



Reports of the Credentials Committee

Third report

Composition of the Conference

1. Since 10 June 2003, when the Committee adopted its second report (*Provisional Record* No. 5C), the only significant changes in the composition of the Conference refer to incomplete delegations. On the one hand, the accreditation of the Employers' delegate of Djibouti has completed its delegation. On the other hand, Myanmar does not now count with a Workers' delegate and, thus, its delegation is incomplete (see paragraph 42 of this report). It should also be noted that Cape Verde and Central African Republic have recovered the right to vote.
2. In addition, the Committee wishes to emphasize that 151 Ministers or Vice-Ministers have been accredited (as compared to 149 last year) and of these 143 have participated this year in the Conference. As of this day, the total number of persons accredited to the Conference is 4,046 (as compared to 3,778 last year) amongst which 3,498 (as compared to 3,306 last year) are registered. The attached list contains more details on the number of delegates and advisers registered for each country.

Objections

3. Following, are the seven objections examined by the Committee since the adoption of its second report. They appear in the French alphabetical order of the Members concerned.

Objection concerning the nomination of the Workers' delegation of Saudi Arabia

4. The Committee has before it an objection challenging the nomination of the Workers' delegation of Saudi Arabia, submitted by the International Confederation of Free Trade Unions (ICFTU). According to the information contained in the provisional list of delegations, the Workers' delegate (Chief, Employee Relations Service Department, Saudi Aramco) and his advisers (General Manager, Personnel, Saudi Telecom and a manager from the Saudi Electrical Company) are middle managers. Trade unions are forbidden in Saudi Arabia and, thus, they do not exist within the terms contemplated by article 3, paragraph 5, of the Constitution. However, new labour regulations seem to have been introduced in April 2002 authorizing the creation of workers' committees (open to both national and foreign workers) within enterprises that have in excess of 100 employees. Despite the undertaking by the Government, on the occasion of a communication that was examined in 2001, to nominate a delegation following direct consultations with workers

and without interference by their employers, it appears that according to the information available the members of the Workers' delegation have not been nominated freely by true workers and that, as a consequence, they are not representative. The objecting organization recalls the close link established in the past by the Committee between the conditions necessary for the nomination of individuals that can represent the interests that they are to defend and the effective exercise of freedom of association. Should the Government prove to have failed to ensure the representativeness of the Workers' delegation, the objecting organization would call for the invalidation of their credentials.

5. In a written communication addressed to the Committee in response to its request, Mr. Ali Ben Ibrahim Al-Namlah, Minister of Labour and Social Affairs, indicated that the Government had consulted with the International Labour Office for the purpose of ascertaining what measures needed to be taken in light of the observations formulated by the Credentials Committee during the 88th Session of the Conference (June 2000). Within the measures adopted by the Government, a decree by the Council of Ministers was promulgated in March 2001 permitting workers to constitute committees, which could amongst other things propose a workers' representative to sessions of the Conference. Although workers have not yet constituted such committees because of a lack of demand, serious steps in this regard have been taken. Amongst other things, in January 2003, high-level ILO officials delivered an information seminar on the ILO and its activities. Not only was this seminar given to Government representatives, but also to employers' and workers' representatives and it emphasized the importance of such workers' committees. The Government has also invited the ICFTU secretary-general to verify progress accomplished in setting up such workers' committees, as well as the Chairperson of the Governing Body, in January 2003, to discuss the workers' representation with enterprises.
6. Regarding the nomination of the Workers' delegation to the present session of the Conference, the Ministry of Labour and Social Affairs started the consultation process in March 2003 in a meeting to which it had invited the enterprises that had the highest concentration of workers and a large proportion of national workers (30 enterprises) where the process of forming committees by workers had already begun and where a member from each preparation group had been appointed by the workers. Subsequent to a meeting amongst them, the representatives from these enterprises later agreed that the representatives of the following enterprises would participate at the International Labour Conference: Saudi Aramco (60,000 workers), Saudi Electricity Company (35,000 workers), and Saudi Telecom (20,000 workers). In addition, the Government asserts that the nomination of the Workers' delegation was completed following negotiations by the representatives of the largest staffed enterprises. Thus, the Workers' delegation represents the majority of workers. The Government confirmed that the selection of the Workers' delegation was effectuated in the aforementioned manner and affirms that no interference had occurred, whether by it or by the employers.
7. Clarifications requested by the Committee were provided orally, by Messrs. Ahmad A. Al-Mansour Al-Zamil, Vice-Minister of Labour, and Abdulaziz I.S. Al-Hadlaq, Director-General of International Organizations in the same Ministry, both Government delegates to the Conference. Concerning the nomination process, the Government indicated that of the 30 enterprises that were invited to the meeting organized by it (with a view inter alia to ensuring that the nomination of the delegate would take place in total independence), only 22 enterprises participated. From this group, four representatives were selected from three enterprises. While it is true that there exist numerous enterprises in the country, the choice by the Government of the 30 enterprises was principally based on their high staff numbers, in sectors including petroleum and oil refining and telecommunications. Figures concerning the total workforce in the country are not yet available, but the Government did indicate that the construction of a database is under way. However, it did furnish an

approximate number of 400,000 Saudis, but not the number of foreign workers who constitute the majority of the country's workforce.

8. Concerning the workers' committees, the Government explained that the reason that none had as yet been constituted since the Ministerial Decree of 2001 was due, in their belief, to reticence by the workers themselves as well as a lack of experience on how to proceed – although some are beginning to embark on this path. The Government has, also, undertaken a promotional campaign (for example, the diffusion of information through different media, holding of meetings with chambers of commerce and labour offices, and the publication of regulations and government criteria for the workers' committees). With respect to the competence and the vocation of these committees, the Government cited the objecting organization's 2003 annual report, which states that workers' committees are aimed at "finding means of dialogue between the employees and employers in order to improve the level of work performance and eliminate technical and material obstacles impeding that".¹ Lastly, turning to the subject of the capacity of the members of the Workers' delegation within their respective enterprises, although it is true that they may occupy different functions at different managerial levels, the Government affirmed that there is not necessarily a conflict of interest with their duty to defend the interests of the workers. Indeed, the respective enterprise administrations assured that the individuals are concerned about workers and, in particular, engaged in this cause as well as the formation of workers' committees. In this regard, they were elected by the 22 representatives assembled, amongst them both manual workers and managers. The Workers' delegate, Mr. Mohammad Al-Hajri, whose function was clarified as being an adviser at Saudi Aramco, has a vast experience concerning labour issues and the Conference and it appears that the workers wished to profit from his experience.
9. The Committee reckons that since its examination of the objection and the communication submitted at the 88th and 89th Sessions of the Conference (June 2000 and 2001, respectively), the Government has taken some steps towards making the nomination of the Workers' delegation to the Conference conform to its constitutional obligations. The Committee welcomes the efforts made in this direction, including the adoption of new regulations authorizing the creation of workers' committees, their promotion and recourse to the ILO's technical assistance. It notes, however, that such efforts have not yet yielded practical results. In addition, the Committee recalls that the Government's ultimate goal should not be the establishment of workers' committees, but the recognition of autonomous and independent trade unions, as required by the principle of freedom of association that all Members have an obligation to realize.
10. Although the Committee further notes that in Saudi Arabia there are not, as yet, organizations that can represent workers within the meaning of article 3, paragraph 5, of the Constitution, it recalls that article 3, paragraph 1, of the Constitution imposes on governments an obligation to nominate workers' representatives that are on the one hand as representative as possible of the workforce in the country and, on the other hand, capable of defending their interests. The Committee notes, as regards the first condition, that it is difficult to evaluate the representative character of the Workers' delegation nominated this year as no figures are available concerning the 30 enterprises that were consulted and their relative importance vis-à-vis the workforce in the country. As to the second condition the Committee notes with satisfaction that according to the Government, it has had no direct intervention in the selection process. However, it has no guarantees concerning the non-intervention of the employers in the election of the workers' representatives. Last, regarding the capacity of the individuals that have been nominated to

¹ ICFTU: *Annual Survey of Violations of Trade Union Rights, 2003*, p. 241 (<http://www.icftu.org>).

represent the workers, although the Committee is sensitive to the arguments of the Government, it is of the opinion that the obligations of managers vis-à-vis their employers make it difficult for them to be fully independent and to actively defend the interests of workers. However, the Committee trusts that such doubts will be removed in the coming year, in particular with the establishment of workers' committees. It has accordingly decided not to propose any action this year.

Objection concerning the nomination of the Workers' delegate of Cambodia

- 11.** The Committee has before it two objections challenging the nomination of the Workers' delegate of Cambodia to the Conference submitted by Mrs. Chhorn Sokha on behalf of the Coalition of Cambodian Apparel Workers Democratic Union (CCAWDU) and Mr. Chea Vichea on behalf of the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC). The objecting organizations present similar claims, in that the standards by which the Government selects participants to attend the Conference are changed every year so as to make it difficult to compete. Further aggravating the situation, the objecting organizations were not informed of the new requirements until December 2002, when it was too late to participate in the selection process. In turn, this late notification limited the candidates to two government-controlled unions, the Cambodian Union Federation (CUF) and the Cambodia Federation of Independent Trade Unions (CFITU). Regarding the CUF of which the Workers' delegate is President, the objecting organizations point to its lack of support by the vast majority of workers and questionable membership numbers as a basis for its non-representativeness, as well as its anti-worker position as demonstrated by its routine voting with the Government and industry leaders instead of with the workers. Indeed, the CUF does not serve the interest of the workers, but rather those of employers and the Government through force, intimidation and threats to workers who push for action.
- 12.** In a written communication addressed to the Committee, at its request, the Government of Cambodia submits that the process for selecting the workers' organization to this year's Conference had been made correctly and in accordance with normal procedures. The Government submits the minutes from a meeting that was held on 12 February 2003 by the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation as demonstrating this fact. Present at the meeting were representatives from each of the objecting organizations, as well as representatives from seven other workers' organizations, including those that have been actually nominated to the Workers' delegation. Based on membership, of the nine workers' organizations invited to the meeting, CUF was the most representative with 4,825 members. The CFITU followed it with 4,060 members. In accordance with the Ministry's regulations, this year's delegate to the Conference should be appointed from CUF. As to the actual representative, a secret ballot took place to determine whether CUF's nominee was agreeable to the other organizations present. Seven out of nine voted in favour. Due to disagreement about the selection procedure, it was agreed that next year's nomination could be agreed upon by the organizations themselves.
- 13.** In a further written communication addressed to the Committee in response to its request for additional information on two points (the reason for limiting the selection process of the Workers' delegate to CUF and the membership figures of the other organizations present at the 12 February meeting), the Government submits that as per article 277(1)(b)²

² Article 277 (1)(b) states, "The representativeness of a professional organisation or a union of professional organisations is recognised in the framework of a geographical area or a profession or,

of Chapter 11 of the Labour Law, only the most representative organization is eligible for consideration to be nominated Workers' delegate to the Conference and that the same procedure has been followed in previous sessions of the Conference. This year, of the 11 federations that have registered their membership figures with the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, CUF and CFITU are, in this order, the two that have the largest numbers, as compared to the rest that have much smaller memberships. In terms of the other organizations, the Government submits that it could not obtain the requested information in time to respond to the Committee. It remains however disposed to do so as of the return of its representatives to the country. The Government reiterates that, as of next year, all the workers' organizations may participate in the selection of a representative, which shall be accordingly nominated to the Conference by the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation.

14. The Committee notes that the Government despite repeated requests has not provided verifiable figures, nor have the objecting organizations, as to the representative character of the various workers' organizations that exist in the country. The only data furnished relates to CUF and CFITU, whose representatives have alternated as Workers' delegate to the Conference (as shown by the list of delegations of recent sessions of the Conference) with no objections having been filed on those occasions. This could indicate that they are indeed the most representative organizations in the country, but absent any data as to the other nine organizations the Committee is unable to reach conclusions on this matter.
15. The Committee, however, is not satisfied that the conditions set out in paragraph 5, article 3, of the Constitution have been met by the nomination procedure decided by the Government. Where, as seems to be the case in Cambodia, there are several workers' organizations and none of them can claim to represent the majority of the organized workers of the country, the ILO Constitution imposes on the Government an obligation to seek agreement with all of them as to the nomination of the Workers' delegate to the Conference. That an organization has a slightly higher membership than others cannot, irrespective of the provisions of national legislation, be an excuse to impose a system whereby only the first organization in terms of membership is entitled to propose a candidate thus excluding all others from the possibility of presenting, individually or collectively, their own candidates. It is for the workers themselves to decide, without government interference or imposed conditions, who can best represent their interests at the Conference. All the more so as in the case of Cambodia, membership figures for even the largest organizations are dramatically low.
16. Turning to the question surrounding the independence and autonomy of the workers' organization of which the Workers' delegate is President, the Committee regrets that, in its response, the Government failed to address this issue. The Committee recalls that independence and autonomy of the social partners are the cornerstones that permit true representativeness, an integral aspect of tripartism.
17. Although, for the above reasons the nomination procedure does not seem to have been in full conformity with the requirements of the ILO Constitution, the Committee trusts that

if necessary, by the type for which the union was registered to operate. The representativeness is determined by the following criteria: have more members holding valid membership cards than the others. Any trade unions having the largest number of members in the order of the first and the second majority will be considered to be the representative Unions within the enterprise. However, any trade union whose number of members is over 51 per cent of the total number of workers in the enterprise shall be considered as the most representative union."

the Government's commitment to let the organizations themselves decide next year on the nomination of their representative to the Conference will prevent such doubts from arising again.

Objection concerning the nomination of the Workers' delegation of Guatemala

18. The Committee has received an objection challenging the nomination of the Workers' delegation of Guatemala submitted by the Unión Guatemalteca de Trabajadores (UGT) and the Unidad de Acción Sindical y Popular (UASP). The Committee also received a communication from the International Confederation of Free Trade Unions (ICFTU) in support of the Confederación de Unidad Sindical de Guatemala (CUSG), affiliate of UGT, who is associated with the objection.
19. The objecting organizations submit that the Government ignored the accustomed practice for nominating the workers' representative to this year's International Labour Conference and that it applied an arbitrary and unilateral process, which does not guarantee the representative character of the delegation. In the first place, the Minister of Labour and Social Protection convoked a meeting through the press with the purpose of proceeding with the election of the Workers' delegate to the 91st Session of the Conference. Thereafter he invited only the federations by letter, but none of the trade union organizations or active movements in the country, such as the UGT, that regroups 12 trade union federations. This practice is contrary to the Government's obligation under the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), which requires effective consultations with the most representative organizations of the country. Furthermore, for the organizations to participate at this meeting convoked by the Minister, conditions contrary to principles of freedom of association had to be fulfilled, such as the necessity to certify that the organizations had a legally recognized personality. There were only three federations that participated in this meeting, all from the public sector, without representative character.
20. In the second place, the objecting organizations impugn the legitimacy of the Workers' delegate elected at this meeting, for the reason that he had been expelled from one of the national organizations and for representing a federation whose formation was only possible because of its serving the interests of the ruling party at the time it was created. For these reasons, the genuine trade union movement of Guatemala esteems that it is not represented at the Conference and seeks the invalidation of the credentials of the Workers' delegation of Guatemala.
21. In a written communication addressed to the Committee in response to its request, the Minister of Labour and Social Protection indicated that in Guatemala the active workers' organizations, which is to say those that have a legally recognized personality and are registered with the Ministry of Labour and Social Protection Labour Registry, are 11 federations and two confederations (the CUSG and the Confederación Central de Trabajadores del Campo y la Ciudad (CTC)). In Guatemala, there are also some movements that unify civil organizations and trade unions that do not enjoy a legally recognized personality nor are registered with the Labour Registry. Amongst these are the two objecting organizations, the Unión Sindical de Trabajadores de Guatemala (UNSITRAGUA) and the Central General de Trabajadores de Guatemala (CGTG).
22. For years, in Guatemala there has not existed an established national practice for the purpose of consulting the most representative employers' and workers' organizations with a view to nominating the delegations that will assist at the International Labour Conference. Prior to 2003, the practice was that each of the organizations would propose

its representatives and communicate the names to the Minister, who would take the final decision. Instead, this year all the employers' and workers' organizations were convoked for consultative meetings, thus accomplishing the principles enshrined in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

- 23.** To this end, the Minister of Labour and Social Protection sent a communication to the 11 federations and two confederations, convoking them to a meeting that was to be held on 16 May 2003, at his offices, for the purpose of selecting the Workers' delegation to the 91st Session of the International Labour Conference. In an effort to make this consultation as broad as possible, the Ministry also sent an invitation to other organizations whose registrations were not up to date with the Labour Registry. It also facilitated the participation of interested social actors through a convocation that was published in the Official Bulletin and the highest circulating private newspaper. The efficiency of the convocations is demonstrated by the fact that one of the unifying movements, the UGT (who is one of the authors of the objection), submitted its proposal of workers' representatives to the Conference in writing. However, at the meeting only the representatives from three federations participated: the Federación Nacional de Sindicatos de Trabajadores del Ministerio de Salud Pública, the Federación Nacional de Sindicatos de Trabajadores del Estado de Guatemala (FENASTEG), and the Federación Nacional de Sindicatos de Empleados Públicos.
- 24.** According to the minutes of the meeting, the representatives of the three federations decided to reject the proposal submitted by the UGT and instead, by consensus, appointed a representative of the Federación Nacional de Sindicatos de Empleados Públicos, as delegate, and a representative of the Federación Nacional de Sindicatos de Trabajadores del Ministerio de Salud Pública, as substitute delegate. The Government limited itself to endorsing this decision in the credentials of Guatemala to the Conference. Consequently, the purpose of the Government was at no time intended to ignore the less or more representative character of the workers' organizations, but rather to permit them autonomy to decide who would be their representatives at the Conference and it limited itself to guaranteeing them equal treatment at the time of their nomination.
- 25.** Clarifications requested by the Committee were provided at a meeting held on 11 June, by the Minister of Labour and Social Protection, Mr. José Moreira Sandoval. He was accompanied by Ms. Carla Rodríguez Mancía, Minister Counsellor with the Permanent Mission in Geneva and Government substitute delegate.
- 26.** In the first place, with respect to the nomination procedure followed by Guatemala from the 1980s until 2003, the Minister indicated that the nominations of workers' representatives to different international meetings as well as to national social bodies (such as to the social security institutions, vocational training, or recreation) was done in a manner commonly referred to as the merry-go-round (*carrusel*). By virtue of this system, appointments were distributed either to organizations affiliated to the ICFTU or to the WCL (World Confederation of Labour), or depending on the organizations' connections with the ruling party. Thus, all objective criteria concerning representativeness were ignored. At the commencement of 2003 after being named Minister, Mr. Moreira Sandoval, who previously was involved in the trade union movement and who had no political affiliation, decided to institute a true system based on objective criteria and democratic principles since he was aware of the faults of the pre-existing system.
- 27.** In Guatemala, as there do not exist detailed statistics concerning the number of members for each trade union (due principally to the exigencies of the Guatemalan legal system which maintains the confidentiality of workers' trade union affiliation, for reasons of

security of trade unionists and to avoid potential repercussions against them by their employers), only the numbers of trade unions affiliated to the different federations and confederations are known. Thus, the nomination of the Workers' delegation to the Conference could not be completed in an objective manner through the use of representativeness. Under these circumstances, the Minister proposed a meeting of all the trade union organizations so that they could appoint, individually or collectively, the person that could be considered to represent the workers at the Conference. His proposal was that the nomination would be determined by a system of weighted votes based on the number of affiliated unions to each federation and confederation. Notwithstanding, the participants to the meeting preferred to proceed with a nomination through consensus.

- 28.** In response to a question posed by the Committee regarding the reasons that had led the Government to not include from the individual convocations the so-called unifying movements (whose representatives had been nominated in preceding years as Workers' delegates to the Conference), Mr. Moreira Sandoval indicated that such movements were neither constituted exclusively nor mainly by trade unions. In fact, they are formed as civil society organizations and regroup not only trade unions and trade union federations, but also other civil society actors. For example, housing associations, farmers, informal sector and indigenous people. The unifying movements are active organizations that operate in various areas and the Government has associated them in all the consultations and meetings in which they have a direct interest, such as the Tripartite Committee on international labour issues that took place on 10 April 2003 wherein the Minister announced his intention to establish a new procedure for the nomination of the delegation of Guatemala to the Conference. Account being taken of the fact that the executive boards of these civil society actors are not only composed of trade union representatives, it seemed logical to limit the convocation of 16 May to trade unions that are accredited as active through a simple certification of registration with the Labour Registry. This also corresponds to the Ministry's desire to motivate the more than 50 federations that exist in the country to renew their registration, as only 11 are up to date with the Labour Registry. In this manner, the Government would have at its disposal the greatest possible information concerning the number of trade unions affiliated to each federation and confederation.
- 29.** In some cases, the movements were created decades ago as trade union confederations, but over time they have broadened their membership base to include different portions of society. As such, their registration with the Labour Registry has not been renewable. Although it is true that the movements were not for this reason individually invited to the meeting that was convoked on 16 May, the Minister did direct invitations to all the trade union federations and confederations, including those associated with the unifying movements. These federations were free to propose leaders from the movements as candidates to be integrated into the Workers' delegation. As a matter of fact, one of the federations present at the meeting, the Federación Nacional de Sindicatos de Trabajadores del Ministerio de Salud Pública which is an affiliate of the CGTG, itself associated with the objecting organization, UGT, participated in the decision to exclude UGT's proposed nominations.
- 30.** The Minister of Labour and Social Protection acknowledged that the manner in which the process, instituted this year, had unfolded had not permitted it to obtain satisfactory results with respect to the representativeness of the nominees, as only three federations participated, all from the public sector that had a lesser number of affiliates as compared to other active federations and confederations. He trusts, however, that a greater number of organizations will actively participate in the process in the future, thus permitting it to reach this end and, in particular, if they decide to follow the guidelines proposed by him.

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31. The Committee joins fully in the Minister's first conclusion, as the nominations for this year can in no case be deemed to be representative of the workers of Guatemala, and they were not carried out in agreement with the most representative workers' organizations. The nominations are accordingly not in conformity with the conditions imposed by article 3, paragraph 5, of the Constitution of the ILO. By virtue of this provision, the Government should have abided by the nomination proposal submitted by the UGT, rather than the nominations issued from the 16 May meeting. Indeed, against the nominations made by three federations from one sector, UGT's nomination represented the interests of three confederations and 12 federations from multiple sectors of the economic activity, bringing together not only the organizations affiliated with the ICFTU, but also those affiliated with the WCL.
 32. Concerning the procedure instituted by the Minister, the Committee also considers that in the future it can secure the largest representative character for nominations to the Conference. To this end, it is nevertheless indispensable that the Government respects the following principles and considerations.
 33. In conformity with article 3, paragraph 5, of the Constitution, as it has been interpreted by the Permanent Court of International Justice in Advisory Opinion No. 1, as well as through the case law of the Committee, the Government should be endowed with the necessary mechanisms to evaluate, in an objective manner, the representativeness of trade unions in the country. Since there is no information in Guatemala concerning the number of members pertaining to trade unions affiliated with the different federations and confederations and, therefore, the number of workers that each trade union organization represents, the Government should abide by the information that it possesses. This is to say regarding the affiliation of individual trade unions to the federations, confederations and unifying movements.
 34. Where, as in Guatemala, the trade union movement is fragmented into multiple federations and confederations with varying levels of representativeness, the Government has an obligation to endeavour to obtain an agreement amongst them all. Such an effort can consist of the process instituted by the Government this year, as long as it is accepted by the organizations and not imposed on them. In this regard, it is necessary that the proposed process be known in detail by the organizations sufficiently in advance. It is not sufficient to convoke the different organizations to a meeting three days before the date by which the credentials of delegations are to be submitted to the International Labour Office (thereby making the organizations reluctant as to the possible reasons for the new procedure). If the Government had laid out the full details of its proposal during the Tripartite Committee held in April, including the system of weighted votes, the response to the convocation would have most likely been higher. Lastly, if, as can occur in the course of consultations between trade unions, they do not reach agreement, or some were to decide to abstain from participating, the Government should not permit that a vote or a decision taken by the minority prevails over the view of the majority.
 35. The Committee trusts that the respect of these guidelines, together with the willingness manifested by the Government, will guarantee as of next year that the nomination of the Workers' delegation of Guatemala to the Conference will be in full conformity with the conditions set down in the Constitution of the ILO.

***Objection concerning the nomination
of the Workers' delegate of Myanmar***

36. The Committee has before it an objection challenging the credentials of the Workers' delegate of Myanmar, submitted by the International Confederation of Free Trade Unions

(ICFTU) on the basis that the nomination by the Government had been made in contravention to article 3, paragraph 5, of the ILO Constitution. In the absence of free trade unions in Myanmar, the Workers' delegate to the Conference, Ms. Lin Lin Oo (Worker Grade 2, Myanmar Guston Molinel Co. Ltd., Hlaingthayar Industrial Zone), cannot be said to have been independently selected by workers in the country as they have no autonomous workers' organizations in the particular zone from where she was nominated and, further, she is the personnel manager according to the Myanmar Textile and Garment Directory (2001-02). Consequently, the Workers' delegate of Myanmar to the Conference is not a true representative of the workers in the country. Indeed, workers' organizations are forbidden by the Government as it ignores the "Trade Union Act, 1926", which permits the establishment of workers' organizations with its prior authorization, as well as its international obligations under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The ICFTU recalls the ILO Committee of Experts on the Application of Conventions and Recommendations observation that, "... it has been commenting upon the Government's failure to apply this Convention [No. 87], both in law and in practice, for over 40 years".³ Given that the Workers' delegate has not been nominated by the Government in a manner consistent with article 3, paragraph 5, of the Constitution and that she cannot be said to represent the 23.7 million workers in Myanmar, the ICFTU seeks the invalidation of the credentials of the Workers' delegate.

- 37.** In a written communication addressed to the Committee in response to its request, Mr. Soe Nyunt, Director-General of the Ministry of Labour and Government delegate to the Conference, indicated that further to the recommendations made by the Committee at last year's Conference the Government of Myanmar had consulted the ILO on three occasions (3 March, 24 March and 2 April) with a view to ensuring that the election of a workers' representative was carried out appropriately. Similar to the information provided last year, there are 18 independent industrial zones (with 320,000 workers) in Myanmar within which there are private companies that have their own autonomous management. Workers' Welfare Associations (comprised of government, employer and worker representatives) operate in each zone and have their own legal personality and legal standing. In April 2003, the Department of Labour, through its Assistant Directors, instructed the Workers' Welfare Associations to elect workers' representatives to the delegation of the 91st Session of the Conference. For this purpose the following ratio was set: one representative for up to 1,000 workers; two representatives for up to 5,000 workers; three representatives for up to 10,000 workers; four representatives for up to 30,000; and five representatives for over 30,000 workers. They were also instructed that no official from the Department, Board, Committee or office under the Ministry should supervise, intervene, or be present at the meetings that were held for this purpose. Consequently, 44 workers' representatives were elected from various industrial zones and, thereafter, a meeting was held on 5 May 2003. It was at this meeting that the 44 workers' representatives elected (30 votes for and 12 against) the workers' representative, Ms. Lin Lin Oo, who was subsequently nominated as the Workers' delegate to the Conference. Not only is she the Secretary of the Workers' Welfare Association of her enterprise, but also a recognized leader in her industrial zone.
- 38.** Clarifications requested by the Committee were provided orally by Messrs. Soe Nyunt and Win Mra, Director-General, Ministry of Foreign Affairs, respectively, Government delegate and substitute delegate to the Conference. They were accompanied by Messrs. Tun Shin, Deputy Attorney-General, Attorney-General's Office, and Tun Ohn, Counsellor with the Permanent Mission in Geneva. In response to the question posed by the Committee, concerning measures taken by the Government since last year to give effect to

³ ILO, Committee of Experts on the Application of Conventions and Recommendations (CEACR), Observation, 73rd Session (2002).

the Credentials Committee's recommendation, the Government highlighted that it had directed the 18 industrial zones (comprised of 350,000 workers, mainly from the textile sector as it is the largest sector of economic activity) to nominate representatives utilizing the aforementioned ratio. Once the representatives from the 18 zones were selected they met on 5 May for the purpose of electing the Workers' delegate to the Conference. The Government indicated that it had acted in conformity with the requirements of the Constitution of the ILO to the extent possible and, in light of the prevailing situation in Myanmar, in the best possible manner. In this regard, it pointed to the directive of the Department of Labour that no individual from the Ministry should instruct, supervise, intervene or be present at the meetings that were held for this purpose. Turning to this point, the Committee sought assurances that the election was carried out in an independent and autonomous manner. In this regard, the Government pointed to the list of names of the 44 representatives that were present at the 5 May election and its minutes, and cited the 12 votes against, as proof of the independent manner in which the election had been conducted. Further, no one, not directly involved with the election was allowed into the meeting in an effort to ensure the integrity of the process. Concerning the Workers' delegate's employment, the Government submits that she is a quality control manager and, thus, to their knowledge is not, nor has she been, a personnel manager. Neither does she exert any managerial responsibilities over the 600 plus staff who work with her. She is also the Secretary of the Workers' Welfare Association in her factory. Of the four representatives from her zone, she is considered a leader. The Government recalled the purpose of the Workers' Welfare Associations as providing social services to employees, including providing assistance and distributing food. The Government conceded that the Workers' Welfare Associations are still comprised of government, employers' and workers' representatives, for the purpose that they may have a tripartite character. However, it was only the workers that had selected their representatives to the 5 May meeting.

- 39.** With respect to the nominations of delegates to future sessions of the Conference, the Government affirmed its readiness to take further steps to bring its process of nominations into conformity with the principles enshrined in the Constitution of the ILO. Further it recognized that consultations with sectors, other than just the textile sector, need to be broadened and it seeks to foster an environment for the creation of representative organizations following the eventual adoption of a democratic constitution that will reflect the aspirations of the citizens of Myanmar and recognize workers' rights. In the interim, it is willing to undertake further discussions with the International Labour Office for future improvements and is amenable to providing, at the time of its submission of credentials for the Conference, information relating to the nomination process so that the Credentials Committee has this information at its disposal at the earliest time possible.
- 40.** Since 1999, the Committee notes that it has been examining objections challenging the credentials of Workers' delegates of Myanmar to the Conference and, in each instance, the Credentials Committee has concluded that a proposal of invalidation is warranted. Despite this the Committee refrained from making such a proposal, as it trusted that the Government would undertake the steps necessary to follow its recommendations towards bringing the nomination process into conformity with article 3, paragraph 5, or, at least, article 3, paragraph 1, of the Constitution of the ILO. In particular, the Committee had refrained from proposing invalidation last year on the basis that the Government had committed itself to widening its consultations from 18 industrial zones to include workers from six additional industrial zones, and on the condition that the Government would move forward without delay to permit independent elections without government or management interference, and to extend its consultations to other categories of workers, such as the 80,000 people employed in the public sector or those that work in large enterprises located outside the industrial zones.

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41. The Committee notes that no such commitment has been honoured nor any of the other conditions met, with the exception of the effort that the Government, according to it, has made with respect to removing its interference from the election process. This year an additional question has been raised as to the capacity of the Workers' delegate on the basis of the information contained in the Myanmar Textile and Garment Directory (2001-02). Under these circumstances, the nomination is for the fifth consecutive year in flagrant violation of the Constitution of the ILO, as no progress whatsoever has been achieved towards greater representativeness. Consequently, the Committee concludes once again that the credentials of the Workers' delegate warrants invalidation, as she cannot be said to be a true representative of the workforce of the country and, thus, raised the question as to whether it is appropriate for her to be in the Workers' group.
 42. However, at the time that this report was adopted it had been communicated to the Committee that the credentials of the Workers' delegate had already been withdrawn by the Government of Myanmar in recognition of the fact that the nomination of the Workers' delegate still raises problems. Thus, the proposal to invalidate her credentials has become moot.
 43. For the future, if it is true, as the Government has stated, that there is the political will to move forward and to follow through with the commitment it has made to the Committee this year, in particular, to provide in the credentials form information pertaining to the manner and scope in which the nomination process is undertaken in accordance with its prior recommendations, such action would be welcomed by the Committee. Such information should include details concerning the industrial zones or sectors consulted, their proportion with respect to the workforce in the country as a whole, and the manner in which representatives are selected (by whom, under what circumstances, etc.). Otherwise, if the Government's actions fall short and, if the Committee receives an objection, it may propose invalidation next year in the early days of the Conference.

Objection concerning the nomination of the Workers' delegate of Oman

44. The International Confederation of Free Trade Unions (ICFTU) has submitted an objection challenging the nomination of the Workers' delegate of Oman. It states that, according to the provisional list of delegations, the Workers' delegate is from the Dhofar Al-Omani Al-Fransi Bank, without any indication of his title or his functions, which he carries out at the aforementioned bank. According to the available information, this individual does not occupy any elective function within a representative workers' organization, and he has not been designated by any organization of this nature so as to permit him to represent the workers of Oman at the Conference. The objecting organization recalls that the Committee has on previous occasions drawn attention to the strong link between freedom of association and the nomination of the Workers' delegation and the fact that such a link is in conformity with the spirit of the ILO's Constitution, as well as the fundamental principle of tripartism. In Oman, the law does not authorize workers to constitute trade unions nor permit them to affiliate themselves to same. Any person that does so can have their employment terminated without prior notice, be taken into custody or, if a migrant worker, be expelled from the country. The ICFTU deplores this position taken by the Government that is in direct violation of paragraphs 1 and 5, of article 3, of the ILO Constitution and seeks the invalidation of the credentials of the Workers' delegate of Oman.
45. In a written communication addressed to the Committee in response to its request, the Minister of Manpower explained that this year the Government of Oman had adopted a new Labour Code by virtue of Royal Decree No. 35/2003 in April 2003. In Chapter IX of this Code, it is stipulated that in each enterprise workers have the right to constitute a

committee that can represent their interests, defend their rights and represent them in any matters that may concern them. At the same time, these enterprise committees will designate a principal committee that can represent them at local, regional and international meetings and act in a manner similar to trade unions open to all workers.

46. The Minister of Manpower of Oman submits that Mr. Abdulazim Abbas Asadallah was nominated Workers' delegate in conformity with the provisions of the Constitution of the ILO. Mr. Asadallah had already been a member of the delegation of Oman at the 89th and 90th Sessions of the Conference that took place, respectively, in 2001 and 2002. At that time, he worked for a bank that was merged with the Dhofar Al-Omani Al-Fransi Bank as the Director of Human Resources. At the same time, Mr. Asadallah is the chairperson of the committee at his company and was designated by the personnel to be their representative at the Conference.
47. The Minister considers that the nomination is valid, since it has respected the principles of tripartism that are enshrined in the Constitution of the ILO. Further, the individual nominated is a worker according to the definition contained in national legislation. He represents one of the sectors that has the largest number of workers and his nomination took place following consultations in this sector.
48. Clarifications requested by the Committee were provided orally by Mr. Al-Abduwani, Adviser to the Minister of Manpower and Government adviser and substitute delegate to the Conference. The Government representative recalled that a new Labour Code had been adopted in Oman in April 2003, but conceded that due to its recent enactment the envisaged workers' enterprise committees and principal committee were not yet functioning. The envisaged workers' enterprise committees under the new Labour Code will be open to national and foreign workers alike (the latter representing almost 60 per cent of the workforce). For the purposes of the nomination of the Workers' delegate to the Conference, the new Labour Code requires consultations with the largest number of workers. This would be fulfilled through the establishment of workers' enterprise committees that would belong to a principal committee. Such principal committee will be conferred with functions and rights similar to those of trade unions, including the free election of their representatives to future sessions of the Conference. However, it was acknowledged by the Government that it would have to undertake promotional efforts as in Oman there exist many small enterprises that do not understand their role in this context.
49. According to the Government, this is a significant effort by it, in particular since 2000 when a similar objection was lodged. In this connection, it should be recalled that when Oman joined the ILO in 1994, the Constitution, as interpreted at the time, imposed no obligation on member States to have trade unions and article 3, paragraph 5, was therefore not applicable to Oman. The Sultanate's acceptance of the Constitution, thus, relied on its ability to abide at the time by the Constitution. The Government therefore considers that until such time as article 3, paragraph 5, will apply to the country, the Constitution only requires that the Workers' delegate be a worker and be as representative as possible of the workforce of the country having regard to its particular circumstances. Such is the case with the nomination of the members of the Workers' delegation this year. The Government identified the largest enterprises in the country in terms of employees and made sure that they covered the main sectors of the national economic activity, namely petroleum and oil refining, banking and ports. The selection process entailed the use of the works committees that existed under the previous Labour Code. The person nominated as Workers' delegate to the Conference is a true representative of the workers, as he is the head of the works committee of his enterprise and was freely elected to represent the workers by his peers.

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50. In response to a question posed by the Committee relating to a possible conflict of interest between the delegate's capacity within the company as Director of Human Resources and his role as defender of the interests of the workers, Mr. Al-Abduwani considered that there was no such possible conflict: the Workers' delegate is not a shareholder or owner of the bank where he works; he is in the best position to understand the needs of staff; and he was elected by the employees of his enterprise. The Government limited itself to endorsing the nominations made by the workers' representatives in the three companies consulted.
51. The Committee notes that despite the adoption of a new Labour Code, the process by which the Workers' delegate of Oman was nominated to this year's Conference does not differ from the one followed three years ago, except for the fact that, according to the Government, foreign workers could take part in the selection process. No significant progress can therefore be said to have been achieved, in reality, since 2000. Nor is the Committee satisfied that the nomination this year is in conformity with the provisions of article 3, paragraph 1, of the Constitution. On the one hand, the Committee has serious doubts that the person nominated this year can represent the interests of the workers while at the same time carry out management decisions issued by the employer, whilst director of human resources. On the other hand, even assuming that the nominees can represent the interests of Omani workers at the Conference, they would only represent a minimal proportion of the workforce in the country. Last, as regards the consultation process, nothing indicates that there have been true consultations between the works committees of the three companies approached by the Government or that the selection process within those committees was free of any pressure by management. The composition of the Workers' delegation would rather indicate that the nominees of each of the three companies consulted were directly appointed by the Government, with no discussion between them as to the one who could best represent the interests of the workers of the three sectors concerned. All these doubts indicate that the nomination of the Workers' delegate and advisers has been in violation of the obligations under article 3, paragraph 1, of the Constitution. However, trusting that the new mechanism put in place by the Government will be accompanied by a promotional campaign to ensure that it becomes effective for the nomination of the Workers' delegation as of next year, the Committee decides not to propose any further action.

Objection concerning the nomination of the Workers' delegation of Venezuela

52. The Credentials Committee has before it an objection challenging the nomination of the Workers' delegation of Venezuela submitted by the Confederación de Trabajadores de Venezuela (CTV) that was supported by the International Confederation of Free Trade Unions (ICFTU). The objecting organization submits that the nomination of the Workers' delegation of Venezuela has been made in flagrant contravention of the Constitution of the ILO, as well as the legal system of Venezuela.
53. In the first place, the CTV is incontestably the most representative workers' organization in the country. This is evidenced by the figures published by the National Electoral Council following the last trade union elections in 2001. Of the three main confederations in the country, CTV is comprised of 68 federations and counts with 1,976 affiliated trade unions, which is to say 68.37 per cent of the organized workers in the country. The other two, the Confederación General de Trabajadores (CGT) and the Confederación de Sindicatos Autónomos (CODESA) are comprised of, respectively, nine federations and 40 trade unions and five federations and 29 trade unions, which represents 1.39 per cent and 1.01 per cent of the organized workers. In the same vein, an opinion by the Supreme Court's Electoral Section, issued at the request of the Minister of Labour, confirmed on the eve of the 90th Session of the Conference (June 2002) the fact that the CTV was the most

representative workers' organization in the country and, as such, its leader had the right to be nominated Workers' delegate of Venezuela to the International Labour Conference.

- 54.** As has been the case for decades, this year the CTV had conveyed to the Government at the beginning of May the list of persons that the organization had designated to represent it in the Workers' delegation to the Conference. Notwithstanding, as also had occurred at the Fifteenth American Regional Meeting held in Lima in December 2002, the Government nominated the Workers' delegation without any type of consultation having taken place with the CTV. Further, the delegate actually nominated this year is from a recently formed trade union centre close to the Government and of his nine advisers, seven are from other smaller confederations in the country or from first and second tier trade unions. Only two advisers accredited by the Government are from CTV. Despite that, the Credentials Committee of the Fifteenth American Regional Meeting had objected to such actions, the Government has once again, knowingly, ignored its obligations with respect to the ILO. Consequently, the CTV has refused the nomination of its representatives and seeks the invalidation of the nomination of the Workers' delegation of Venezuela.
- 55.** In a written communication addressed to the Committee at its request, Messrs. Ricardo Dorado Cano Manuel, Director-General of Labour, and Rubén Darío Molina, Director of International Relations and Liaison with the ILO in the Ministry of Labour, both Government delegates to the Conference, describe in detail the trade union situation in the country.
- 56.** Venezuela is a country that has social pluralism as regards both employers' and workers' organizations. For decades, the representative trade union movement has been organized into four confederations and centres, CTV, CGT, CODESA and the Central Unitaria de Trabajadores de Venezuela (CUTV), as well as a number of non-confederated unions. A new centre emerged in early 2003 following dissidence within the CTV – the Unión Nacional de Trabajadores (UNETE), which acquired legal personality upon its registration on 2 May. This organization is mainly comprised of former trade unions and union leaders from the CTV, as the executive of the latter acknowledges.
- 57.** The most recent statistical data on the representative character of the various centres and confederations, which is available from the National Electoral Council, correspond to 2001 trade union elections, before CTV's membership split. Until then CTV had been the most representative workers' organization, with almost 850,000 members, representing 68 per cent of the trade union movement in the country. While there is no reliable data on membership and affiliation since CTV's split, the size of the unions that have since then affiliated themselves with UNETE would indicate that CTV and UNETE are, at present, the most representative organizations in Venezuela. In fact, both organizations wrote in early May to the Ministry of Labour claiming to be the most representative centre for the purposes of the nomination of the Workers' delegate to the 91st Session of the Conference.
- 58.** Since CTV was, until 2002, indisputably the most representative organization, it had been the practice of the Government to determine in agreement with CTV the nomination of the Workers' delegate and the advisers accompanying him. Any remaining post of adviser was distributed amongst the other trade union centres, in the spirit of plural participation.
- 59.** Against the new trade union situation in 2003, the Government sent on 19 May a convocation to a meeting to each of the two organizations that claimed for themselves the right to appoint the Workers' representative. The meeting, scheduled on 21 May, was aimed at obtaining from each centre the information necessary to determine their relative representative character and, if possible, an agreement between the two as to the composition of the delegation to the Conference. Present at the meeting were trade union

leaders of a number of federations affiliated to UNETE, but none from CTV, which only sent a lawyer to represent it. In a written communication from CTV's secretary-general, conveyed to the meeting through its lawyer, CTV claimed for itself the positions of Workers' delegate and all accompanying advisers, or to have the matter adjudicated by the competent bodies of the ILO. This demonstrated CTV's lack of willingness to enter into a constructive dialogue. Taken together with a number of prejudicial statements against public authorities and other trade union leaders, the Minister of Labour decided to enlarge the consultation process with all representative organizations through the convocation of a new meeting. This convocation was sent the same day, 21 May. The meeting was held on 23 May and representatives from UNETE, CGT, UNTV, CODESA and CUTV attended it. Yet again, no representative from CTV was present. In a spirit of consensus, the organizations themselves decided that two advisers would represent each of them at the Conference, including CTV. As regards the nomination of the Workers' delegate, a new series of consultations led to an agreement in the course of a meeting held on 26 May, from which CTV was once again absent.

- 60.** In the Government's view, such a position adopted by the objecting organization is totally unjustified, as past practice has it that the Workers' delegation to the Conference always included representatives from various centres with no objection being lodged by the CTV. For example, the delegation to the 89th Session of the Conference was comprised of a substitute delegate and an adviser from a non-confederated union; the substitute delegate even addressed the plenary in lieu of the delegate from CTV. Moreover, last year, at the 90th Session of the Conference, three leaders from unions that had contested the legitimacy of CTV's executive were appointed as advisers to the Workers' delegate, again without objection from CTV.
- 61.** The conflict over the legitimacy of CTV's leadership, from which the present contentious situation seems to arise, dates back to 2001, when the last elections to the CTV bureau were held. This conflict is still unresolved and the Government lacks any reliable information to determine who in fact are the legitimate representatives of the Confederation. Even though it has requested such information, so far without avail, including before the Committee on Freedom of Association in relation to a complaint lodged by CTV on grounds of alleged interference by the Government in the internal business of the confederation, the Government has remained neutral. For instance, when CTV's nominee as Workers' delegate to the Conference in 2002 was disputed, the Government decided to request an independent opinion from the judiciary, as referred to by the objecting organization. While the Government acted last year in conformity with the opinion it had sought, some of its considerations cannot be deemed to be valid indefinitely in light of the significant changes that have occurred since then. Similarly, in view of the conclusions reached by the Credentials Committee of the Fifteenth American Regional Meeting, also referred to in the objection, the Government has decided this year to consult the various workers' organizations so that they decide themselves, without interference, the composition of the Workers' delegation to the Conference.
- 62.** The Government therefore fails to understand the decision of CTV's secretary-general and his colleague not to accept their nomination within the Workers' delegation. It regrets that the situation could not be resolved through dialogue, in the same spirit of good will and consensus of which the CTV is capable, as evidenced by its participation in the recent "Agreement between the representatives of the Government of the Bolivarian Republic of Venezuela and the political and social groups supporting it, and the Coordinadora Democrática and the political and civil society organizations supporting it", signed on 29 May.

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- 63.** The Committee takes note of the information, documents, and arguments put forth by the Government in an effort to clarify the context in which the nomination process of the Workers' delegate of Venezuela was carried out this year. The Committee also notes other information that it had at its disposal and, in particular:
- conclusions from the mission report, describing direct contact in Venezuela from 6 to 10 May 2002;
 - Credentials Committee report from the Fifteenth American Regional Meeting, held in December 2002;
 - comments from the Committee of Experts on the Application of Conventions and Recommendations, contained in Report III (Part I) from the 91st Session of the Conference and pertaining to Venezuela's application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);
 - observations from the Committee on Freedom of Association from Case No. 2067, contained in its 330th Report (March 2003).
- 64.** The Government's main argument to justify the process followed this year lies in the emergence of a new representative trade union centre that emanated from CTV's split. A scission occurred within the most representative centre in a country could have been considered plausible in certain circumstances, but it is not in the context of Venezuela. In view of all the information available, the situation rather points to a strategy to weaken and progressively marginalize an independent trade union movement and to promote the creation or the strengthening of organizations more in tune with governmental policies. This is corroborated by a series of elements.
- 65.** According to the information provided by the Government, the CTV, for decades by far the most representative workers' organization in the country, traditionally presented on the eve of the annual sessions of the Conference or other international meetings the list of its representatives so that the Government could remit the delegations' credentials. Following previous practice, this year, the CTV sent at the beginning of May the list of its representatives. On the same day, UNETE was legally constituted. Notwithstanding, on 19 May 2003 (date by which according to article 26 of the Standing Orders of the Conference all countries should have deposited their credentials in Geneva), the Government convoked the UNETE and the CTV to a joint meeting with the pretext that in the two weeks that UNETE had existed it had demonstrated its representativeness even though it had not put forth any objective and verifiable data on its composition, affiliations or its achievements. As long as the Government cannot demonstrate the true reach of the UNETE vis-à-vis the CTV, it is obligated to abide by the objective data published by its own institutions and have the agreement of the most representative organization at the time that it nominates the Workers' delegation.
- 66.** In these circumstances, the late nature and precipitated manner in which the consultations of 19 May were convoked makes it difficult to satisfy the good faith basis that should characterize all efforts towards reaching agreement with the most representative organization, in conformity with article 3, paragraph 5, of the Constitution. Proof of this are the results of the meetings that took place on 21 and 26 May. Despite the indisputable minority character of all the organizations that participated, the equal distribution of two advisers to each of the five centres of the country resulted, totally disproportional with respect to their true representative importance and, in particular, for the CTV.

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67. The Committee cannot but agree with the pluralist spirit and participation expressed by the Government. However, that spirit cannot be imposed by the Government without it having obtained consent in advance, whether explicit or tacit, from the most representative organization. In fact, the proceedings from prior sessions of the Conference show that the Workers' delegations of Venezuela have included advisers from minority centres or non-confederated trade unions, without the CTV having opposed such inclusion.
68. As to the discord, which according to the Government affects since 2001 the executive organs of the CTV, the Committee has not found substantiation for this from the information it has at its disposal. At the same time, it does have at its disposal information that the introduction of legislative measures and practices are directed at interfering with freedom of organization within trade union centres. In the first place, it is worthwhile mentioning the incompatibility of certain constitutional and legislative provisions with the requirements of Convention No. 87, such as the limitation on the duration of the mandates of the members of the executive boards of these trade union organizations, or intervention of an institution controlled by the State in the organization of trade union elections. In respect to practical measures, it is sufficient to point out the Government's attitude of ignoring the leaders of the CTV, with the pretext that they lack legitimacy, but without any independent juridical authority having annulled their appointments, as was evident from the conclusions of the Credentials Committee at the Fifteenth American Regional Meeting.
69. The combination of these serious findings as to the manifest incompatibility of the nomination of the Workers' delegation with the provisions of article 3, paragraph 5, of the Constitution, together with the preoccupying doubts with respect to Venezuela's compliance with its conventional obligations would, in normal circumstances, have led the Committee to propose the invalidation of the credentials of the whole Workers' delegation of Venezuela. The Committee however does not wish to upset the delicate balance recently reached after years of a tense political and social climate and will not propose invalidation this year. At the same time, it trusts that the willingness manifested by the Government in its conclusions to safeguard the agreement reached with the opposition will be such as to guarantee that next year's nomination of the Workers' delegation recognizes the relative representativeness of the various trade union organizations in the country through a process that will cast no doubt as to its impartiality, transparency and predictability.

Objection concerning the nomination of the Employers' delegation of Venezuela

70. The Committee has received an objection regarding the composition of the Employers' delegation of Venezuela, from the Federación de Cámaras y Asociaciones de Comercio y Producción de Venezuela (FEDECAMARAS).
71. The objecting organization explains that it is the most representative employers' organization in Venezuela. In fact, it has represented the Venezuelan employers at different ILO meetings for over 50 years and its delegates and advisers have been traditionally nominated amongst its affiliates. However, this year, of the ten advisers ascribed to the delegate from FEDECAMARAS, five pertain to employers' organizations of minor importance or to newly constituted organizations without the Government having undertaken any type of consultation with FEDECAMARAS. This is a violation of article 3, paragraph 5, of the ILO Constitution, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). This intentional disregard on the part of the Government for its international obligations is no more than the result of its desire to purposefully discriminate against professional organizations that oppose its platform. Proof of this marginalization is the fact that of the two travel and subsistence

expenses allotted to the Employers' delegation, one has been ceded to an adviser from one of the employers' organizations of minor importance, thus limiting the most representative employers' organization's ability to follow fully the activities of the different committees at the Conference.

- 72.** In a written communication addressed to the Committee in response to its request, Messrs. Ricardo Dorado Cano-Manuel, Director-General of Labour, and Rubén Darío Molina, Director of International Relations and Liaison with the ILO in the Ministry of Labour, both Government delegates to the Conference, explained that Venezuela is a country that has social pluralism, as regards both employers' and workers' organizations. With reference to the former, during the last few decades there were two representative employers' centres: FEDECAMARAS, that regrouped employers' groups and organizations, not only in the primary sector, commerce and services, but also in the manufacturing sector; and the Federación de Artesanos, Micros, Pequeños y Medianos industriales de Venezuela (FEDEINDUSTRIA), created in 1970, that represents small and medium-sized enterprises and industry affiliates with up to 100 workers. Since 2000, new employers' organizations have emerged, in particular, micro-enterprise guilds, such as the Empresarios de Venezuela, commonly known as EMPREVEN, and the Confederación de Agricultores y Ganaderos de Venezuela (CONFAGEN). The creation of these associations has been encouraged by the Government, through its policy of strengthening small and medium-sized enterprises as a means of creating more stable and decent jobs, as enshrined in the Constitution of the Republic of Venezuela and national legislation.
- 73.** Although there are no statistical data with respect to the relative importance of the different employers' organizations, in that they are not subject to the same rigorous requirements of national registries as are workers' organizations, no one in the country disputes that, by its very nature, FEDECAMARAS, is the most representative employers' organization in the country. This is even despite the defection of affiliates to different organizations. Notwithstanding, the other three organizations are particularly active in the country, as demonstrated by their adhesion in February 2003 to a "Framework Agreement for the reactivation, production, preservation and creation of jobs and the recovery of consumption".
- 74.** Regarding the process followed this year for the purpose of nominating the Employers' delegation, the Ministry of Labour received a communication from FEDECAMARAS dated 15 May, which contained the names that it proposed for the nomination of the Employers' delegate and of five advisers. Thereafter, on 23 May, the other three employers' organization jointly requested to participate for the first time at the International Labour Conference. Account being taken of the late receipt of this request and the difficulty of carrying out consultations with FEDECAMARAS, in particular due to their delegate being out of the country, the Government convoked these three organizations to a meeting on 26 May. Since FEDECAMARAS had only sought the accreditation of five advisers (thus, another five remained available) and, in an effort to respect a balance with reference to the numerical composition of the Workers' delegation (comprised of ten advisers), the Government decided to accede to the request of the coalition led by FEDEINDUSTRIA and to nominate five of its representatives as additional advisers. On the one hand, the representatives designated by the coalition agreed to be bound by the instructions of the Employers' delegate and to coordinate with him their activities at the Conference. On the other hand, by the inclusion of representatives from all sectors of economic activity, the representativeness of the Employers' delegation would be significantly broadened, in consonance with pluralism. The Government considers that the participation of all organizations at the Conference is complementary and, thus, not exclusive, since it is not aware of any controversy between the different enterprise confederations.

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- 75.** With reference to the allegation regarding the payment of expenses, it is true that the Government had decided to cover the expenses of one of the FEDECAMARAS representatives and one from the coalition led by FEDEINDUSTRIA. However, this reflects the concern to assure equal and non-discriminatory treatment.
- 76.** As the Government had already stated in its reply to the objection challenging the credentials of the Workers' delegate, it would not make sense to attribute political motivations that could risk the results of the negotiating table that led to the signing of an agreement between the Government and the political opposition, of which FEDECAMARAS is part. Accordingly, the Government seeks that the Committee direct the interested organizations to bring up to date their registries so as to eliminate any doubt as to their respective importance, including, as may be necessary, with technical assistance from the Office. For its part, the Government is disposed to avoid similar situations in the future and, in particular, by convoking organizations with sufficient notice to meetings for the purpose of nominating representatives to future sessions of the Conference. This would permit the sufficient time necessary to undertake as many consultations as necessary, so as to overcome any differences that may emerge through dialogue and conciliation.
- 77.** As the Committee has similarly indicated with respect to the objection challenging the nomination of the Workers' delegation, the information and the arguments that have been laid out before it by the Government could have had some weight, had it not been for the broader context in which the objection has been lodged. Indeed, the willingness to assure as broad as possible representativeness of the social actors represented at the Conference is in itself praiseworthy, but the Committee considers that under the circumstances in which the Government has carried this out with respect to the Employers' delegation a series of doubts are raised over the purpose of the process followed this year.
- 78.** The Committee notes that FEDECAMARAS is by far, according to the Government itself, the most representative employers' organization in the country. For years, it has participated alone at the Conference, apparently without other confederations that have existed either since the 1970s or the more recent ones after 2000, having claimed a representative in the Employers' delegation or objected to the composition of the delegation to the Conference.
- 79.** The sudden request by these organizations to participate this year, only a week before the commencement of the Conference, after FEDECAMARAS had communicated the composition of the Employers' delegation to the Government, looks, at first glance, surprising. Upon examination of the arguments formulated in this respect by the Government, the situation becomes worrisome. It is clear that at no moment did the Government attempt to consult the most representative organizations with a view to obtaining an agreement regarding the nomination of the delegation, as is required by article 3, paragraph 5, of the Constitution of the ILO.
- 80.** On the one hand, the absence from the country of a representative of FEDECAMARAS, nominated as delegate, at the time that the coalition led by FEDEINDUSTRIA submitted its demand, is not convincing: the board of FEDECAMARAS is collegial and nothing impeded the Government from ascertaining whether they would agree to include representatives from other confederations in the delegation. If it would have been necessary to obtain the absent representative's point of view, the means to communicate do exist that would have permitted the Government to do so. On the other hand, the Government recognizes in its reply the efforts that it has made to promote the three minor centres, but there is no indication regarding its attitude towards the most representative one. Instead, it is well known that FEDECAMARAS plays a leadership role in the opposition to the Government.

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81. Further, the alleged equal treatment by the Government between FEDECAMARAS and FEDINDUSTRIA in respect of travel and subsistence costs is in complete contradiction to such a principle and has led to opposite results, in light of the well-known differences in their respective representativeness. The same disproportion is manifested in the number of advisers from FEDECAMARAS and the coalition led by FEDEINDUSTRIA, accredited by the Government.
82. These elements, taken together, and viewed from the perspective of similar actions being taken with respect to trade union movements that are in the political opposition, could well indicate that the nominating process followed this year constitutes a first step towards the progressive erosion of importance of the principal employers' organization in the country by favouring other employers' organizations and, thus, an interference incompatible with principles of freedom of association.
83. Although the manner in which the nomination process was applied was flawed, the Committee does not propose any particular action this year. It trusts however that the spirit of dialogue that was able to reach the signature of the agreement between the Government and its opposition, will prevail and that this will be translated next year into the nomination of an Employers' delegation without any possible suspicion of partiality.

Complaints

84. Following, are the six complaints that the Committee received during the present session of the Conference.

Complaints concerning the non-payment of expenses of the Employers' delegates of Bolivia, the Democratic Republic of the Congo and Peru

85. The Committee has received a complaint alleging the non-payment of any of the expenses of the Employers' delegate of the Democratic Republic of the Congo, as well as only partial payment of the subsistence expenses of the Employers' delegates of Bolivia and Peru, submitted on their behalf by the Employers' group of the Conference. According to the Employers' group, these situations are incompatible with the obligation laid down in article 13, paragraph 2(a), of the Constitution of the ILO. In the case of the Democratic Republic of the Congo, the situation was even more preoccupying as the Government delegation comprised 33 persons.
86. Despite the governments concerned having been requested to provide information regarding the allegations, the Committee had neither received any replies nor any information as to the reason for the absence of their replies. The Committee could, in the circumstances, imply that the allegations are totally accurate and conclude that a violation of the obligations contained in article 13, paragraph 2(a), of the Constitution had been committed.
87. However, in the case of Bolivia and Peru, the Committee noted that according to the form of credentials that each Government had submitted, respectively, on 3 June and 20 May, the full expenses of the whole delegation were stated to have been covered by the Government. The Committee therefore wishes to believe that such was the case.
88. Concerning the Employers' delegate of the Democratic Republic of the Congo, the Committee regretted that no information whatsoever had been provided by the Government as to the extent to which it had complied with its obligations under article 13,

paragraph 2(a). Nevertheless, the Committee noted that of the 33 Government representatives indeed accredited to the Conference, only two had registered, both from the country's foreign representation in Switzerland, and that a similar situation arose in the Employers' and Workers' delegation. Although the very minimum obligation under the Constitution is that all the expenses of a full tripartite delegation be borne by the Government for the whole duration of the Conference, to the extent that the Government has apparently incurred no direct expense even for its own delegation, the Committee will not request any particular course of action this year. It reminds the Government, however, that its nomination of one of the most sizeable delegations to the Conference is to no effect if such nominations cannot be fulfilled due to the lack of payment of the necessary expenses so as to guarantee the presence of two Government delegates, one Employers' delegate and one Workers' delegate.

Complaint concerning partial payment of the subsistence expenses of the Employers' delegate of Nepal

89. The Committee has examined a complaint submitted by the Employers' group of the Conference on behalf of the Employers' delegate of Nepal, alleging that his subsistence expenses had not been fully covered by the Government.
90. In a written communication addressed to the Committee in response to its request, Mr. Premnidhi Gyawali, Secretary of the Ministry of Labour and Transport Management, assured the Committee that the Government had provided for the payment of all the expenses of the whole tripartite delegation. The Ministry would however conduct an investigation into the circumstances that could have led to partial payment of the expenses of the Employers' delegate and, if required, correct the matter.
91. The Committee welcomed the willingness of the Government to have the matter solved, but hoped, having regard to its findings on a similar complaint lodged last year, that the Government will in the future make certain that prior to the commencement of the Conference that all subsistence expenses are at the disposal of the Employers' delegate.

Complaint concerning the non-payment of expenses of the Employers' delegate of Rwanda

92. The Committee has received a complaint alleging the non-payment of the travel and subsistence expenses of the Employers' delegate of Rwanda, which was submitted on his behalf by the Employers' group of the Conference.
93. In a written communication addressed to the Committee at its request, Ms. Angelina Muganza, Head of the delegation of Rwanda to the Conference, explains that, as is stated in the credentials form presented on 19 May to the International Labour Office, the Government has provided the Employer's delegate travel and subsistence expenses, even before the commencement of the Conference. Although the Government considers in the circumstances that the complaint is baseless, it would like the Employers' group to verify in future the accuracy of its allegations with the delegates concerned, so as to avoid unnecessary inconvenience and workload.
94. In a subsequent communication copied to the Committee by Mr. Bart Gasana, Employer's delegate of Rwanda to the Conference, he confirms that all his travel and subsistence expenses had actually been borne by the Government and that the complaint had been filed by mistake.

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95. Clarifications were sought from the Employers' group. It appears that the Employers' delegate of Rwanda had signed a questionnaire in which he had stated that not all his expenses were covered and agreeing to the group submitting a complaint on his behalf.
96. In view of the information at its disposal, the Committee concluded that the matter called for no intervention on its part.

Complaint concerning non-payment of expenses of the Employers' delegate of Venezuela

97. The Committee has examined a complaint submitted by the Employers' group of the Conference on behalf of the Employers' delegate of Venezuela. It was alleged that despite the promises made last year by the Government, no payment had yet been made this year to the Employers' delegate.
98. In a written communication addressed to the Committee in response to its request, the Government delegates of Venezuela to the Conference, recalling their reply in the context of the objection made against the nomination of the Employers' delegation to the Conference, stressed that provision had been made for the expenses of two members in the Employers' delegation, one from FEDECAMARAS and one from FEDEINDUSTRIA, to be borne by the Government. That information had already been furnished in the credentials form issued by the Government on 29 May 2003, whereby the Government had similarly treated the Workers' delegation. This is a significant effort in light of the financial circumstances of the national economy.
99. As regards the expenses of FEDECAMARAS' representative, the Government had sent, on 27 May 2003, a communication to that organization to the effect that the Employers' delegate should contact the Administration Directorate of the Ministry of Labour to have the amount corresponding to his travel and subsistence expenses paid.
100. The Committee has no reason to doubt that the Government will honour its obligation to pay the travel and subsistence expenses of the Employers' delegate. However, it wishes to recall its conclusion of last year, that the obligation under article 13, paragraph 2(a), of the Constitution of the ILO requires governments not only to bear the expenses necessary for a member State's tripartite delegation to be present in Geneva for the whole duration of the Conference, but to make sure that the necessary financial means are made available to the participants concerned sufficiently in advance. Yet again, this year the Government informed FEDECAMARAS only on 27 May that the amount corresponding to the travel and subsistence expenses of the Employers' delegate would be paid upon request, at a time when the Government knew (see paragraph 74 above) that the delegate had already travelled to Geneva.
101. For these reasons, the Committee is not satisfied that the Government has in the circumstances done its best to comply on time with its constitutional obligations. As to the Government's comments on the equality of treatment applied within the Employers' delegation, the Committee refers to its observations of the present report (see paragraph 81 above).

Communications

102. The Committee considered the following four communications, received since the publication of its second report on 10 June 2003.

Communications concerning the incomplete delegation of Mauritius

- 103.** The Committee has received two communications, one from the National Trade Unions Confederation of Mauritius (NTUC) and another from the Ministry of Labour of Mauritius concerning the reasons for the non-accreditation of a Workers' delegate within the delegation of Mauritius to the 91st Session of the International Labour Conference.
- 104.** According to NTUC, the Government had initially nominated Mr. T. Benydin, its president, as Workers' delegate to the Conference. However, following industrial action by the Union of Customs and Excise, of which Mr. Benydin is also the president, the Government decided to cancel his nomination. As a result, Mauritius has attended the Conference with an incomplete delegation.
- 105.** On its part, the Government informs that it had indeed initially nominated the president of NTUC, the most representative workers' organization in the country, as Workers' delegate to the Conference. Following a serious incident on 27 May, involving NTUC's president in a non-union capacity, and the subsequent initiation of disciplinary procedures against him, he informed the Ministry of Labour that he no longer intended to form part of the delegation of Mauritius to the Conference. The Government invited NTUC to appoint another representative to attend the Conference as Workers' delegate, but the Confederation declined. As a result, the Government approached thereafter the president of the Mauritius Trade Union Congress with a view to nominating him to the Workers' delegation. He also declined. This explains the incomplete character of the delegation of Mauritius to the present session of the Conference.
- 106.** The Committee has already indicated in its first report that all member States have an obligation, under article 3 of the Constitution, to send a full tripartite delegation to the Conference, and deplored on that occasion the number of incomplete delegations, including that of Mauritius. Against the contradictory information now made available to it, the Committee is in addition concerned about the true reasons for the absence of a Workers' delegate from the most representative workers' organization of Mauritius to the Conference. However, the Committee has no competence to entertain allegations relating to the incomplete nature of a delegation, and can therefore not investigate the matter any further. It has nevertheless requested in paragraphs 11 and 14 of its second report (*Provisional Record* No. 5C) the Governing Body of the ILO to consider proposals with a view to enabling the Committee to consider such matters in the future.

Communication concerning the composition of the delegation of the International Confederation of Free Trade Unions

- 107.** Despite the content of paragraph 49 of last year's third report of the Credentials Committee, it has received once again a communication challenging the inclusion of Mr. Maung-Maung, the secretary-general of the Federation of Trade Unions of Myanmar in the delegation of the International Confederation of Free Trade Unions (ICFTU), submitted by Mr. Soe Nyunt, Government delegate of Myanmar to the Conference.
- 108.** As this matter has been already raised before the Committee on the Application of Standards, and as the Credentials Committee has already elaborated on the rules and procedures of the Conference on two prior occasions, it calls for no further comment on its part.

**Communication concerning the imbalance between
the overall number of Employers' and Workers'
advisers accredited to the Conference**

- 109.** The Committee has received a communication from the Employers' group calling on it to urge governments to ensure a better balance between the number of advisers accredited to the Employers' and Workers' delegates, as well as between the number of advisers in the two non-governmental delegations in respect of whom the Government bears the expenses, as required by the Constitution of the ILO.
- 110.** The Committee shares the concerns raised by the Employers' group and therefore reiterates the considerations contained in paragraph 12 of its first report (*Provisional Record 5B*):

The Committee also notes that there is some imbalance between the number of advisers to the delegates of each group and, particularly, between the number of Employers' (334) and Workers' advisers (415). It once again urges governments to take greater account, when nominating delegations, of the proportions in their composition to the Conference as envisaged by paragraphs 1 and 2, of article 3 of the Constitution. The Committee further recalls the request contained in the resolution concerning the strengthening of tripartism in the overall activities of the International Labour Organization, adopted by the Conference at its 56th Session in 1971, and expresses the hope that governments will accord equal treatment to each of the groups when appointing advisers to their country's delegation to the Conference. The Committee recalls in this connection the obligation of Members under article 13, paragraph 2(a), of the Constitution, to pay the travelling and subsistence expenses of their delegates and advisers and trusts that this obligation will be respected for the whole duration of the Conference.

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- 111.** The Credentials Committee adopts this report unanimously. It submits it to the Conference in order that the Conference may take note of it.
- 112.** In addition, the Committee would like to stress its request of last year for an urgent consideration of additional and more effective means for the Conference to deal with credentials, in particular where such credentials lead to situations hindering the proper functioning of tripartism and the independence of the groups. This year, the Committee has again proposed, in paragraphs 11 and 14 of its second report, that the consideration of such additional means include the enlargement of its mandate to consider objections concerning incomplete delegations. The Committee therefore hopes that the Governing Body will be in a position to propose next year to the Conference the amendments or arrangements necessary to enforce those additional means.

Geneva, 16 June 2003.

(Signed) Mr. Jules Medenou Oni,
Chairperson.

Ms. Lucia Sasso Mazzufferi,
Mr. Ulf Edström.
