27. The representative of the Government of New Zealand deplored the use of forced labour. There had been little cooperation from the Government of Myanmar to comply with the Commission. Considering the seriousness of the findings of the Commission of Inquiry, its recommendations should be given due consideration and prompt action. She thanked the technical cooperation mission for its excellent report: her Government supported the recommendation to adopt a comprehensive framework of legislative, executive and administrative measures to halt all practices of forced labour in Myanmar.
28. The representative of the Government of Switzerland supported the Governing Body resolution before the Conference and was in favour of a firm and consistent position. The ILO must apply its own rules, without which it would lose credibility. Only recourse to specific measures to ensure the execution of the recommendations of the Commission of Inquiry had provoked a reaction on the part of the Burmese authorities. The resolution was an adequate means of obtaining the Government's fulfilment of its obligations. In particular, recourse to article 33 was legitimate and not out of proportion.
29. The representative of the Government of Canada expressed satisfaction that Burma had agreed to the ILO mission, although it would have been preferable if it had taken place

earlier in the year. The report of the mission was very thorough, balanced and fair, in part because the mission was allowed freedom of action during the visit. Her Government was gravely concerned about the situation in Burma. As a Member of the ILO which had ratified specific Conventions, Burma had voluntarily undertaken a number of obligations, including not to use forced or compulsory labour. After years of discussion about allegations, the Commission of Inquiry made several recommendations which Burma had not taken any real and practical steps to implement. Article 33 was included in the ILO Constitution to deal with serious and extreme situations, and this was one of them.

- 30.** The representative of the Government of Italy shared the view of the Government representative of Portugal, speaking on behalf of the EU members. The Italian Minister of Labour had already called for measures to be taken, and he did so after having considered the approach of the Commission of Inquiry. As the situation in Myanmar with respect to human rights, particular in respect to forced labour, was very serious, Italy considered that strict measures should be taken.
- 31.** The representative of the Government of Malaysia, speaking on behalf of the Governments of Indonesia and the Philippines (and supported by the Governments of Cambodia, Laos, Singapore and Viet Nam, which were not members of the Committee) continued to remain preoccupied with the question of observance by Myanmar of Convention No. 29 which the Governing Body of the ILO has decided to place on the agenda of the 88th Session of the Conference. At the Fourteenth ASEAN Labour Ministers meeting held on 11 and 12 May 2000 in Manila, the Ministers had discussed this matter constructively, welcomed the invitation by the Government of Myanmar for the ILO technical cooperation mission to visit Yangon, and strongly urged on the ILO that this mission take place. On behalf of the above countries, he expressed sincere appreciation to the Director-General and the members of the technical team for their efforts. The visit and the report by the mission marked important progress in efforts to engage the Government in Myanmar in resolving the issue of forced labour in their country. The willingness and sincerity demonstrated by the Government of Myanmar to cooperate in resolving this issue was a good way forward and should be taken fully into account. The Government had gone out of its way to facilitate the technical teams meeting with as many personalities as possible both within and outside the Government, including the diplomatic community, to enable the team to have an objective view of the situation. The Committee should take into account this goodwill and openness in determining the way forward and finding an amicable resolution of the matter. More effective and pragmatic means could be found to resolve these issues through cooperation rather than resorting to drastic measures, which might have far-reaching ramifications, and therefore could seriously undermine all of the efforts taken thus far to resolve the matter. The Committee should build upon the important progress achieved by the technical mission, work with the Government of Myanmar on a comprehensive framework for the elimination of the practice of forced labour, and refrain from applying measures under article 33 of the ILO Constitution. He referred to the proposal by the Governments for which he spoke, which he strongly believed merited the serious attention of the Committee in view of the latest positive developments.
- 32.** On a point of order, Mr. Brett indicated that the matters before the Committee were the Governing Body's recommendations and the report of the mission, including the Government's letter of 27 May. He was concerned that the procedure followed in relation to article 33 of the Constitution should be correct, and he therefore sought the Legal Adviser's opinion. The Legal Adviser stated that at the present time the only text before the Committee was that containing the Governing Body's recommendations; however, as the Chairperson had ruled, other proposals might be presented, but during the general discussion their substance could not be discussed and at this stage they would not be moved. Mr. Thüsing emphasized that the present general discussion should be open to all

views being expressed in the Committee, so that more concrete steps could be considered at the following meeting of the Committee.

33. The Chairperson reaffirmed that the general discussion was now on the text of the Governing Body's recommendations. Following the Committee's initial invitation for proposals to be handed in, only one was received: this could be presented now but not debated formally, which might occur at the next stage of the Committee's work.
34. The Government representative of Brazil underlined the indications of change and the Myanmar delegation's evidence of willingness to engage in dialogue with the ILO. He stressed that the Conference was not obliged to adopt all the measures and could also adopt additional texts. It would be excessive to adopt all the measures proposed by the Governing Body. A consensus solution should be found. The Government's letter in Appendix 2 of *Provisional Record* No. 8 was not perhaps sufficient to highlight this progress.
35. The representative of the Government of Pakistan said that her country had ratified Convention No. 29 and was opposed to forced labour anywhere in the world. Today Myanmar was willing to work with the ILO to take concrete measures to deal with the problem of forced labour, even though it had rejected earlier Governing Body recommendations. The mission report in *Provisional Record* No. 8 had been drafted in such a manner that it could be interpreted in different ways. For example, the last paragraph on page 8/6, "... the Minister stressed that the Government had already demonstrated its commitment and would endeavour to take the necessary action in the light of what the mission had requested", could be read to be positive on the part of the Government. The Employers' group said that we must ask ourselves if the situation in Myanmar had changed and if therefore the position of the Governing Body was still appropriate. In her view, the situation had changed: the Government recently accepted the visit by the technical cooperation mission and gave complete freedom of action to the technical team. She supported those speakers who had stated that invoking article 33 was an extreme position, but agreed with the Japanese Government that, now that Myanmar had welcomed the mission, it would not be appropriate for the Conference to adopt the Governing Body's recommendations. Would it not be better through cooperation to help eliminate forced labour, rather than to bring punitive action? The path of "punitive action" was endorsed by those who recall that a "sanctions approach" worked in the case of apartheid. But, for apartheid, it took decades of sanctions to work and remove that scourge. Myanmar was willing to work with the international community today. The ILO should enable Myanmar to remove any remnants of forced labour now through cooperative action. The mission had provided an opening for technical assistance, as stated by the Government representative of Japan, and she strongly urged the Government to work with the ILO and the international community.
36. The representative of the Government of Denmark said that neither the report of the ILO technical cooperation mission, nor the letter from the Minister of Labour, nor even the explanation of the representative of the Government of Myanmar had convinced his Government that things in Myanmar had changed. Therefore, his Government continued to support the resolution put forward by the Governing Body.
37. The representative of the Government of Sudan said that the application of Conventions of the ILO was paramount. Through further technical cooperation the Government could draw up a legal framework with the assistance of the Office to enable Myanmar to carry out the recommendations of the mission. The Government had made explicit its intention to cooperate with the ILO. This technical cooperation should be pursued in accordance with the conclusions of the mission report in *Provisional Record* No. 8. A report on the

further technical assistance should be presented to the November 2000 meeting of the Governing Body. Article 33 was an extreme provision and if there were any other measures available for solving the problem they should be examined. This provision could be returned to if all other measures failed.

- 38.** The representative of the Government of Cuba said that the principal aim of the ILO was to persuade the Government of Myanmar to respond positively to the recommendations of the Commission of Inquiry. The statements made by the representative of that Government should be taken into account. No importance should be given to coercive measures, and they would be unacceptable. The application of an ILO Convention was a matter within this Organization's competency, and the majority of Members had reiterated their rejection of any application of sanctions. One of the strategic objectives of the ILO was to strengthen social dialogue, and economic and political coercive measures ran counter to that fundamental objective. The ILO had to deal with labour standards within the framework of its own procedures, and involving other organizations was not part of its mandate – particularly when Members of the ILO had constitutionally accepted and assumed obligations relating to the ratification of an ILO Convention. The measures discussed in the Committee went beyond the Constitution and were therefore improper, since article 33 did not authorize the adoption of simply any measure without limitation. All Members should reflect on the dangers of creating a precedent when using coercive measures or other actions outside the procedures of the ILO. Moreover, the situation had changed since the adoption of the Governing Body's recommendations. There had been progress in Myanmar and this should be taken into account by the Committee.
- 39.** The representative of the Government of the United Kingdom supported the statement of the representative of the Government of Portugal, which set out the political context of the debate, the measures taken by the EU and the EU countries' position. The United Kingdom minister had mentioned Burma in her statement in the plenary. *Provisional Record* No. 4 and *Provisional Record* No. 8 made it clear that the Government of Burma had not taken action to end forced labour. The supporters of Burma mentioned that the mission was granted freedom of movement and had met Burmese officials; however, the question was not whether the Government was prepared to talk to the ILO, but rather whether steps had been taken to implement the recommendations of the Commission of Inquiry. There was nothing in the mission report to suggest that they had: indeed, the Director-General's Report to the March Governing Body had made it clear that the Towns and Villages Acts were not amended; the possibility of forced labour was not excluded and it continued to be imposed; and there were no penal sanctions for its imposition. The technical cooperation mission had also made it clear that the tools were in the hands of the regime. He shared the Workers' analysis that the promises in the minister's letter to the Director-General of the ILO were not sufficient to justify postponing action. A promise for the future was not enough. Article 33 was an extreme measure, but the Organization had exhausted all other possible measures. This was a precedent, but a good precedent which showed that governments could not show contempt for the Organization as Burma had done. Other governments were unlikely to find themselves in the same position as Burma.
- 40.** The representative of the Government of China took note of the progress in the application of Convention No. 29 achieved between the ILO and Myanmar. The technical cooperation mission had commenced a dialogue. Sanctions or punishment would not be good to settle the issue. In view of the cooperation between the ILO and Myanmar, and the progress achieved, the basis on which the Governing Body had made its recommendations had undergone some change and the extreme measures of article 33 were no longer appropriate.
- 41.** The Committee closed its general discussion.

Consideration of written proposals

42. The representative of the Government of Malaysia, on behalf also of the representatives of the Governments of Indonesia and the Philippines (and announcing the support of the Governments of Cambodia, Laos, Singapore, Thailand and Viet Nam, which were not members of the Committee) proposed the replacement of the measures under article 33 of the ILO Constitution recommended by the Governing Body at its 277th Session by a recommendation to the Conference to adopt the following resolution:

Draft resolution

The International Labour Conference,

Reaffirming the purposes and principles of the Constitution of the International Labour Organization,

Reaffirming that all member States have an obligation to apply fully, in law and in practice, the Conventions that they voluntarily ratified,

Taking note of the recommendations of the Governing Body at its 277th Session,

Welcoming the visit and the report of the technical cooperation mission as contained in *Provisional Record* No. 8 dated 2 June 2000,

Taking note of the letter of the Minister of Labour of the Union of Myanmar dated 27 May 2000 affirming that the Government of Myanmar has taken and is taking necessary measures to ensure that there are no instances of forced labour in Myanmar and would take into consideration appropriate measures, including administrative, executive and legislative measures, to ensure the prevention of such occurrences in the future,

1. Decides to defer consideration of the measures under article 33 of the Constitution recommended to the Conference by the Governing Body at its 277th Session and requests the Governing Body to review the recommended measures at its next session in the light of new developments and any progress that has been achieved with respect to the observance by the Government of Myanmar of commitments to the ILO in compliance with Convention No. 29,
2. Invites the Director General of the ILO, with a view to assisting the Government of Myanmar in its effort to resolve the question, to send follow-up missions to Myanmar to work out, together with the Government of Myanmar, a comprehensive framework of legislative, executive and administrative measures including measures to ensure that there are no instances of forced labour in Myanmar in the future,
3. Invites the Government of Myanmar and the Director General of the ILO to continue their cooperation in this regard,
4. Decides to review the progress on the implementation of this resolution at the 89th Session of the International Labour Conference.

43. The Committee noted that this was the only text proposed in this part of its discussion.

44. Mr. Brett observed that the proposal before the Committee was to make a wholesale substitution.

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45. The Committee considered the manner in which to proceed in the light of this proposal, the delicate nature of the matter and the need for reflection and consultation. The Chairperson in particular proposed to undertake consultations with members of the Committee, taking account of the positions of different groups and the desirability of achieving a consensus. Consultations should take in as wide-ranging opinions as possible within this context. He invited Committee members from the different groups or regional coordinators to meet him in the course of the next day so that the way forward might be made clearer.

Consideration of a draft resolution

46. When the Committee reconvened on 9 June, the Chairperson noted that the consultations had confirmed that there appeared to be three different positions among members of the Committee. One did not accept the recommendations of Governing Body. Another believed that the ILO must take a strong decision, because it was intolerable to let the situation in Myanmar continue unabated with people living the consequences of forced labour. A third thought that Myanmar should be allowed to correct the current state of affairs: although a decision under article 33 of the Constitution could be taken only by the Conference, implementation of that decision could be suspended for a time, so that Myanmar would understand that the forced labour problem must be decisively resolved. In this light, the Chairperson had prepared a draft resolution for the Committee's consideration (see appendix to the present report). Fully recognizing that the text would not entirely reflect any one of the three positions, the Chairperson wished to submit it for discussion and possible approval by the Committee.
47. Following a short recess, Mr. Brett emphasized that the clear majority of the Committee was opposed to a delay in implementing the recommendations of the Governing Body, and other Committee members also wanted urgent action from the Government of Myanmar. The Employer members appeared to be looking for middle ground between opposite poles. The Workers did not share the optimism of others that a delay would bring significant improvement; nor did they view the measures proposed by the Governing Body as hasty, given that the problem of forced labour in Myanmar had been before the Conference since 1996. No action would be taken under the Chairperson's draft resolution until 1 December 2000. This was a very important decision. The credibility of the ILO had reached a crisis point in its 80 year history because of those who refused to accept the findings of the Commission of Inquiry, change laws and end forced labour. The Workers wanted to proceed with the implementation of article 33. Some said that regardless of any measures taken, the Government of Myanmar would not change their actions; others said that failure to take action immediately would simply confirm that the ILO was not the proper place for such a discussion because the ILO was simply a talking shop and the matter should more properly be put before the World Trade Organization. He thanked the Chairperson for the suggested compromise text which had attempted to reconcile differing views. In this compromise text, the Committee would appease those who want to take action under article 33 but would also respond to the views of Government members who wanted to give Myanmar additional time. Accordingly, the Workers accepted the text, and although they might have several queries, they would offer no amendments. They hoped that other Members would not offer amendments either, otherwise this last chance might slip away. Therefore, the Workers would join a consensus on the Chairperson's draft resolution and appealed to others to agree.
48. Mr. Thüsing thanked the Chairperson for his efforts in producing the proposal. He hoped that this text would contribute to the Committee's efforts to find a positive solution supported by all. The Employers' group joined all members of the Committee in their firm conviction that the recommendations of the Commission of Inquiry must be accepted and followed by the Government of Myanmar. He noted that there were not only different

approaches in the Committee on how best to accomplish this but there were even different views within the Employers' group. His group recognized that the Chairperson's text took a middle view among different, opposing views. It was important to have a full airing of all views. The Employers were convinced that it was important to produce a final text, even if it did not satisfy everyone's views, otherwise the Conference would end without a solution and undermine the ILO's international standing.

49. The representative of the Government of the Philippines stressed that members from the ASEAN group had submitted an alternative proposal in an attempt to reach a compromise solution. They had asked for open-ended consultations but those that had taken place resembled a one-way conversation rather than open consultations. He had been informed that other groups did not want to let their views be known. He had wanted transparent, open-ended discussions not only on the proposal submitted by the Chairperson but on all proposals submitted to the Committee. He again urged the Committee to hold open-ended consultations on all proposals, including the ASEAN proposal.
50. Mr. Thüsing indicated that the Employers' group could not accept the ASEAN members' proposal. The Employers sought a middle way and had sympathy for the Chairperson's attempts to find middle ground.
51. Mr. Brett considered that the majority of the Committee was not prepared to accept a delay in implementing the recommendations of the Governing Body and that the ASEAN members' proposal was premised on total delay.
52. The representative of the Government of Malaysia recognized the views of both the Workers' and Employers' groups, but emphasized that the Committee must find a middle ground. The recommendations, on behalf of several ASEAN countries, submitted by his Government had been a good basis. The proposal from the Chairperson was far from the expectations of his Government and many members of the Committee, and consultations with the various groups and with capitals were needed. He agreed with the representative of the Government of the Philippines that open-ended consultations must now take place.
53. Mr. Brett stated that this was the ILO, not the UN General Assembly, and such consultations were not the practice here. Retarding the discussion cannot be appropriate in a Committee where half of the members – the Employers and Workers – were agreed to go ahead without delay.
54. The representative of the Government of Canada said that no compromise could ever be perfect, and her Government had serious reservations about parts of the Chairperson's proposal. Canada wanted to take a very firm line and adopt the recommendations of the Governing Body. However, at this stage, and in a spirit of compromise, her Government accepted the text prepared by the Chairperson. She expressed hope that Burma would take positive advantage of the additional time given to them in implementing the recommendations of the Commission of Inquiry. It was understood that paragraph 3 of the text referred to the November 2000 Governing Body.
55. The representative of the Government of Portugal said that it would not be possible to satisfy all delegations with a consensus paper. There continued to be forced labour in Burma and it must be stopped. Burma had refused for five years, so the right solution would be to apply immediately article 33. On the other hand, he was aware of the efforts which had been made and the appeal by the Worker members. Perhaps one could wait until November 2000 to begin to apply this article. However, the Governing Body would then have to assess the situation, based on clear, specific and accurate data which should be made available in a report to be submitted to it.

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- 56.** The representative of the Government of Myanmar regretted that the text of the Chairperson's draft resolution did not reflect the spirit of the Organization. Use of article 33 was totally unsuitable and would negate all the gains of the technical cooperation mission. A way forward could be achieved through continued technical cooperation between the ILO and Myanmar. The mission had opened the door to the resolution of issues, and it was to be hoped that the ILO would not now slam the door shut.
- 57.** The representative of the Government of the United Kingdom agreed with the statement of the Government representative of Portugal. The preferred position of the United Kingdom would be the immediate implementation of article 33. This was the will of the Governing Body and it had very widespread support. In the interest of compromise, his Government was willing to support a text which covered the middle ground. There were aspects which gave him some difficulty, but, in the interest of consensus, he would not propose amendments. It was his understanding that the Director-General would have to produce a report to the November 2000 Governing Body, outlining whether or not the Burmese regime had met the targets identified in the technical cooperation mission's report. In paragraph 3 of the consensus paper, there were actually two ideas. The first idea was that technical assistance should be provided to the Government of Burma between now and November to help them fulfil the recommendations of the mission indicated in the conclusion of its report: the same conditions should be guaranteed for such technical assistance as were assured to the first mission, e.g. full freedom of movement and access to all sections of Burmese society. Ideally, then, the second idea – a sustained ILO presence – should be in a separate paragraph, and could be dealt with after November. However, he was prepared to accept the present draft, which covered both points.
- 58.** The representative of the Government of Japan stated that at this very important juncture the Committee should proceed with all due deliberation. During the March Governing Body the Japanese delegation raised its objections to the recommendations by the Governing Body and its position still remained. As a point of philosophy, the Government had long been aware that the issue of forced labour in Myanmar was a grave one. The aim was to eliminate forced labour in Myanmar and not to isolate the Government in international forums. Implementation of what is written in the text might actually shut Myanmar out of international forums and dialogue and not achieve the real target of eliminating forced labour. The easiest way to achieve this target would be to work through dialogue with the Government of Myanmar. While he much appreciated the efforts of the Chairperson, the contents of the draft were too harsh. His Government was not ready to approve in principle the items from (a) to (e) listed, some of which would be far too harsh and counterproductive to the goal of achieving the eradication of forced labour. He requested time to consult within the groups and with capitals.
- 59.** The representative of the Government of the Russian Federation wished to have procedural and technical matters clarified. The United Kingdom Government representative had spoken of some "understandings" of the submitted text, thus starting to interpret it: those were the understandings of his own delegation and of certain other delegations, but not the unanimous opinion of the Committee. He asked whether the proposed text of the draft resolution had been already tabled for discussion: if so, his delegation was ready to propose certain amendments. He further stressed that, if the Committee was really moving towards a consensus, then the two previous interventions did not lead in the right direction.
- 60.** The representative of the Government of India said that substantive comments on the Chairperson's text must await consultations within the groups, as stated by other Governments, and instructions from capitals. He was at that stage only in a position to give preliminary views on the Chairperson's text. The visit of the ILO technical mission to Myanmar had been a positive development. The desirability of punitive measures was

questionable. To take a few points, paragraph 1(b) seemed to impose certain decisions on governments. He agreed with the Government representative of Japan that one must be clear as to whether the aim was to end forced labour in Myanmar or to isolate the country. His Government did not agree with punitive measures and was instead supportive of the approach outlined by the delegate of Malaysia on behalf of a certain number of countries. He emphasized the need for additional time for reflection and consulting the capitals and also to explore the possibility of consensus.

- 61.** The representative of the Government of Malaysia suggested that given the different points of view, the Committee needed to reflect very carefully on the Chairperson's text. A few delegations had substantive difficulties with the text, and in particular with paragraphs 1(c) and 1(d) and operative paragraph 2. In his delegation's view, paragraphs 1(c) and especially 1(d) were inappropriate. How could the matter be submitted to ECOSOC when it was not clear what actions had to be taken by the Government of Myanmar as yet. It was not clear how a measurement of Governing Body satisfaction could be found in this context. A more pragmatic approach, cooperation with Myanmar, and a consensual approach to find an acceptable text was the way forward. He asked the Chairperson for a ruling on his earlier proposal that discussions be conducted in a more transparent fashion and open-ended consultations be undertaken to resolve the matter.
- 62.** The Chairperson indicated that consensus was not the same as unanimity. Contrary opinions had been expressed, but a number of members were in favour of the text and some had even suggested not introducing any amendments.
- 63.** The representative of the Government of the United States thanked the Chairperson for undertaking this difficult responsibility. He was frustrated that the Committee was not proceeding directly on the Governing Body's recommendations, but that a new proposal had to be considered. Some delegates had expressed the view that the Chairperson's proposal is too harsh. In order to understand the true significance of the word "harsh", he referred again to the contents of the report of the Commission of Inquiry. The report of the Commission of Inquiry and the facts in Burma were harsh, not the Chairperson's proposal before the Committee. Some delegates had also expressed the view that the Committee should not be too hasty. The matter had been before the Conference since 1996 and the Commission of Inquiry had found that gross violations of human rights had been occurring in Burma particularly since 1988, to the extent that the only escape for some of the people of Burma was fleeing the country. Consequently, the Chairperson's proposal could not at all be viewed as "hasty". Some delegations might prefer to continue deliberating so that no action was taken against Burma at the Conference. His delegation would not prevent the taking of action, even if it was not fully satisfactory. He would not support delaying tactics in any way. The Committee had been told by some delegations that dialogue was preferable to the proposal before it. The report of the technical cooperation mission reflected an exchange of views with generals, that were ministers, who said that there was no forced labour in Burma; the officials only disagreed on whether forced labour had ever existed before. In addition, the Committee had heard comments of the Burmese representative and this was a vivid illustration of the kind of cooperation which could be expected from that Government in the future. The Committee also heard some delegations express concern that the Chairperson's proposal had uncertainties about it. If the Committee was uncertain, a very simple option was to vote on the original set of Governing Body recommendations.
- 64.** Mr. Thüsing stressed that all Committee members agreed that a peaceful solution of the situation in Myanmar was the principal objective. There were three main actors: the Committee, the people of Myanmar who have the problem of forced labour, and the Government of Myanmar. The Committee could propose that implementation of the

Governing Body's recommendations could be delayed. In any event the recommendations of the Commission of Inquiry could only be implemented with the Government's cooperation. If the Government of Myanmar harboured good will, it could not reject a decision of this Committee. As a procedural matter, he suggested that the Committee air views and then have a break for group consultations. If the Committee was to take a decision on the basis of the Chairperson's paper, he joined the Workers' group in suggesting that members limit amendments. Otherwise no headway would be made.

- 65.** The representative of the Government of Pakistan thanked the Chairperson for undertaking consultations and producing a draft but expressed disappointment that her delegation's views seemed not to have been taken into account. The Government of Myanmar had shown some movement in dealing with the issue. Since this cooperation had been forthcoming and circumstances had changed, the decision of the March Governing Body should be modified. Her Government could not support the adoption of punitive sanctions under article 33 of the ILO Constitution. She agreed with the Employers' representative that the Committee should follow an agreed approach but this approach must be on the basis of middle ground; the middle ground should be sought between the immediate implementation of the Governing Body decision and the alternative view that Myanmar's cooperation should be taken into account. The middle ground was not between immediate action and delayed action. Some argued that a Committee decision was not hasty because the matter had been before the Conference since 1996. This question should be set aside. The primordial question was whether the Committee's decision would serve the people of Myanmar, those who were allegedly undergoing forced labour. It would not, because the cooperation of the Government of Myanmar was critical to fixing the problem. Her delegation strongly supported the suggestion of the representative of the Government of Malaysia that the Committee work with the Chairperson's text to find a middle ground. Since she had just received a copy of the text, a decision could not be reached in half an hour, as capitals needed to be consulted. The issue was far too critical to take a decision during an evening session.
- 66.** The representative of the Government of South Africa stated that she had the mandate of the African group, but since the new text had been presented she could not commit her group to any position at this stage. She had to consult them and she needed more time.
- 67.** The representative of the Government of Malaysia emphasized the actions taken by the Government of Myanmar since the last Governing Body meeting. The Committee had to agree that indeed actions had been taken. There was a certain movement forward, and the Committee had received assurance from the Government that this would continue. The Committee must be objective and pragmatic in dealing with this issue. The good will shown by the Government would have to be recognized. More time must be given so that the members of the Committee could make a more objective analysis of the text and find the middle ground which all parties were seeking but which seemed elusive. He referred to the statement made by the representative of the Government of South Africa as an indication that more time was needed to consult.
- 68.** The representative of the Government of New Zealand stressed that due to the seriousness of this issue the ILO must take prompt action. In the interest of trying to reach a consensus, her Government could accept the compromise proposal put forward by the Chairperson.
- 69.** Mr. Brett wondered why the Government members were insisting on soundings within their groups or with their capitals. All of the information before the Committee had been available for a long time. The Committee had decided to take a break in order to carry on these consultations. This was an attempt to reach a consensus, not a fictional middle ground. The Government of Myanmar was to be given five months to do what they

promised. There were in fact no new elements in the Chairperson's proposals necessitating any new consultations. In the absence of consensus, the alternative was simply to revert to the Governing Body's recommendations, as the representative of the United States Government had suggested. Then the ground which Myanmar had gained in the compromise text would be lost.

70. The representative of the Government of Indonesia stated that the good will of all parties concerned was necessary to get past the main obstacles to a solution to forced labour in Myanmar. The ILO must give Myanmar the chance to address its problems. He disagreed with the argument that the credibility of the ILO would be at stake if immediate punitive measures were not put into place. The question for the future would be whether in fact punitive measures would definitely and effectively bring about the abolition of forced labour. Paragraph 1(b), (c) and (d) of the proposed text were unacceptable.
71. The representative of the Government of France stated that the situation was serious and, for the credibility of the Organization, the ILO must not abstain from action. Article 33 was precisely the tool required to put an end to the situation described by the Commission of Inquiry. She had listened to all of the arguments brought forward by the Government delegates, including the need for more time. France was ready to adopt the compromise text, and the new deadline of 30 November 2000 seemed sufficient for concerted action, given the good will of the Government of Myanmar.
72. The representative of the Government of Japan addressed the issue of credibility. The purpose of the ILO and its high standing needed to be promoted further. There seemed to be a comparison, whether intentional or not, between the WTO and the ILO. While the WTO had sanction measures which were being implemented all the time, the ILO, an international organization of high standing, did not have means equivalent to what exists in the framework of the WTO. When talking about punitive measures, comparison with the WTO was not really relevant because putting Myanmar into isolation would not necessarily bring an end to forced labour – whereas in the WTO, for example, sanctions to prevent dumping immediately addressed the cause of the problem. Sanctions in the ILO would bring an end to dialogue, which, however, must be the only way to know the situation inside the country and the only way of trying to persuade the Government to comply with Convention No. 29. While the WTO was gaining more momentum, partly because of its sanctional measures, the ILO should be more prudent about applying the same formula when trying to redress labour issues.
73. The representative of the Government of Sudan stated that the Committee must endeavour to implement the recommendations of the Commission of Inquiry, but at the same time to have a dialogue with Myanmar. This dialogue had now commenced with the mission which visited that country. The text before the Committee tried to reach a solution by continued technical cooperation with this country in order to carry out the recommendations of the Commission of Inquiry. However, this was not justified because it repeated the same recommendations as the Commission, while at the same time limiting technical cooperation by setting a deadline. This was not an adequate way of enabling a demonstration of good will. His Government would prefer a text that was more balanced and satisfactory to everyone.
74. Mr. Brett stated that it was not enough for the ILO to be an organization of high standing. The question was how long it could retain that status in the light of the matter before them. The Commission of Inquiry, which had cost US\$1.2 million and comprised three highly respected international jurists, had not provoked any action from the Government by May 1999 as had been required, and one could take little comfort from the letter dated 27 May 2000. Myanmar must accept the recommendations of the Commission of Inquiry.

Provisional Record No. 4, Appendix 1, reproduced the Conference decision a year ago “that the attitude and behaviour of the Government of Myanmar are grossly incompatible with the conditions and principles governing membership of the Organization”. The Committee could nevertheless decide to offer another five months to the Government to live up to what it said it would do. This displayed greater credibility on the part of the ILO than Myanmar had displayed for its part. Dialogue was denied for the better part of five years. Failing this compromise, the high standing of the ILO would be damaged within the United Nations system and there would be greater pressure from those who said that the matter should be taken to the WTO instead. He asked for an immediate vote on the draft resolution of the Chairperson, or a vote on the original Governing Body proposal.

75. The Chairperson reminded the Committee that consensus did not mean unanimity. Mr. Thüsing had asked the Committee to adopt the Chairperson’s text for final discussion in the Conference. The Government of Malaysia had insisted on the text which it submitted the previous day. Since the draft resolution coming from the Chairperson was an attempt at conciliation, the Committee could decide either on consensus or by a vote whether to adopt it.
76. Mr. Thüsing preferred the Committee to reach a consensus on the Chairperson's draft, even though not everyone agreed with the entire text, rather than having to bring the decision to a vote. He called for a recess to give the groups time to consider their positions.
77. The representative of the Government of Malaysia reminded the Committee that he had made a proposal on behalf of several countries. The Committee must also take into account the position of the Government representative of South Africa who had no means of contacting her group during this session. He could not agree with the implementation of punitive measures and thus he could not agree with the Chairperson’s draft resolution.
78. Mr. Brett considered that the Government member of Malaysia represented a minority view. It was not shared by the Employers or the Workers and therefore there could be no consensus around the text proposed by Malaysia. He supported the Employers’ proposal that the Committee take a break. If the Workers and Employers and a large number of Governments agreed, then the Chairperson’s text could be adopted by consensus. Mr. Thüsing reminded the Committee that the Selection Committee is not made up of groups in the usual sense of the word. Each member of the Selection Committee is appointed as an individual and can therefore express himself or herself and vote as an individual. This would be another reason why group consultations were unnecessary. Mr. Brett agreed, but noted that it was also important to have a consensus in the regional groupings of the Conference.
79. After a recess for further consultations, Mr. Thüsing expressed the Employers’ view that the Committee must propose a draft to the Conference. Although there were difficulties in the Chairperson’s text, they would not propose amendments and would support it as a whole. Mr. Brett was grateful to the Employers. His group too was divided, as some thought the Chairperson’s draft too weak; but they agreed to proceed with that text, by consensus if possible and without any amendments. He hoped that the Governments – and that of Burma in particular – would see the next five months as an opportunity to fulfil the ardent desire expressed by Burma in its letter of 27 May 2000 to end forced labour in that country.
80. The representative of the Government of India counselled against precipitate action in this matter. Even 12 hours would be insufficient for consultations with capitals, and the matter should be postponed to the following Monday (12 June).

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81. The representative of the Government of the Philippines supported this view, as the matter was sensitive and involved extreme punitive measures. The Government of Myanmar had shown a commitment to comply with Convention No. 29 and the Governing Body's recommendations should not be adopted at this stage.
 82. The representative of the Government of Portugal said that the EU member countries present on the Committee supported the Chairperson's draft.
 83. The representative of the Government of China supported the statement of the Government representative of India. It would be the first time that measures were applied under article 33 of the Constitution and it would be too hasty.
 84. The representative of the Government of South Africa said that she could not make any commitment for the African group at this stage.
 85. The representative of the Government of Canada supported the Chairperson's text.
 86. The representative of the Government of Cuba considered that the measures proposed went beyond the ILO's mandate. She regarded the measures as punitive and excessive. The Organization should explore alternative measures based on dialogue.
 87. The Chairperson suggested that, if there was a consensus, consideration of the draft could move ahead to the next stage. Mr. Brett and Mr. Thüsing agreed that, though there was not unanimity in the Committee, there was a consensus. The discussion should be closed. The draft could be submitted to the Conference.
 88. The representative of the Government of the Philippines, supported by the representative of the Government of Malaysia, expressed doubt whether a consensus existed and called for a vote on the draft resolution.
 89. The Legal Adviser, responding to a point of order and a question as to procedure, confirmed that any member who was unable to join a consensus had the constitutional right to request a vote. On procedure, he indicated that the matter before the Committee was the draft proposed by the Chairperson. If this were not adopted, the Committee would return to the underlying text, which contained the Governing Body recommendations. No amendments had been made to them. The Government representatives of Indonesia, Malaysia and the Philippines had proposed to the Committee that measures should not be adopted. If those Government representatives maintained their proposal, the Committee would vote on that: if that proposal were adopted the measures recommended by the Governing Body would not be considered, and if that proposal were not adopted the Governing Body's recommended measures would be left before the Committee for adoption.
 90. Mr. Thüsing observed that the various arguments raised in the Committee would be reflected in its report. He would have preferred to adopt the Chairperson's text by consensus, as voting could be counterproductive.
 91. The representative of the Government of the Philippines, supported by the representative of the Government of Malaysia, requested that a vote should first be taken on the proposal they had submitted to the Committee.
 92. Concerning the order in which votes should be taken, the Legal Adviser indicated that article 63 of the Standing Orders, by virtue of article 55(2)(c), does not apply to the Selection Committee. This did not mean that the Committee could act arbitrarily: in this

case, after a general discussion of the Governing Body's recommendations and the proposal of three Government members of the Committee, there was agreement in the form of consensus that the Chairperson would try to propose an intermediate solution, and it was on this proposal that the Committee was now to vote.

93. The Committee proceeded to a vote by show of hands on whether to adopt the resolution contained in the appendix to this report. The results of the vote were as follows: 33 in favour, 4 against, with 3 abstentions. The proposal was adopted.
94. Following a request for a record vote on the same question, the Legal Adviser explained that this would be possible under article 65(7) or (8) of the Standing Orders if the result of a vote by show of hands was the subject of a proper challenge, or if one-fifth of the members present immediately requested it.
95. The Chairperson noted that neither of these conditions had been fulfilled in this case. The Chairperson then declared the draft resolution adopted.

Final statements

96. As an exceptional measure, the representative of the Government of Myanmar was given the floor. He described the action taken by the Committee as unfair, unreasonable and unjust. His Government dissociated itself from the Selection Committee's decision and its consequences. He regretted the resort to article 33 of the Constitution in order to put pressure on Myanmar through punitive measures, when it had taken positive steps. The Committee had ignored the positive steps taken by Myanmar. It penalized a member State which had voluntarily been cooperating with the ILO. For this reason, his delegation totally and categorically rejected the resolution of the Selection Committee and any activities and effects connected with it.
97. Mr. Brett noted that the Government representative was reading from a typed statement which had clearly been prepared before the decision had been reached and indeed before the meeting had commenced. He felt this accurately underlined the lack of sincerity displayed by the Government of Burma throughout the period.

Adoption of the report

98. The Committee met on 12 June for the adoption of this report.

Geneva, 12 June 2000.

(Signed) J.F. Alfaro Mijangos,
Chairperson.

Appendix

Resolution submitted to the Conference

The International Labour Conference,

Meeting at its 88th Session in Geneva from 30 May to 15 June 2000,

Considering the proposals by the Governing Body which are before it, under the eighth item of its agenda (Provisional Record No. 4), with a view to the adoption, under article 33 of the ILO Constitution, of action to secure compliance with the recommendations of the Commission of Inquiry established to examine the observance by Myanmar of its obligations in respect of the Forced Labour Convention, 1930 (No. 29),

Having taken note of the additional information contained in the report of the ILO technical cooperation mission sent to Yangon from 23 to 27 May 2000 (Provisional Record No. 8) and, in particular, of the letter dated 27 May 2000 from the Minister of Labour to the Director-General, which resulted from the mission,

Considering that, while this letter contains aspects which seem to reflect a welcome intention on the part of the Myanmar authorities to take measures to give effect to the recommendations of the Commission of Inquiry, the factual situation on which the recommendations of the Governing Body were based has nevertheless remained unchanged to date,

Believing that the Conference cannot, without failing in its responsibilities to the workers subjected to various forms of forced or compulsory labour, abstain from the immediate application of the measures recommended by the Governing Body unless the Myanmar authorities promptly take concrete action to adopt the necessary framework for implementing the Commission of Inquiry's recommendations, thereby ensuring that the situation of the said workers will be remedied more expeditiously and under more satisfactory conditions for all concerned;

1. Approves in principle, subject to the conditions stated in paragraph 2 below, the actions recommended by the Governing Body, namely:

- (a) to decide that the question of the implementation of the Commission of Inquiry's recommendations and of the application of Convention No. 29 by Myanmar should be discussed at future sessions of the International Labour Conference, at a sitting of the Committee on the Application of Standards specially set aside for the purpose, so long as this Member has not been shown to have fulfilled its obligations;
- (b) to recommend to the Organization's constituents as a whole – governments, employers and workers – that they: (i) review, in the light of the conclusions of the Commission of Inquiry, the relations that they may have with the member State concerned and take appropriate measures to ensure that the said Member cannot take advantage of such relations to perpetuate or extend the system of forced or compulsory labour referred to by the Commission of Inquiry, and to contribute as far as possible to the implementation of its recommendations; and (ii) report back in due course and at appropriate intervals to the Governing Body;
- (c) as regards international organizations, to invite the Director-General: (i) to inform the international organizations referred to in article 12, paragraph 1, of the Constitution of the Member's failure to comply; (ii) to call on the relevant bodies of these organizations to reconsider, within their terms of reference and in the light of the conclusions of the Commission of Inquiry, any cooperation they may be engaged in with the Member concerned and, if appropriate, to cease as soon as possible any activity that could have the effect of directly or indirectly abetting the practice of forced or compulsory labour;

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- (d) regarding the United Nations specifically, to invite the Director-General to request the Economic and Social Council (ECOSOC) to place an item on the agenda of its July 2001 session concerning the failure of Myanmar to implement the recommendations contained in the report of the Commission of Inquiry and seeking the adoption of recommendations directed by ECOSOC or by the General Assembly, or by both, to governments and to other specialized agencies and including requests similar to those proposed in paragraphs (b) and (c) above;
- (e) to invite the Director-General to submit to the Governing Body, in the appropriate manner and at suitable intervals, a periodic report on the outcome of the measures set out in paragraphs (c) and (d) above, and to inform the international organizations concerned of any developments in the implementation by Myanmar of the recommendations of the Commission of Inquiry;

2. Decides that those measures will take effect on 30 November 2000 unless, before that date, the Governing Body is satisfied that the intentions expressed by the Minister of Labour of Myanmar in his letter dated 27 May have been translated into a framework of legislative, executive and administrative measures that are sufficiently concrete and detailed to demonstrate that the recommendations of the Commission of Inquiry have been fulfilled and therefore render the implementation of one or more of these measures inappropriate;

3. Authorizes the Director-General to respond positively to all requests by Myanmar that are made with the sole purpose of establishing, before the above deadline, the framework mentioned in the conclusions of the ILO technical cooperation mission (points (i), (ii) and (iii), page 8/11 of *Provisional Record* No. 8), supported by a sustained ILO presence on the spot if the Governing Body confirms that the conditions are met for such presence to be truly useful and effective.

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