Reports of the Governing Body Committee on Freedom of Association (123rd, 124th, 125th)

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¹ For communications relating to the 23rd and 27th Reports see Official Bulletin, Vol. XLIII, 1960, No. 3.
² The letter S, followed as appropriate by a roman numeral, indicates a supplement.
INTRODUCTION

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 22 February 1971, under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body. The member of the Committee of Belgian nationality was not present during its examination of the case relating to Belgium (Case No. 655).

2. In accordance with the procedure laid down in paragraph 12 of its 29th Report, as amended by paragraph 5 of its 43rd Report, the Committee recommends the Governing Body to examine the present report at its 183rd Session.

3. The Committee considered fifteen cases in which the complaints had been communicated to the Governments concerned for their observations, namely the cases relating to Peru (Case No. 614), Turkey (Case No. 631), Argentina (Case No. 633), Spain (Case No. 637), the United States (Case No. 639), Colombia (Case No. 641), the United Kingdom (British Honduras) (Case No. 642), Colombia (Case No. 643), Costa Rica (Case No. 646), the United Kingdom (Saint Vincent) (Case No. 648), El Salvador (Case No. 649), Argentina (Case No. 651), the Philippines (Case No. 652), Portugal (Case No. 654) and Belgium (Case No. 655).

Cases the Examination of Which the Committee Has Adjourned

4. The Committee adjourned until its next session its examination of the cases relating to Spain (Case No. 637), Colombia (Case No. 641), the United Kingdom (British Honduras) (Case No. 642), Costa Rica (Case No. 646), the United Kingdom (Saint Vincent) (Case No. 648), El Salvador (Case No. 649), Argentina (Case No. 651), Portugal (Case No. 654) and Belgium (Case No. 655), concerning which it is still awaiting information or observa-

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1 Earlier reports have been published as indicated in the table opposite.

2 The 123rd Report of the Committee on Freedom of Association was examined and approved by the Governing Body at its 183rd Session (May-June 1971).
tions requested from or promised by the Governments in question. As regards the case relating to the United Kingdom (British Honduras) (Case No. 642), the Committee has taken note of the communication from the Government indicating that the matter in question is under examination by the competent national authorities and that the information requested will be transmitted to the Committee as soon as possible.

5. As regards the case relating to Turkey (Case No. 631) the Committee decided to ask both the Government and the complainants for further information on certain points. As regards the case relating to Colombia (Case No. 643) the Committee decided to ask the Government for further information. The Committee has adjourned its examination of both these cases.

6. The Committee also decided to adjourn its examination of the case relating to the Philippines (Case No. 652).

Cases in Which the Committee Submits Its Conclusions to the Governing Body

7. In the present report the Committee submits for the approval of the Governing Body the conclusions which it has now reached concerning the remaining cases before it, namely the cases relating to Peru (Case No. 614), Argentina (Case No. 633) and the United States (Case No. 639). These conclusions may briefly be summarised as follows:

(a) the Committee recommends that, for the reasons indicated in paragraphs 8 to 15 of the present report, the case relating to the United States (Case No. 639) should be dismissed as not calling for further examination;

(b) with regard to the case relating to Peru (Case No. 614), the Committee, for the reasons indicated in paragraphs 16 to 37 of the present report, has reached certain conclusions, to which it wishes to draw the attention of the Governing Body;

(c) with regard to the case relating to Argentina (Case No. 633), the Committee, for the reasons indicated in paragraphs 38 to 52 of the present report, has presented an interim report containing certain conclusions to which it wishes to draw the attention of the Governing Body.

Cases Which the Committee Considers Do Not Call for Further Examination

Case No. 639

Complaint Submitted by the World Confederation of Labour against the Government of the United States

8. The complaint by the World Confederation of Labour is contained in a communication dated 5 August 1970 addressed direct to the ILO. The complaint was transmitted to the Government, which sent its observations in a communication dated 7 January 1971.

9. The United States has not ratified the Right of Association (Agriculture) Convention, 1921 (No. 11), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

10. The complainants state that the United Farm Workers, which is an association grouping the agricultural labour of the state of California, informed them that a large number of farm workers engaged in the cultivation and harvesting of California grapes had been on strike for four years, adding that this strike “has been legally registered with the Federal Department of Labor”.

11. The complainants allege that the reason for this strike is that the farm workers in the United States are excluded from the National Labor Relations Act, which grants industrial
workers "the right to elect their representatives and to be recognised for the purposes of collective bargaining". This law, which does not cover agricultural workers, provides that workers shall have the right to choose the union which is to represent them for the purposes of collective bargaining and that this union, once certified as the bargaining agent of the workers concerned, shall be recognised by the employer.

12. According to the complainants, the owners of the vineyards relied on the fact that this Act does not apply to agricultural workers in refusing systematically to recognise the agricultural workers' trade union organisation and have rejected any proposal for talks with the workers' representatives.

13. The complainants allege that the workers in question wanted "to have a contract that will guarantee minimum occupational health conditions, and regulations to control the unrestricted use of pesticides involving exposure to incurable diseases, and to receive decent wages for a proper livelihood and stable and safe employment".

14. In its observations the Government states that the strike mentioned by the complainants has ended and that the dispute has been settled. It reports that the United Farm Workers has signed agreements with over thirty owners of vineyards.

15. In these circumstances, since the dispute mentioned in the complaint appears no longer to exist, the Committee, considering that it would be pointless for it to pursue the matter, recommends the Governing Body to decide that the case calls for no further examination on its part.

DEFINITIVE CONCLUSIONS IN THE CASE RELATING TO PERU (CASE NO. 614)

Case No. 614

Complaint Submitted by the Workers' Confederation of Peru against the Government of Peru

16. By means of a direct communication to the ILO dated 19 November 1969, the Workers' Confederation of Peru transmitted a complaint by the Federation of Peruvian Bank Employees.

17. The complaint was communicated to the Government for its observations, which were received in a communication dated 18 March 1970. After examining this case at its meeting in May 1970, the Committee decided to obtain certain additional information from the Government with a view to formulating its conclusions. This information was supplied to the ILO on 1 December 1970.

18. Peru has ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

19. The complainants allege that during the course of the negotiation and settlement of the most recent set of collective claims advanced by the Federation of Peruvian Bank Employees, the Peruvian labour authorities took action affecting collective bargaining and violating the provisions of Convention No. 98.

20. The complainants first of all describe the procedure provided by Peruvian law for the settlement of workers' collective claims for wage increases or improvements in working conditions. There are three principal stages:

(a) direct negotiation between workers and employers;
(b) in the event of direct negotiations breaking down the claims are discussed before a conciliation board presided over by an official of the labour administration;
(c) if both parties agree the claims may be settled by way of arbitration; if not the claims will be settled by the labour administration. Further, a Presidential Decree of 4 July 1966 provides that “claims concerning wage increases and conditions of work may be submitted thirty days before the expiry of the period fixed by agreement or by law for previous wage increases to apply. In such cases, any agreements reached by the parties shall come into force upon the expiry of the current agreements”.

21. The complainants state that, in the present case, it was on the basis of this latter enactment that, on 20 May 1969, they submitted to the Banks of Peru their file of collective claims, which were to come into force on 1 June of that year since the agreement reached in respect of the previous claims was due to expire on 31 May 1969.

22. The complainants allege, however, that these claims were not dealt with in accordance with the legal provisions governing collective bargaining. Thus at the stage of direct negotiations the banks adopted a totally obstructionist attitude quite incompatible with their obligation to co-operate in finding a settlement by suggesting bases for agreement. Again during the conciliation stage their failure to discuss all the points raised in the claims flew right in the face of a decision of the Administration Division of 23 July 1969 that “the parties must be informed that both during direct negotiation as well as before the Conciliation Board, all points of claims must be discussed; likewise account must be taken of the Presidential Decree of 1954” (which obliges both parties—especially the employers—to co-operate in settling collective claims).

23. The complainants allege, moreover, that in a manner quite incompatible with its professed policy of “supporting and encouraging the principle of collective bargaining as the most suitable means of reconciling the interests of both employers and workers” the labour administration arbitrarily cut short the proceedings of the Conciliation Board on the grounds that it had failed—thereby ensuring that it did fail. Moreover, when, immediately after halting the proceedings of the Conciliation Board, the labour administration pronounced on the claims, it did so by decreeing a general rise of 600 soles a month for a period of eighteen months from 1 July 1969 instead of a period of one year as is customary and as had been agreed with the banks for many years and ratified by administrative provisions—in particular, by Resolution No. 251 RT dated 8 November 1966. This Resolution lays down in clause 8 that “advantages acquired through previous agreements shall remain in force, provided that they are not mentioned in the present claims. Banks which grant greater advantages than those sought, or which grant advantages in settlement of these claims, may neither reduce nor withdraw such advantages”.

24. The complainants further allege that in fixing a period of eighteen months instead of the twelve months provided for under collective agreements and custom, the labour administration has acted in contempt of collective bargaining, of Convention No. 98 and of statutory provisions and its own previous practice in affairs of this nature.

25. The Government in its observations states that the allegations of the complainants are unfounded since the decisions of the Directorate General of Labour on the subject of the collective demands of the Federation of Peruvian Bank Employees were taken in accordance with the substantive and procedural rules governing such demands. According to the Government, collective disputes are the subject of a series of legal provisions (some of which were cited by the complainants in the second part of their allegations), which the labour administration has strictly observed. More particularly, Presidential Decrees of 30 May 1939 and 11 January 1942 provide that when conciliation proceedings are under way as a result of a collective dispute or any other dispute affecting the interests of the workers, the two sides shall abstain from taking any action detrimental to the interests of the other and from illegal activities such as lockouts, go-slow, strikes and collective stoppages of work whatever their purpose. The bank employees failed to observe these regulations and repeatedly interrupted their labours; a fact which, as is public knowledge, affected the normal functioning of the banking system in the country. As a consequence the labour administration was legally
obliged under the Presidential Decree of 23 March 1936 to declare that the Conciliation Board had failed. The Government goes on to state that by virtue of this Decree the Peruvian labour administration has the power to declare that conciliation has failed whenever the dispute is of such a nature or has arisen in such a manner as to render it impossible.

26. As regards the allegation that the labour administration was at fault in fixing the new wage scale for eighteen instead of the usual twelve months, the Government states that the increase of 600 soles a month amounted to an increase of some 11.2 per cent over the previous rate, whereas the increase in the cost-of-living index during the preceding year had been only 3.8 per cent. In view of the magnitude of the increase it was felt to be only reasonable and equitable that it should be binding over a longer period than the normal twelve months. In adopting this procedure, the Peruvian labour administration was acting quite correctly since the refusal of the parties to go to arbitration and their submission of the matter to the decision of the labour administration entail binding acceptance of its recommendations as is provided in Presidential Resolution No. 2 DS of 17 September 1957. The intervention of the Peruvian labour administration in the affair, which constitutes the subject-matter of the present complaint, was therefore in strict accordance with the legal provisions governing the consideration and settlement of collective disputes in Peru (inter alia, the provisions of ILO Convention No. 98 which forms part of the Law of the Republic). Moreover, its decisions were taken in pursuance of powers granted under Presidential Decree No. 36 DT of 31 August 1957.

27. The Committee notes that the Government makes no reply to the allegations concerning the attitude adopted by the employers in the course of the proceedings. With regard to the termination of the conciliation proceedings the Government refers to national legislation which provides that during the course of these proceedings both parties shall refrain from taking action detrimental to the interests of the other party; and states that, in the present case, the workers by repeatedly stopping work acted in breach of this legislation. The Government further makes reference to certain provisions of national legislation which empower the Peruvian labour administration to declare that conciliation has broken down whenever the dispute is of such a nature or has arisen in such a manner as to render it impossible. The Government states that it was because of the stoppages of work that the labour administration terminated the conciliation proceedings. As regards the decision of the labour administration to give a general wage increase of 600 soles a month for a period six months longer than the period agreed in previous collective agreements, the Government states that this measure was justified by the fact that it was a particularly large increase compared with the rise in the cost-of-living index over the past year.

28. Regarding the allegations concerning the attitude adopted by the employers during the direct negotiation and conciliation stages the Committee observes that Peruvian legislation provides that employers shall co-operate in finding a settlement to a set of collective claims put forward by the workers and shall discuss all points raised therein.

29. The Committee asked the Government for additional information showing whether restrictions on strikes during the course of conciliation continue to be applied after the labour authority has given its decision in the case of a collective dispute. In its reply the Government states that the right to strike is not restricted; nevertheless, it also mentions that measures adopted by the labour authority during the course of the proceedings relating to collective claims in order to prevent attitudes prejudicial to the interests of the other party are kept in operation subsequently only in cases where the workers’ side prolongs the dispute notwithstanding the settlement of the matter by the authority, in lieu of the arbitrator. It would therefore appear that the workers may not strike in support of their claims once the labour authority has adopted a decision regarding the questions at issue.

30. This conclusion is also suggested by Decree No. 009 of 1963 concerning the settlement of labour disputes, which the Committee has examined and under which,
following the breakdown of direct negotiation and conciliation, the dispute, if the parties do not consent to submit it to arbitration, has to be settled by the labour authorities specified therein.

31. From this it appears that under the law, the claims advanced by the Federation of Peruvian Bank Employees had to be settled by binding decision of the labour authority after the breakdown of conciliation and the refusal to go to voluntary arbitration. This means that the Federation was not entitled to declare a strike during the conciliation proceedings and, as seen above, that it was not entitled either to have recourse to a strike after the authority had reached its decision on the claims advanced.

32. The Committee has always applied the principle that questions relating to the right to strike are not outside its competence in so far as they affect the exercise of trade union rights. In doing so it has pointed out that the right of workers and their organisations to strike as a legitimate means of defending their occupational interests is generally recognised.

33. With regard to the decision of the labour authority to declare the conciliation proceedings concluded owing to the stoppage of work during those proceedings, the Committee recalls that it has in many cases in the past observed that, although the right of workers and their organisations to strike as a legitimate means of defending their occupational interests is generally recognised, this right may be subject to temporary restrictions, such as the suspension of strikes during conciliation and arbitration proceedings in which the parties can take part at every stage. In doing so, the Committee has stressed that when restrictions of this kind are placed on the exercise of the right to strike, the ensuing conciliation and arbitration proceedings should be adequate, impartial and speedy.

34. With regard to the binding settlement of disputes by decision or arbitration given by the labour authority, the Committee recalls that although it has stated in previous cases that, where strikes are prohibited or are subject to restrictions, the workers should enjoy adequate, impartial and speedy conciliation and arbitration procedures in order to protect their interests, it has also pointed out that such principles do not apply to the absolute prohibition of the right to strike but to the restriction of that right in the essential services or in the civil service, in which case adequate guarantees should be provided to safeguard the interests of the workers.

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1 See 28th Report, Case No. 143 (Spain), para. 109, Cases Nos. 141, 153 and 154 (Chile), para. 202, and Case No. 169 (Turkey), para. 297; 47th Report, Case No. 143 (Spain), para. 66; 58th Report, Case No. 221 (United Kingdom - Aden), para. 109; 65th Report, Case No. 266 (Portugal), para. 77; 66th Report, Case No. 294 (Spain), para. 481; 71st Report, Case No. 273 (Argentina), para. 67; 72nd Report, Case No. 211 (Canada), para. 27; 78th Report, Case No. 364 (Ecuador), para. 79; 83rd Report, Case No. 399 (Argentina), para. 293; 86th Report, Case No. 430 (United States - Puerto Rico), para. 48; 104th Report, Case No. 493 (India), para. 73; 118th Report, Cases Nos. 589 and 594 (India), para. 59.

2 See Fourth Report, Case No. 5 (India), paras. 18-51; 12th Report, Case No. 60 (Japan), paras. 10-83; 28th Report, Cases Nos. 141, 153 and 154 (Chile), para. 202; 30th Report, Case No. 167 (Honduras), para. 76, Case No. 181 (Ecuador), para. 94, Case No. 143 (Spain), para. 130, and Case No. 172 (Argentina), para. 178; 58th Report, Case No. 192 (Argentina), para. 447; 63rd Report, Case No. 266 (Portugal), para. 77; 68th Report, Case No. 294 (Spain), para. 137; 78th Report, Case No. 364 (Ecuador), para. 79; 83rd Report, Case No. 399 (Argentina), para. 293; 86th Report, Case No. 430 (United States - Puerto Rico), para. 48; 104th Report, Case No. 493 (India), para. 73; 118th Report, Cases Nos. 589 and 594 (India), para. 59.

3 See First Report, Case No. 32 (United Kingdom - Uganda), paras. 87-92; Fourth Report, Case No. 29 (United Kingdom - Kenya), paras. 137-139; Sixth Report, Case No. 11 (Brazil), para. 75, Case No. 47 (India), paras. 704-736, and Case No. 50 (Turkey), paras. 814-860; 12th Report, Case No. 60 (Japan), paras. 10-83; 22nd Report, Case No. 148 (Poland), para. 100; 23rd Report, Case No. 111 (USSR), para. 226; 25th Report, Case No. 151 (Dominican Republic), para. 305; 30th Report, Case No. 172 (Argentina), para. 179; 45th Report, Case No. 212 (United States), para. 80; 58th Report, Case No. 221 (United Kingdom - Aden), para. 111; 92nd Report, Case No. 454 (Honduras), para. 196; 99th Report, Case No. 506 (Liberia), para. 89.

4 See 25th Report, Case No. 151 (Dominican Republic), para. 305; 58th Report, Case No. 221 (United Kingdom - Aden), para. 111; 66th Report, Case No. 294 (Spain), para. 481; 92nd Report, Case No. 454 (Honduras), para. 186; 99th Report, Case No. 506 (Liberia), para. 89.

5 See 76th Report, Case No. 294 (Spain), paras. 284 and 285; 78th Report, Case No. 411 (Dominican Republic), para. 224; 99th Report, Case No. 490 (Colombia), para. 39.
35. The Committee observes that in Peru binding arbitration on the part of the labour authority if a dispute is not settled by other means is part of the general procedure applicable to collective disputes. The Committee believes that this system may result in a considerable restriction of the right of workers' organisations to organise their activities and may indirectly entail an absolute prohibition of strikes, contrary to the principles generally recognised in regard to freedom of association.

36. The Committee notes the Government's declaration that there are no measures restricting the right to strike but it also observes that there are legal provisions which would appear to result in voiding the lawful exercise of this right.

37. In these circumstances, the Committee recommends the Governing Body—
(a) to point out to the Government that the system for the settlement of collective disputes as laid down by law may result in a considerable restriction of the right of workers' organisations to organise their activities and indirectly impose an absolute prohibition of strikes, contrary to the principles generally recognised in regard to freedom of association;
(b) to restate the principle that the right to strike may be subject to temporary restriction such as the suspension of strikes during conciliation and arbitrary proceedings, which should be adequate, impartial and speedy and allow either party to act at every stage;
(c) to draw the Government's attention to the desirability of re-examining the legislation with a view to clarifying the legal situation in this regard in the light of the above considerations, keeping the Committee of Experts on the Application of Conventions and Recommendations duly informed.

INTERIM CONCLUSIONS IN THE CASE RELATING TO ARGENTINA (CASE NO. 633)

Case No. 633
Complaint Presented by the Trade Unions International of Chemical, Oil and Allied Workers against the Government of Argentina

38. The complaint of the Trade Unions International of Chemical, Oil and Allied Workers is contained in a communication dated 17 June 1970. It was brought to the attention of the Government, which forwarded its observations by a communication dated 30 October 1970.

39. Argentina has ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

40. The complainants begin by referring to an earlier complaint examined by the Committee, which related to the taking over by the Government, ordered in January 1968, of the Argentine Federation of Chemical and Allied Workers. The Committee recommended the Governing Body in connection with that case "to take note of the Government's statement that it intends to restore the trade union organisation in question to normal as soon as possible".

41. The complainants go on to say that no action has been taken to this effect, and that the authorities have forcibly handed over the management of the Federation to pro-government collaborators. The General Secretary of the Federation, who had been arrested in July 1969, was released only after mass demonstrations and a strike. According to the complaint, the leaders imposed upon the Federation by the authorities organised rigged elections at the end of November 1969. The electoral committee, composed of people who had no connection with the Federation, displayed no list of candidates and even refused to allow the ballot boxes to be kept on the Federation's premises as was customary. In view of

\(^1\) See 109th Report, Case No. 552 (Argentina), paras. 79-87.
these facts, allege the complainants, the Federation's members abstained from voting in large numbers.

42. The complaint concludes with the statement that the last collective agreement was signed on behalf of the Federation by government officials.

43. In its reply the Government, referring to the General Secretary of the Federation, mentioned above, declares that he was arrested on account of activities presumed to be of subversive nature, and subsequently released.

44. As regards the elections held within the Federation, the Government states that there was no electoral committee and that no allegations were made of electoral fraud. The controller in charge of the taking over of the organisation, an official of the Secretariat of State for Labour, called for elections on 19 February 1970, and at the Congress held a month later the Federation's new leaders were elected. They took office on 30 March 1970. A single list of candidates was submitted to the Congress, and obtained 38 votes from the 41 delegates present.

45. As concerns the collective agreement to which the complainants refer, the Government explains that under Decree No. 4686/69 a timetable was laid down for the renewal of collective agreements, that for the chemical industries being due for renewal in December 1969. Since at that time the Federation was under government control, the Secretary of State for Labour designated the controller and two other persons to negotiate on its behalf, since otherwise the agreement in force would have been renewed without any possibility of securing better working conditions.

46. The Committee observes that the procedure whereby the leaders of the Federation were elected did not reach its culmination until two years after the taking over of this organisation by the public authorities, with the result that when the time came for the renewal of the collective agreement (towards the end of this period), the workers' representatives had to be designated by the Secretariat of State for Labour, and included the controller himself—an official of the Secretariat. The Committee considers it necessary to emphasise in this respect the importance it attaches to the principle contained in Article 3 of Convention No. 87, which lays down that workers' and employers' organisations shall have the right to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes, and that the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

47. As regards the elections held within the Federation, the Committee takes note of the Government's observation to the effect that no allegations of electoral fraud were made at the time. The Committee has pointed out on many occasions that, while in view of the nature of its responsibilities it cannot consider itself bound by any rule that national procedures of redress must be exhausted, such as applies, for instance, to international claims tribunals, it must have regard in examining the merits of a case, to the fact that a national remedy before an independent tribunal whose procedure offers appropriate guarantees has not been pursued.1

48. The Committee observes that in their account of the events in question the complainants refer to what appear to have been primary elections held in November 1969 for the purpose of electing delegates to the Congress which was to have the actual task of electing the leaders of the Federation. The Government supplies certain details about this Congress, but apart from stating that there was no electoral committee, it makes no comment upon the remaining assertions of the complainants with regard to these primary elections, which concern alleged irregularities in regard to the displaying of a list of candidates and the custody of the ballot boxes.

1 See 14th Report, Case No. 88 (France-Sudan), para. 30; 27th Report, Case No. 163 (Burma), para. 51; 30th Report, Case No. 171 (Canada), para. 42; 33rd Report, Case No. 189 (Honduras), para. 37; 60th Report, Case No. 234 (Greece), paras. 89-90; 78th Report, Case No. 294 (Spain), paras. 136.
49. It would appear from certain leaflets of which copies have been supplied to the Committee by the complainants that the group of trade unionists ousted as a result of the takeover hold the takeover responsible, in particular, for the following facts: the fact that the rolls listing the names and other particulars of the electors were not made available to those on the officially authorised lists of candidates, the fact that the ballot boxes were not allowed to be kept on the Federation's premises, the fact that the persons on the officially authorised lists of candidates were not permitted to be on the electoral committee (or board), and the fact that no announcement was made stating when and where the voting was to take place. Accordingly, the group of trade unionists in question announced the withdrawal of their list of candidates and urged the workers to boycott the election.

50. The Committee recalls Decree No. 969 of 1966, which was apparently in force at the time of the elections, and which contains certain provisions relevant to some of the points raised by the complainants. Section 6 of the Decree lays down certain rules with regard to elections, which must be embodied in the by-laws of trade unions. As concerns electoral rolls, section 6(d) stipulates that they must be made available to members and to the candidates for office not less than 30 days prior to the date of the election. As for the places where votes may be cast, section 6(b) states that they must be specified in the notice of election and may not be changed.

51. In order to be in possession of sufficient evidence on which to base its conclusions in regard to this case, the Committee would like to have the Government's observations and comments on the points mentioned in the two preceding paragraphs.

52. In these circumstances, with regard to the case as a whole, the Committee recommends the Governing Body—

(a) to draw attention to the importance it attaches to the principle contained in Article 3 of Convention No. 87, which lays down that workers' and employers' organisations shall have the right to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes, and that the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof;

(b) to request the Government to be good enough to supply information concerning the administrative and judicial avenues which were open to the trade unionists involved in the present case enabling them to appeal against the decisions of the controller concerning the elections in question;

(c) to request the Government to be good enough to forward its observations and comments on the points mentioned in paragraphs 49 and 50 above;

(d) to take note of the present interim report, on the understanding that the Committee will report again as soon as it is in possession of the information, observations and comments to which reference is made in this paragraph.

Geneva, 25 February 1971

(Signed) Roberto Ago, Chairman.
INTRODUCTION

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 25 May 1971 under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body. The members of the Committee of United States, Brazilian, Ecuadorian, Indian and Mexican nationality were not present during its examination of the cases relating to the United States (Cases Nos. 580 and 627), Brazil (Cases Nos. 385, 554 and 632), Ecuador (Case No. 645), India (Case No. 608), and Mexico (Cases Nos. 492 and 603) respectively.

2. In accordance with the procedure laid down in paragraph 12 of its 29th Report, as amended by paragraph 5 of its 43rd Report, the Committee recommends the Governing Body to examine the present report at its 183rd Session.  

3. The Committee examined: (a) thirty-nine cases in which the complaints had been communicated to the Governments concerned for their observations, namely the cases relating to Brazil (Case No. 385), Guatemala (Case No. 396), Japan (Case No. 398), Paraguay (Case No. 439), Bolivia (Cases Nos. 451, 456 and 526), Mexico (Case No. 492), Colombia (Case No. 514), Spain (Cases Nos. 520 and 540), Panama (Case No. 531), Brazil (Case No. 554), Chad (Case No. 569), Bolivia (Cases Nos. 571 and 573), United States (Case No. 580), Senegal (Case No. 591), Guyana (Case No. 602), Mexico (Case No. 603), Paraguay (Case No. 606), India (Case No. 608), Spain (Case No. 612), Guatemala (Case No. 626), United States (Case No. 627), Nicaragua (Case No. 629), Brazil (Case No. 632), Costa Rica (Case No. 635), Lesotho (Case No. 638), Mali (Case No. 644), Portugal (Case No. 647), El Salvador (Case No. 650), Argentina (Case No. 653), Spain (Cases Nos. 657 and 658), Guatemala (Case No. 659), Mauritania (Case No. 660), Paraguay (Case No. 663), and Colombia (Case No. 664); (b) one complaint relating to Ecuador (Case No. 645), and one complaint relating to Argentina (Case No. 656), as well as one further complaint relating to Mexico (Case No. 492), one further complaint relating to El Salvador (Case No. 650) and ten further complaints relating to Guatemala (Case No. 659), which were submitted to the Committee for its opinion.

Cases the Examination of Which the Committee Has Adjourned

4. The Committee adjourned until its next session its examination of the cases relating to Brazil (Case No. 385), Guatemala (Case No. 396), Paraguay (Case No. 439), Colombia (Case No. 514), Brazil (Case No. 554), Bolivia (Case No. 573), United States (Case No. 580), Mexico (Case No. 603), Paraguay (Case No. 606), India (Case No. 608), Spain (Case No. 612), Guatemala (Case No. 626), United States (Case No. 627), Brazil (Case No. 632), Costa Rica (Case No. 635), Lesotho (Case No. 638), Mali (Case No. 644), Portugal (Case No. 647), Argentina (Case No. 653), Spain (Case No. 657), Guatemala (Case No. 659), Mauritania (Case No. 660) and Paraguay (Case No. 663), concerning which it is still awaiting information or observations requested from, or promised by, the Governments in question. As regards the case relating to Paraguay (Case No. 439), the Committee has taken

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1 See footnote 1, p. 1.
2 The 124th Report of the Committee on Freedom of Association was examined and approved by the Governing Body at its 183rd Session (May-June 1971).
note of a communication from the Government indicating that the matter in question is under examination by the competent national authorities.

5. The Committee also adjourned its examination of the cases relating to Spain (Cases Nos. 520 and 540), El Salvador (Case No. 650) and Spain (Case No. 658), concerning which the observations of the Government arrived too late to permit examination of the substance of the case. Finally, the Committee adjourned its examination of the case relating to Senegal (Case No. 591).

Cases in Which the Committee Submits Its Conclusions to the Governing Body

6. In the present report, the Committee submits for the approval of the Governing Body the conclusions which it has now reached concerning the remaining cases before it, namely the cases relating to Japan (Case No. 398), Bolivia (Cases Nos. 451, 456 and 526), Mexico (Case No. 492), Panama (Case No. 531), Chad (Case No. 569), Bolivia (Case No. 571), Guyana (Case No. 602), Nicaragua (Case No. 629), and Colombia (Case No. 664), as well as the complaints relating to Ecuador (Case No. 645), Argentina (Case No. 656), and the further complaints relating to Mexico (Case No. 492), El Salvador (Case No. 650) and Guatemala (Case No. 659), which were submitted to the Committee for its opinion. These conclusions may briefly be summarised as follows:

(a) the Committee recommends that the further complaints relating to Mexico (Case No. 492), El Salvador (Case No. 650) and Guatemala (Case No. 659) should, for the reasons indicated in paragraphs 7 to 11 of the present report, be dismissed as irreceivable under the procedure in force without being communicated to the Governments concerned;

(b) the Committee recommends that, for the reasons indicated in paragraphs 12 to 20 of the present report, the complaints relating to Ecuador (Case No. 645) and Argentina (Case No. 656), should be dismissed without being communicated to the Governments concerned;

(c) the Committee recommends that, for the reasons indicated in paragraphs 21 to 48 of the present report, the cases relating to Panama (Case No. 531), Chad (Case No. 569) and Guyana (Case No. 602) should be dismissed as not calling for further examination;

(d) with regard to the cases relating to Japan (Case No. 398), Bolivia (Cases Nos. 451, 456 and 526), and Mexico (Case No. 492) the Committee, for the reasons indicated in paragraphs 49 to 80 of the present report, has reached certain conclusions to which it wishes to draw the attention of the Governing Body;

(e) with regard to the cases relating to Bolivia (Case No. 571) Nicaragua (Case No. 629) and Colombia (Case No. 664), the Committee, for the reasons indicated in paragraphs 81 to 116 of the present report, has presented an interim report containing certain conclusions to which it wishes to draw the attention of the Governing Body.

Complaints Which the Committee Recommends Should be Dismissed as Irreceivable Under the Procedure in Force

7. The Director-General has received, either direct or through the United Nations, a certain number of complaints which, according to the provisions of the procedure in force, are not receivable.

8. The complaints in question are irrecevable for one or other of two reasons: (a) one because it emanates from an organisation which is not an organisation of employers or workers; (b) the remainder because they emanate from national organisations or workers in countries other than those to which the complaints relate, having no direct interest in the matters raised in the allegations. 

1 See First Report, para. 14.
2 See 29th Report, para. 9.
9. So far as the first of these categories is concerned, the Director-General has received a communication dated 1 March 1971, from Teams of Trade Union Congresses of Latin America (Caracas) containing allegations concerning the infringement of trade union rights in Guatemala (Case No. 659).

10. With regard to the complaints falling within the second category, the Director-General has received:

(a) a communication containing allegations concerning the infringement of trade union rights in Mexico (Case No. 492), dated 3 February 1971 and forwarded by the Christian Trade Union Movement of Peru;

(b) a communication containing allegations concerning the infringement of trade union rights in El Salvador (Case No. 650) dated 31 December 1970 and forwarded by the National Confederation of State Workers (Bolivia);

(c) nine communications containing allegations concerning the infringement of trade union rights in Guatemala (Case No. 659) addressed by the following organisations and dated as indicated: General Union of Workers of "Nissan Mexicana" (24 February 1971), "Overlegorgaan" (Netherlands) (25 February 1971), National Union of Land Transport (Honduras) (1 March 1971), Confederation of Autonomous Unions (Venezuela) (1 March 1971), Port Union of Aruba (Netherlands Antilles) (1 March 1971), Confederation of Workers of Venezuela (1 March 1971), Trade Union Action of Chile (1 March 1971), Autonomous Confederation of Christian Trade Unions (Dominican Republic) (1 March 1971), and the French Democratic Confederation of Labour (23 March 1971).

11. The Committee recommends the Governing Body to decide, for the reasons indicated in paragraph 8 above, that the complaints referred to in paragraphs 9 and 10 above are not receivable under the procedure in force.

COMPLAINTS WHICH THE COMMITTEE RECOMMENDS SHOULD BE DISMISSED WITHOUT BEING COMMUNICATED TO THE GOVERNMENTS CONCERNED

Case No. 645

Complaint Presented by the Latin American Federation of Farmworkers against the Government of Ecuador

12. On 17 November 1970 the Director-General received a telegram from the Latin American Federation of Farmworkers, containing allegations that the authorities of Ecuador had arrested several leaders of Christian trade unions in Ecuador.

13. Under the procedure in force, complaints lodged with the ILO must come either from workers' or employers' organisations or from governments. The allegations made are not receivable unless they are submitted by a national organisation directly concerned in the matter, by international organisations of employers or workers having consultative status with the ILO, or other international organisations of employers or workers where the allegations relate to matters directly affecting organisations affiliated to these international organisations.

14. Since, in the light of the foregoing, the Director-General had doubts about the receivability of the complaint from the Latin American Federation of Farmworkers, he sent a letter on 20 November 1970 to the complainant organisation requesting it to state whether the trade union leaders mentioned in their communication belonged to organisations affiliated to the Latin American Federation of Farmworkers and, if so, to specify the names of these organisations.

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1 See First Report, para. 14.
2 See 29th Report, para. 9.
15. No reply having been received to the Director-General's letter, the Committee recommends the Governing Body to decide to file the complaint from the Latin American Federation of Farmworkers without communicating it to the Government concerned.

Case No. 656
Complaints Presented by Argentine Trade Union Action, the World Confederation of Labour and the Latin American Confederation of Christian Trade Unions against the Government of Argentina

16. The Director-General received two communications, dated 6 and 13 January 1971, from Argentine Trade Union Action and the World Confederation of Labour respectively. The latter communication was supported by the Latin-American Confederation of Christian Trade Unions in a letter dated 18 January 1971.

17. The complainants allege that, on 16 December 1970, Nestor Martins, a lawyer, on leaving his office in the company of his client, Mr. Nildo Centeno, was forced into a police car, and that when Mr. Centeno tried to assist him he too was subjected to the same treatment. These two persons have since disappeared. The complainants add that Mr. Martins specialised in defending political and trade union prisoners.

18. The Director-General had doubts about the connection between the alleged facts and the exercise of trade union rights and, on 20 January 1971, he addressed to the complaining organisations letters in which he requested them to specify what connection they considered there was between the facts they had described and the exercise of trade union rights. The Director-General received no reply to these letters.

19. The Director-General decided to submit the case in question to the Committee for its opinion, according to the procedural provision whereby he may, if he should have any difficulty in deciding whether a particular complaint can be regarded as sufficiently substantiated to justify its communication to the government concerned, consult the Committee before taking a decision.¹

20. It appears from the information at the Committee's disposal that this case involves essentially the question of the rights of an individual, a matter which does not lie within the competence of the Committee. In these circumstances, having regard to the fact that the complainants, in spite of the specific request made to them, have failed to establish that there was any connection between the events mentioned by them and the exercise of trade union rights, the Committee recommends the Governing Body to decide that the complaints in question should be filed without being communicated to the government concerned.

CASES WHICH THE COMMITTEE CONSIDERS DO NOT CALL FOR FURTHER EXAMINATION

Case No. 531
Complaint Presented by the International Federation of Christian Trade Unions ² against the Government of Panama

21. This case was first examined by the Committee at its session in May 1968 (105th Report, paragraphs 276-288), at which it submitted interim conclusions to the Governing Body and recommended the Governing Body to request further observations from the Government concerning one aspect of the case, namely that of the non-admission of trade unionists to the Committee for the revision of the Labour Code (105th Report, paragraph 288 (b)).

¹ See 9th Report, para. 23 (d).
² Now the World Confederation of Labour.
22. The case was again examined by the Committee at its sessions in February 1969, May 1969, November 1969, February 1970, May 1970, November 1970, February 1971, at each of which the Committee decided to adjourn its examination of the case since the Government's observations on the above matter had not been received. In a communication dated 9 March 1971 the Government communicated its observations on this question.

23. Panama has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

24. With regard to the outstanding allegation that trade unionists had not been allowed to participate in government committees set up for the purpose of the revision of the Labour Code, the Government states in its communication that it does not consider it appropriate to justify the reasons which the authorities may have had when they took this attitude, since none of the officials concerned takes any part in the governmental work of the present revolutionary Government. The Government adds that its policy has, at all times, been aimed at ensuring a harmonious and balanced participation by all sectors of the economy in any action taken which affects their interests. It points out that, when work was resumed on the study of the draft Labour Code, all trade union organisations were asked to make their comments so that these could be considered seriously before a final decision was taken. In this connection the Government encloses with its communication a copy of a letter dated 1 February 1971 addressed to the trade union organisations requesting their opinion on the draft Labour Code.

25. While the refusal of a government to permit or encourage the participation of trade union organisations in the preparation of new legislation or regulations affecting their interests would not necessarily constitute an infringement of trade union rights, the Committee would point out that the principle of consultation, and co-operation between public authorities and employers' and workers' organisations at the industrial and national levels is one to which importance should be attached. In this connection, attention can be drawn to the provisions of the Consultation (Industrial and National Levels) Recommendation, 1960, (No. 113), Paragraph 5 (b) of which provides that "such consultation and co-operation should aim, in particular, at ensuring that the competent public authorities seek the views, advice and assistance of employers' and workers' organisations in an appropriate manner, in respect of such matters as the preparation and implementation of laws and regulations affecting their interests." In the present case, the Committee has noted the Government's statement that all trade union organisations have been consulted on the question of the revision of the Labour Code, and, in the circumstances, recommends the Governing Body to decide that the allegation relating to the non-admission of trade unionists to committees for the revision of the Labour Code, and consequently the case as a whole, do not call for further examination.

26. This case was examined by the Committee at its session in May 1969, when it submitted to the Governing Body an interim report, which is contained in paragraphs 175-190 of its 112th Report, as adopted by the Governing Body at its 175th Session (May 1969). The case was subsequently examined by the Committee at its session in February 1970, when it submitted to the Governing Body a further interim report, which is contained in paragraphs 262-275 of its 116th Report, as adopted by the Governing Body at its 178th Session (March 1970).

27. It will be recalled that the case concerned the allegation that, in February 1968, seven national leaders of the National Union of Workers of Chad (UNATRAT) had been arrested
on charges of conspiring against national security and taken into custody. These trade union leaders, it was alleged, had remained without trial and there was nothing to suggest that the Government was preparing to institute proceedings against them. At its session in May 1969 the Committee noted that the Government, in its reply to the allegation, had stated that three of the persons had been released but did not deny the fact that at least four of the trade union leaders mentioned in the complaint were still in preventive detention, and apparently had been since February 1968.

28. Chad has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

29. In response to a request to specify the precise reasons for the arrest of the trade union leaders in question, the Government, in a communication dated 20 December 1969, informed the Committee that these trade unionists had been arrested as a result of their implication in a plot imperilling the security of the State. The Government added that, bearing in mind the question of sovereignty, only Chad institutions were competent to give valid rulings on the manner in which the persons concerned should be dealt with.

30. The Committee noted at its session in February 1970 that the Government’s reply contained no indication of the situation of the trade unionists who had been arrested nor did it state whether they had been tried or not. In the circumstances the Committee recommended the Governing Body to press the Government to state the exact grounds on which the trade union leaders mentioned in the complaint had been arrested and, in particular, the specific acts which it saw as justifying their arrest, and to describe the documents which the Government had regarded as constituting vital evidence. It also recommended the Governing Body to draw the attention of the Government to the principle that it should be the policy of every government to take care to ensure the observance of human rights and especially the right of all detained persons to be tried promptly by an impartial and independent judicial authority, and to request the Government to state whether the persons concerned were being or had been tried and, if so, to provide the text of the decision and of the judgment.

31. In a further communication addressed by the Government to the Director-General of the ILO dated 21 April 1971 the Government states that at the last congress of the only party in Chad, the PPT-RDA, it was decided to liberate all political prisoners, whatever the reasons for their arrest. Thus, states the Government, on 18 April 1971 the President announced on the national radio the liberation of political prisoners, including the trade unionists in question. The Government adds that it accordingly considers the matter closed.

32. While the Committee notes the Government’s statement that the trade unionists who were the subject of the complaint have now been liberated, it feels obliged to express its grave concern that, for a period of more than three years, at least four of the persons in question remained in preventive detention without any observations being received from the Government indicating whether these persons had been brought to trial or concerning the specific acts which, in the Government’s view, justified the measures taken against them. The Committee recalls, as it did at its sessions in May 1969 and February 1970, that in numerous cases in the past in which trade union officers or members were alleged to have been precipitously detained, it has always expressed the view that such measures might constitute a grave interference with the exercise of trade union rights which would be open to criticism unless accompanied by adequate judicial safeguards applied within a reasonable period. The Committee also wishes to recall that, on several occasions, it has emphasised the importance which it attaches to the principle of prompt and fair trial by an independent and impartial judiciary in all cases, including cases in which trade unionists are charged with political or criminal offences which the Government considers have no relation to their trade union functions.

33. With regard to the case as a whole, the Committee accordingly recommends the Governing Body—
(a) to note that the trade unionists who were alleged to have been preventively detained in February 1968 have been liberated;

(b) to draw the attention of the Government to the fact that the purpose of the whole procedure is to promote respect for trade union rights in law and in fact and that this purpose cannot readily be achieved unless co-operation is obtained both from complainants and governments in the communication of information either to substantiate or refute specific allegations, thus enabling the Committee to arrive at definitive conclusions in each case;

(c) to express grave concern that, for a period of more than three years some of the trade unionists in question were detained without any observations being received from the Government indicating whether these persons had been brought to trial or concerning the specific acts which, in the Government’s view, justified the measures taken against them, and in this connection, to draw the attention of the Government to the principles expressed in paragraph 32 above; and

(d) to decide that, in the present circumstances, the case as a whole does not call for further examination.

Case No. 602

Complaint Presented by the World Confederation of Labour and the Latin American Federation of Christian Trade Unions against the Government of Guyana

34. This case was first considered by the Committee at its session in February 1970 (see 116th Report, March 1970, paragraphs 380 to 390). At this session the Committee, deploring the fact that the Government had not made more detailed information available to it, recommended the Governing Body to request the Government to supply its detailed observations on the various allegations made and on the position of Mr. Patrick Tennessee, General Secretary of the Guyana National Confederation of Workers and Peasants, who, it was alleged, had been imprisoned.

35. The case was further considered by the Committee at its sessions in May 1970, November 1970 and February 1971, at each of which the Committee adjourned its examination of the case since the observations requested from the Government had not yet been received.

36. The Government’s observations, contained in a communication addressed to the ILO dated 3 February 1971, were received on 22 March 1971.

37. Guyana has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

38. With regard to the allegation that the local police had, on five occasions, forced their way into the premises of the Guyana National Confederation of Workers and Peasants and unlawfully seized documents and other material belonging to the organisation, the Government states that members of the Criminal Investigation Department, acting under due process of law, searched premises at 109 Regent Road, Bourda, Georgetown, on two occasions (6 June and 8 September 1969). The Government states that these premises were being used as the headquaters of an organisation calling itself the Guyana National Party (GNP), of which Mr. Patrick Tennessee claimed to be leader. There was sufficient evidence, the Government continues, that the GNP was a subversive organisation which had established links with, and was financed by, a foreign power hostile to Guyana. The Government states that the searches had nothing to do with the union or with the trade union activities of Mr. Tennessee. They were carried out for reasons of state security and were concerned with the activities of the GNP. The Government further states that, on both occasions, documents relating to the GNP were taken away for examination, but were subsequently returned.
39. As regards the allegation concerning the arrest and deportation of a leader of the Latin American Federation of Christian Trade Unions (CLASC), Mr. Adolfo Bonilla, a Nicaraguan who was organising a trade union seminar in Georgetown, and the arrest of a Canadian, Mr. Andrew Blackwell, who was collaborating in the seminar, the Government states that both these persons were deported for breaches of the immigration laws and procedures. Neither had obtained written permission from the Ministry of Home Affairs to enter Guyana for the purpose of engaging in work, as is required by Ministry directives. "Work", as defined by these directives, includes lecturing, organising seminars, etc. These persons were given permits by the immigration authorities to remain in Guyana for three days, and both failed to obtain extensions of their permits. Thereafter, they became prohibited immigrants under section 11 of the Immigration Ordinance, chapter 98 of the Laws of Guyana. Both, the Government states, had deceived the immigration authorities by declaring that the purpose of their visit was a holiday for ten days. The Government supplies photostat copies of the disembarkation cards of Messrs. Bonilla and Blackwell. In connection with the complainant's statement that Mr. Bonilla had a visa valid for six months, the Government explains that this does not confer any right to enter a country; and the final decision to enter a country, and the length of the stay, rests with the immigration authorities at the port of entry.

40. As regards the allegation concerning the imprisonment of Mr. Patrick Tennessee, the Government states that this person was not imprisoned on 10 September 1970, nor has he ever been imprisoned in Guyana. The Government adds that, since the complaint was submitted, Mr. Tennessee has travelled abroad without hindrance by the Government and is at present in Guyana, where he enjoys the full rights of a citizen and the full protection of the law.

41. In its reply to the allegation that the mail of the union had, for some time, been intercepted, the Government states that no government agency has ever intercepted the mail of this or any other organisation. Indeed, the Government adds, it would be illegal to do so unless authorised by law during a state of emergency.

42. The Government denies the allegation that persons were ill-treated in the course of the two searches which the police carried out. Moreover, adds the Government, such action on the part of the police would render them liable to sanctions under the criminal and civil law. The allegation that the lives of union members were in danger was absurd and wholly untrue. In this connection, the Government states that no member of the union has been imprisoned, injured, threatened or prosecuted by any government official or agency.

43. In addition, the Government points out that the Guyana National Confederation of Workers and Peasants, although registered as a trade union since 1964, has never been active, has no known membership, and has never complied with the legal requirements regarding the filing of annual returns.

44. As regards the allegation that the offices of the Guyana National Confederation of Workers and Peasants were entered by the police and certain material removed, the Committee notes the Government's explanation that there was sufficient evidence that an organisation using these premises, known as the Guyana National Party, was subversive in character. The Committee takes the view that no evidence has been supplied by the complainants to substantiate the allegation of repression of the union or of interference by the Government in the normal trade union activities of the union. For this reason, it recommends the Governing Body to decide that this aspect of the case does not call for further examination.

45. Concerning the cases of Mr. Bonilla and Mr. Blackwell, the Committee observes that these persons were deported in accordance with the law for failure to comply with national immigration regulations, and not as a result of their connection with, or participation in, a trade union study seminar as indicated by the complainants. The Committee accordingly considers that no purpose would be served in pursuing further its examination of this
allegation and recommends the Governing Body to decide that this aspect of the case does not call for further examination.

46. With regard to the case of Mr. Tennessee, the Committee notes the Government's statement that this person has at no time been imprisoned, and that he is at present in Guyana enjoying the full rights of a citizen and the full protection of the law. In the circumstances, the Committee can only recommend the Governing Body to decide that there would be no point in examining this aspect of the case further.

47. With regard to the general allegations of threats, ill-treatment and arrests of trade unionists, the Committee notes that the complainants have supplied no precise information in this respect, and on the other hand, it observes that the Government wholly denies those allegations and states that no member of the union has been imprisoned, injured, threatened or prosecuted by any government official or agency. Since the complainants have therefore not supplied any information in support of these allegations the Committee does not feel that it can reach any conclusions on these matters. It accordingly recommends the Governing Body to decide that these allegations are too vague to permit consideration of them on their merits.

* * *

48. In all the circumstances, and with regard to the case as a whole, the Committee recommends the Governing Body, for the reasons given in paragraphs 44 to 47 above, to decide that all the allegations, and consequently the case itself, do not call for further examination.

DEFINITIVE CONCLUSIONS IN THE CASES RELATING TO JAPAN (CASE No. 398), BOLIVIA (CASES Nos. 451, 456 AND 526) AND MEXICO (CASE No. 492)

Case No. 398

Complaint Presented by the Miners' International Federation (London), the Japanese Coal Miners' Union and the General Council of Trade Unions of Japan against the Government of Japan

49. This case was first considered by the Committee at its session in November 1965, when it decided to request the Government to furnish additional information on certain aspects of the case. The case was further considered by the Committee in May 1966, November 1966 and February 1967, and then at its sessions in November 1967 and May 1968, on both of which occasions it submitted further interim conclusions. At its sessions in May 1969, November 1969, February 1970 and May 1970 the Committee repeated its request for further information on the case.

50. At its session in November 1970, when the case was again examined by the Committee, further interim conclusions were submitted to the Governing Body, which are to be found in paragraph 191 of the Committee's 120th Report, and the Government was again requested to supply additional information concerning certain aspects of the case. The Committee, at its session in February 1971, adjourned its examination of the case in view of the fact that information transmitted by the Government on 16 February 1971 arrived too late to permit examination of the substance of the case. The Government also sent to the Director-General of the ILO a further communication dated 7 April 1971 containing additional information concerning the case.

1 See paras. 42-153 of the 92nd Report (166th Session, June 1966).
3 The Governing Body approved the 120th Report at its 181st Session (November 1970).
51. Japan has ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Allegations relating to Delay in Legal Proceedings

52. The Government appended to its communication dated 16 February 1971 a summary of the judgments rendered by the Fukuoka High Court in the appeals of twenty-five of the twenty-seven trade unionists whose applications for reinstatement had been dismissed by the Fukuoka District Court on 24 April 1967 (see paragraphs 229-234 of the 101st Report). The Government states in this communication that one of the appellants subsequently withdrew his appeal and that, on 2 November 1970, the Fukuoka High Court dismissed twenty-three of the appeals as being groundless. In one case, however, that of Mr. Araoka Isamu, the Court held that his position with the company should be preserved in terms of the contract of employment concluded with the company. In this case the Court found that although the appellant had, in fact, trespassed in the premises of the Mikawa Mine of the Miike Mining Plant, which the members of the Miike Coal Miners' Union had been prohibited from entering as a result of the lockout, this act had been committed on impulse and accidentally by the appellant, who was in an abnormal state of excitement. The Court held that, in the circumstances, the act did not constitute misconduct sufficient to justify discharge or disciplinary dismissal under the labour agreement or rule of employment. This appeal was, accordingly, upheld and a court order granted. The Government further states in this communication that the company entered appeals in the cases of the three trade unionists whose applications for reinstatement were granted by the Fukuoka District Court in April 1967, but subsequently withdrew its appeal in one of these cases.

53. At its session in November 1970 (120th Report) the Committee had requested the Government to keep it informed of the outcome of the legal proceedings which were still pending in respect of another trade unionist, referred to in the original complaint, Mr. C. Endo, who was dismissed on 6 April 1959. The Government's communication of 16 February 1971, however, again contains no information concerning this matter.

54. In these circumstances the Committee recommends the Governing Body—

(a) in the case of the appeals in respect of twenty-four of the trade unionists originally dismissed, to take note of the judgments rendered by the Fukuoka High Court;

(b) to deplore that in the case of Mr. C. Endo, despite the time which has elapsed since application was made to the Fukuoka District Court on 21 April 1959, for preservation of his position, no decision appears to have been reached by the Court; and

(c) once again to draw the Government's attention to the importance it attaches to expeditious proceedings, in the absence of which an offended employee will feel a growing sense of injustice, with consequent harmful effects on industrial relations, and the risk of potential violation of trade union rights inherent in the absence of expeditious court proceedings in cases involving dismissals.

Other Allegations Outstanding

55. These allegations referred to the discharge of ten officers of the Miike Coal Miners' Union (paragraphs 45 to 52 of the 92nd Report); discrimination against union members in respect of recruitment, wages and work assignment and payment of accident compensation (paragraphs 58 to 77 of the 92nd Report); and the repudiation of collective bargaining with the Miike Coal Miners' Union and interference with the Union (paragraphs 78 to 96 of the 92nd Report). Since 1966 the Committee has requested the Government to supply information relating to these allegations and to forward the texts of decisions of the Fukuoka District Court, the Central Labour Relations Commission and the Fukuoka Prefectural Labour Relations Commission in respect of the matters referred to in paragraphs 52, 75, 77,
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94 and 96 of the 92nd Report. At its session in November 1970 the Committee recommended the Governing Body to repeat the request to the Government for the supply of this information and the relevant texts (120th Report, paragraph 191 (b)).

(a) Allegations Relating to the Repudiation of Collective Bargaining with the Miike Coal Miners' Union.

56. In its communication dated 16 February 1971 the Government states that, with regard to the allegations relating to the repudiation of collective bargaining with the Miike Coal Miners' Union (paragraphs 78 to 89 of the 92nd Report), it is not in a position to judge whether such an individual case constitutes an unfair labour practice, since it is exclusively within the competence—under section 27 of the Trade Union Law—of the Labour Relations Commission of the Court, being bodies independent of the Government, to decide whether or not any act committed by an employer constitutes an infringement of the right to organise. The Government points out that in the case in question no redress has been sought by the aggrieved parties before either the Labour Relations Commission or the Court. The Committee, in view of the nature of its responsibilities, cannot consider itself bound by any rule that national procedures must be exhausted such as applies for instance to international claims tribunals; it must, however, have regard in examining the merits of a case, to the fact that a national remedy, whose procedure offers appropriate guarantee, has not been pursued. In this connection, the Committee notes that the complainants have not made any use of the special procedure available to them for legal redress in case of unfair labour practice. It accordingly recommends the Governing Body to decide that this allegation does not call for further examination.

(b) Alleged Discrimination against Union Members in Respect of Work Assignment.

57. In its communication the Government indicates that, on 26 June 1969, a compromise was reached in respect of the complaints regarding discrimination in the assignment of jobs to certain members of the union (referred to in paragraphs 65 to 68 of the 92nd Report), and the complainant union withdrew the case which had been pending before the Fukuoka Prefectural Labour Relations Commission since December 1964. In its communication dated 7 April 1971 the Government explains that the effect of the compromise—which was reached on 26 June 1969—was that the Company would give to the complainant union the same treatment in assignment and transfer as it gave to the rival union. The Committee, accordingly, recommends the Governing Body to decide that this aspect of the complaint does not call for further examination.

(c) Other Allegations.

58. With regard to the other outstanding allegations the Committee recalls the following facts:

(a) as regards the ten union officers, an application for maintenance of their status was initially submitted to the Fukuoka District Court on 1 October 1963 and on 25 December 1965 the parties were making preparations for testimony (paragraphs 48 and 51 of the 92nd Report);

(b) as regards the allegations concerning discrimination against union members in respect of recruitment, wages and work assignment, a complaint of unfair labour practices was filed with the Fukuoka Prefectural Labour Relations Commission on 27 November 1961. An order granting part of the remedy sought was made by the Commission on 31 August 1964, but both parties, being dissatisfied, requested, on 18 September 1964, a review by the Central Labour Relations Commission (paragraph 72 of the 92nd Report);

(c) as regards interference with the union, complaints were originally filed with the Fukuoka Prefectural Labour Relations Commission on 10 and 12 March 1960. The Commission made an order granting part of the remedy sought, and both sides, being dissatisfied, requested, on 18 September 1964, a review by the Central Labour Relations Commission (paragraph 92 of the 92nd Report).
59. The Government states in its communication dated 16 February 1971 that cases are now under examination by the Fukuoka District Court, the Fukuoka High Court or the Central Labour Relations Commission in connection with those allegations.

60. In these circumstances, the Committee, being of the opinion that proceedings which are excessively lengthy can result in a denial of justice, recommends the Governing Body to draw the attention of the Government to the principle expressed in paragraph 54 (c) above.

61. In all these circumstances, and with regard to the case as a whole, the Committee recommends the Governing Body—

(a) with regard to the allegations outstanding: for the reasons given in paragraphs 56 and 57 above, to decide that these allegations do not call for further examination; and

(b) with regard to the allegations relating to delay in legal proceedings:

(i) in the case of the appeals in respect of twenty-four of the trade unionists originally dismissed, to take note of the judgments of the Fukuoka High Court;

(ii) to deplore that, in the case of Mr. C. Endo, as well as in the cases of the other trade unionists mentioned in paragraph 58 above, despite the time which has elapsed since these cases were brought before the courts, no final decisions appear to have been reached;

(iii) to urge the Government, for the reasons expressed in paragraph 54 (c), to take all necessary steps to ensure that in cases involving dismissal, judicial proceedings are expeditious; and to express the hope that the cases at present before the Fukuoka District Court, the Fukuoka High Court and the Central Labour Relations Commission will be brought to a speedy conclusion, and that the decisions will be communicated to the Governing Body.

Cases Nos. 451, 456 and 526

Complaints Presented by the Latin American Federation of Christian Trade Unions, the World Federation of Trade Unions, the Bolivian Workers’ Confederation and the International Federation of Christian Trade Unions against the Government of Bolivia

62. These three cases were last examined by the Committee at its session in November 1968 (108th Report, paragraphs 118 to 153), when the Committee submitted to the Governing Body an interim report containing the Committee’s conclusions on certain aspects of the case which remained outstanding at that time. The Committee also recommended the Governing Body to request the Government to supply additional information concerning certain other aspects of the case (paragraph 153 (b) and (c) of the 108th Report).

63. The aspects of the case concerning which the Committee recommended the Governing Body to request additional information were the trial or exile of certain trade unionists in 1965, and the events which occurred in 1967 during which workers were killed. In particular, the Committee had noted that certain trade unionists, namely Mr. Lechin Oquendo, Mr. Quispe, Mr. Pimentel and Mr. Reyes, who had been charged with common law offences, were awaiting trial, and the Government was requested to supply information on the results of the proceedings instituted against these four persons. The Government was also requested to inform the Governing Body, as soon as possible, of the position before the law of the trade unionists who, according to the complainants, were exiled in 1965, as well as on their possibility of legally re-entering the country. The Committee had occasion, at its session in February 1970 (116th Report, paragraphs 299 to 302) to examine the case concerning Mr. Lechin Oquendo in the context of Case No. 571, since the Government had supplied certain information regarding this person. It will be recalled that the Committee, in view of the information received, recommended the Governing Body to decide that, subject
to the further examination of the proceedings against Mr. Lechín Oquendo in the present cases, this aspect of the case did not call for further examination. As regards the events of 1967 in which workers were killed, the Committee recommended the Governing Body to request the Government to keep it informed of the results of the judicial investigation ordered by the Government and to supply the text of the judgment in the case against Mr. Chacón (a trade union leader against whom proceedings were instituted in respect of various offences), together with the grounds for this judgment.

64. At its various sessions since November 1968 the Committee adjourned its examination of these cases since the Government had not supplied all the information requested.

65. Bolivia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

66. In a communication addressed to the Director-General of the ILO by the Government dated 31 December 1969, the Government stated that the revolutionary government which came into power on 27 September 1969 adopted certain measures which were of relevance in assessing the trade union situation. These measures, the Government stated, were as follows: (a) no persons were in prison for reasons of political or trade union activities; (b) the Chancellery of the Republic had been instructed to authorise ambassadors to issue visas to any citizens now outside the country for political reasons and wishing to return; (c) the Minister of the Interior had also received instructions to expedite the trials of any persons against whom legal proceedings had been instituted under previous regimes.

67. The Committee feels bound to express its concern that in spite of repeated requests to the Government for information concerning the cases of Mr. Lechín Oquendo, Mr. Quispe, Mr. Pimentel, Mr. Reyes and Mr. Chacón, this information has not yet been communicated by the Government. The Committee likewise expresses its concern that the Government has so far failed to supply the information requested concerning the outcome of the judicial investigation into the events of June 1967 in which workers were killed. In the absence of such information, the Committee finds itself unable to reach definitive conclusions regarding these aspects of the complaints. The Committee wishes to recall in this connection that the purpose of the whole procedure is to promote respect for trade union rights in law and in fact. This purpose cannot readily be achieved unless co-operation is obtained from both complainants and governments in the communication of information either to substantiate or refute specific allegations, thus enabling the Committee to arrive at definitive conclusions in each case.

68. Furthermore, the Committee wishes to recall that on several occasions it has emphasised the importance which it attaches to the principle of prompt and fair trial by an independent and impartial judiciary in all cases, including cases in which trade unionists are charged with political or criminal offences which the government considers have no relation to their trade union functions. The Committee also points out that the communication of the texts of judgments given in such cases and the grounds on which these are based provide useful information enabling the Committee to reach its conclusions in full knowledge of the facts.

69. In all the circumstances, and with regard to the case as a whole, the Committee recommends the Governing Body—

(a) to take note of the Government's statement that instructions have been given authorising ambassadors to issue visas to any citizens now outside the country for political reasons and wishing to return;

(b) to draw the attention of the Government to the principles expressed in paragraph 68 above regarding the observance of the right of trade unionists to receive a prompt and fair trial, and the communication of the texts of judgments to the Committee;
(c) to express serious regret that, in spite of repeated requests for information concerning Mr. Lechín Oquendo, Mr. Quispe, Mr. Pimentel, Mr. Reyes and Mr. Chacón, as well as the results of the judicial investigation into the events of June 1967 in which workers were killed, this information has not been received, which prevents the Committee from reaching definite conclusions regarding these aspects of the case;

(d) to draw the attention of the Government to the fact that the purpose of the whole procedure of the Committee on Freedom of Association is to promote respect for trade union rights in law and in fact, and that this purpose cannot be readily achieved unless co-operation is obtained both from complainants and governments in the communication of information either to substantiate or to refute specific allegations, thus enabling the Committee to arrive at definitive conclusions in each case.

Case No. 492

Complaint Presented by the World Confederation of Labour against the Government of Mexico

70. The last report to the Governing Body in respect of this case, which was examined by the Committee at its session in November 1970, is contained in paragraphs 192 to 206 of its 120th Report. That report contains a further analysis of the situation of Mr. Rubén Carlos Esguerra as concerns the sentence imposed upon him by a court of first instance for the offence of attempted homicide. An appeal against this sentence had been lodged with the High Court of Justice of the Federal District and Territories, and for this reason the Committee adjourned its examination of the case. Mr. Esguerra had made certain comments upon the court proceedings with respect to which the Government had not yet forwarded its observations.

71. The Committee recalls that this case arose out of Mr. Esguerra's participation in an act of protest by workers and trade unionists in support of labour claims. The action he had taken had consisted, firstly, in inducing these workers to stage a hunger strike, in which they participated voluntarily. Later, Mr. Esguerra was said to have tried to prevent the participants in the strike from abandoning it or from being given food and assistance, thus endangering their lives. As a result, according to the judgment sentencing him for attempted homicide in respect of these persons, it had been necessary for the police to intervene in order that the strikers might be taken to hospital. Nevertheless, the Committee also observed that the Government had earlier supplied information (communication of 12 January 1968) that "seven persons took part in a hunger strike at the doors of the United Nations offices, but lack of food was endangering their health and this induced them to give up the strike and seek medical treatment". Of these seven persons, "six were taken, at their own request, by staff of the Social Welfare Directorate to the general hospital in Mexico City. The remaining person preferred to go to a private clinic".

72. On 29 January 1971 Mr. Esguerra sent a further communication in which he stated that the High Court had sentenced him upon appeal, and he made comments upon this sentence. This communication was transmitted to the Government which, in its turn, sent two communications, dated 23 February and 23 April 1971, the latter containing the text of the judgment rendered by the High Court.

73. Mr. Esguerra claims that the Federal Security Directorate forced him, by violent means, to sign a statement, that his accusers failed to appear before the trial judge and submitted no evidence against him, that the verdict was based mainly on the charges made by three persons who had asserted that the accused had compelled them to continue the hunger strike but who in fact had not even taken part in the strike, and that the court completely ignored the fact that the accusers, in their evidence, had given a false address so that they could not be found.

74. In its first communication the Government gives the assurance that Mr. Esguerra enjoyed the guarantees provided by the Federal Political Constitution to every accused
person and that he was tried by an impartial, independent and previously constituted court, which applied provisions of a general nature. The sentence pronounced by the High Court could be challenged by invoking the constitutional guarantees. The Government goes on to state that it “recognises the high office of the ILO as guardian of the workers’ interests on a world-wide scale but it does not believe that its functions include the reviewing of judgments pronounced by the tribunals of its member countries since this would obviously impinge upon the sovereignty of those Members and would place the workers in a situation of unfair advantage over other nationals by being permitted to resort to a body not available to others”.

In its second communication the Government gives a summary of the trial and of the evidence upon which the verdict was based, stating that, in its opinion, the Committee on Freedom of Association will have fully carried out its duty in ascertaining that Mr. Esguerra enjoyed all the legal guarantees and that the sentence is based on the legal provisions applicable to criminal offences.

75. The Committee considers that while it is inconsistent with the principles of freedom of association for public authorities to deprive trade union officials of their freedom in order to put a stop to their trade union activities, this in no way implies that these authorities should refrain from using the powers legally vested in them for the purposes of maintaining public order in cases where trade union officials commit acts which are offences under national law. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), ratified by Mexico, confers no immunity upon such officials, and even stipulates that workers and their organisations, like other persons, shall respect the law of the land. Nevertheless, the Committee also considers that in cases where a trade union official is imprisoned or sentenced it is incumbent upon the Committee to ascertain the reason or justification for such a measure. In this connection, the Committee wishes to recall the statement already made in an earlier report on this same case to the effect that it is its practice not to pursue its examination of a complaint where it is clear from the information received that the persons concerned have been tried by the competent judicial authorities with all the safeguards of normal judicial procedure, and sentenced for offences unconnected with their trade union activities or outside the scope of normal trade union activities.

76. Bearing these considerations in mind, the Committee has examined the text of the judgment of the High Court, from which the following facts emerge. According to the statements made at the public prosecutor’s office by the workers who took part in the hunger strike staged in front of the United Nations building in Mexico City and by welfare officers who examined these persons during the strike, Mr. Esguerra objected to the persons concerned being taken to hospital despite the fact that they were in a severely weakened state—overriding their own wishes in this respect. Finally, it was necessary for the police to intervene to overrule Esguerra and ensure that the strikers were taken to hospital, where they were given the medical attention they needed. In the writ of appeal, counsel for Mr. Esguerra alleges that these statements cannot be accepted as evidence because they were not made before the examining magistrate, even though they were countersigned by the public prosecutor’s office, and that Mr. Esguerra’s accusers did not appear before the judge for a confrontation with him. He further declares that even if these statements were to be declared admissible, they would not constitute evidence of the offence with which Mr. Esguerra has been charged, since his objection to any interruption of the strike was in any case purely verbal. He points out in this respect that it does not appear from the evidence “that the accused prevented the injured parties from taking nourishment by any physical means, and they were free to abandon the strike at any moment, since there was nothing to stop them from leaving the part of the public thoroughfare where the hunger strike was being staged”.

77. In the judgment the court overrules the objections of counsel for the defence with regard to the procedure followed, declaring that the statements made by the plaintiffs and by

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1 See 118th Report, para. 107.
the officials of the Department of Health and Welfare at the public prosecutor’s office are entirely admissible as evidence under the terms of section 286 of the Code of Criminal Procedure, and that the confrontations did take place in accordance with the terms of subsection 1 of section 229 of that Code. As regards this last point, the Committee observes that the provision in question is worded as follows: “Where one of the persons between whom confrontation is to take place cannot be found, or resides within the jurisdiction of another court, the confrontation shall be suppletory, the statement of the person absent being read out to the person present, note being taken of any disparities between the said statement and the evidence given by the person present.”

78. With regard to the trial and the judgments pronounced, the Committee wishes to point out the following. On the one hand, it appears clear from the documentary information available that the persons who took part in the hunger strike and the officials of the Department of Health and Welfare did not appear before the trial judge and were not confronted with the accused. The former had given a false address to the public prosecutor’s office and then disappeared. On the other hand, the sentence is based on the fact that the accused prevented the participants in the strike from interrupting it, thus endangering their lives. Nevertheless, all this occurred in a public place and it is not clear to what extent his opposition could really have prevented them from abandoning the strike of their own accord. In any event, any opposition by Mr. Esguerra to the wishes of the participants to interrupt the strike would constitute an obvious overstepping of his authority, the seriousness of which, from a penal standpoint, would be a matter for the judicial authorities to determine in the light of the circumstances of the case.

79. The Committee observes that Mr. Esguerra has been tried by the normal judicial authorities, that they have applied the procedure generally applicable to such cases, that he was assisted by counsel and that he availed himself of his right of appeal—an avenue still open to him in respect of the ruling of the higher court if he considers that the constitutional guarantees were not applied to him.

80. In these circumstances the Committee recommends the Governing Body to take note of the present report, to draw the Government’s attention to the foregoing remarks and to request the Government to keep it informed of any further developments in this case.

INTERIM CONCLUSIONS IN THE CASES RELATING TO BOLIVIA (CASE NO. 571), NICARAGUA (CASE NO. 629) AND COLOMBIA (CASE NO. 664)

Case No. 571

Complaint Presented by the World Confederation of Labour against the Government of Bolivia

81. The Committee examined this case at its session in May 1969, when it submitted to the Governing Body an interim report, which appears in paragraphs 191 to 206 of its 112th report, as approved by the Governing Body at its 175th Session (May 1969). At its session in February 1970 the Committee submitted to the Governing Body a further interim report, which appears in paragraphs 276 to 315 of its 116th report, as approved by the Governing Body at its 178th Session (March 1970).

82. To enable it to continue its examination of the case the Committee recommended the Governing Body (paragraph 315 of its 116th report) to ask the Government, as a matter of urgency, to supply detailed information and observations with regard to the allegations relating to the imprisonment and banishment of Mr. Barrisueata, a leader of the Bolivian Trade Union Action (ASIB), and its observations on the facts alleged concerning the elections at the Siglo XX mines (paragraph 315(e) and (f) of the 116th report). In a communication dated 15 February 1971 the Government supplied further information relating to the case.
83. Bolivia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but not the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

84. In its latest communication, the Government confines itself to outlining, in general terms, the improved status of the trade union movement since the revolutionary regime came to power in Bolivia on 7 October 1970. The Government further states that there are, at present, no political or trade union prisoners in Bolivia, and that the anti-labour policy of dissolving the leadership in the mining and industrial centres which was carried out by previous regimes has been completely reversed. The Government includes in its communication a copy of another communication received by it from the Bolivian Workers' Confederation (COB), which makes reference to the complaint before the Committee and adds that, despite the systematic persecution under previous regimes, workers' associations were able to remain intact although their activities and influence were limited as a result of the attitude of these governments. The Government contends that the complaint submitted by the World Confederation of Labour should now be examined in the light of this statement since, in the opinion of the Government, it clearly shows the present position of the Bolivian trade union organisations.

85. The Committee feels obliged to point out that one of the principles established in the procedure for the examination of alleged infringements of trade union rights is that, where precise allegations are made, the Committee cannot regard as satisfactory replies from governments which are confined to generalities. It also draws the attention of the Government to the principle established in earlier cases that, where a change of regime has taken place in a country, the new government should take all necessary steps to remedy any continuing effects which events complained of as having taken place under its predecessor may have had since its accession to power. In the present case, the Committee is of the opinion that, while the new government cannot be held responsible for the events which gave rise to the complaint, the effects of the events which gave rise to the allegations concerning the imprisonment of Mr. Barrisueta and the elections at the Siglo XX mines could, without information to the contrary, be of a continuing nature.

86. The Committee recalls that Mr. Barrisueta was alleged to have been arrested on 19 December 1968, subjected to severe physical torture and banished, and, in view of the nature of this allegation, the Committee requested the Government to supply, as a matter of urgency, detailed information and its observations on the matters referred to in the complaint (paragraph 284 of the 116th report). As regards the allegation relating to the elections at the Siglo XX mines, which was contained in the communication of the complaining organisation dated 30 December 1968, the Committee, at its session in February 1970, having received no reply to its request for observations, again recommended the Governing Body (116th report, paragraph 315 (f)) to invite the Government to send its observations on the facts alleged. No reply to either of these allegations has yet been received by the Committee.

87. In the circumstances, the Committee recommends the Governing Body:

(a) to deplore that, in spite of repeated requests made to the Government in this connection, no information has been supplied, and to invite the Government, as a matter of urgency, to supply detailed information and observations on these two aspects of the complaint, and especially on the present situation of Mr. Barrisueta; and

(b) to take note of the present interim report, it being understood that the Committee will submit a further report when it has received this information and these observations.

1 See First Report, para. 31.
2 See, for example, Second Report, Case No. 13 (Bolivia), para. 149; 25th Report, Case No. 129 (Peru), paras. 15 and 16; and 28th Report, Case No. 146 (Colombia), para. 223.
88. The complaint of the World Confederation of Labour is contained in a communication dated 14 May 1970, supplemented by two further communications dated respectively 26 May and 18 June 1970. The complaint and the additional information supplied in substantiation thereof were transmitted to the Government, which forwarded its observations concerning their substance by a communication dated 11 February 1971.

89. Nicaragua has ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

90. On the basis of information supplied to it by its affiliated organisation in Nicaragua, the Autonomous Trade Union Movement of Nicaragua (MOSAN), the World Confederation of Labour alleges in general terms that a wave of repression and persecution has been unleashed against trade unions and their members in that country. More specifically, it alleges that two leaders of the MOSAN, Messrs. Fernando Caracas Ricaurte and Guillermo Mejía, have been arrested and imprisoned.

91. Appended to the supplementary information it has supplied in connection with this case, the World Confederation of Labour has furnished photocopies of the receipts for fines paid by Messrs. Caracas Ricaurte and Mejía, stating that these fines were the only means whereby they could regain their freedom. "As you will observe," declares the World Confederation of Labour "these receipts do not record any details, nor do they specify any particular offence as having been committed, which is yet further proof that in the Republic of Nicaragua the most fundamental workers' rights are disregarded, their leaders being imprisoned, heavy fines being imposed upon trade union officials and members and union members being terrorised if they defend the interests of the workers and refuse to submit to the dictates of the Government and the police".

92. Furthermore, on the basis of fresh information received from its affiliate in Nicaragua, the World Confederation of Labour accuses the Ministry of Labour of taking sides in a dispute between the workers and the firm of "El Porvenir", which it alleges to be "subjecting its employees to harsh military discipline". "This is quite understandable," continues the World Confederation of Labour "bearing in mind that the undertaking in question is owned by the President of the Republic, General Somoza, whose family has ruled the country for thirty years".

93. In its observations the Government states that the reason for the measures taken against Messrs. Caracas Ricaurte and Mejía was that they were caught in the act of sticking up subversive posters, and that these measures were taken in pursuance of Decree No. 800 of 1965, the text of which the Government supplies. The Government also supplies the text of a statement made in this connection by the Police Magistrate of Managua, and points out that the persons in question have not appealed against the Police Magistrate's ruling.

94. The Government argues that the World Confederation of Labour has based its allegations on information supplied by a "non-existent" organisation, the Autonomous Trade Union Movement of Nicaragua (MOSAN), "of serious breaches of freedom of association in Nicaragua", adding that this information too is unlawful and unfounded, and that "in any case it should not be taken into consideration since this organisation has no legal personality, the Associations Department of the General Inspectorate of Labour having no record on its books of the registration of the so-called Autonomous Trade Union Movement of Nicaragua". The Government appends to its communication an attestation from the Associations Department of the General Inspectorate of Labour to the effect that it has no record of the registration of the MOSAN.
95. Before examining the specific allegations made in the complaint, the Committee considers that it should deal with the preliminary question raised by the Government in the observations quoted in the preceding paragraph. In this connection the Committee wishes to point out that it has never considered itself bound by any national definition of the term "industrial association". In the present case the Committee notes that the MOSAN does have at least a de facto existence and that it is affiliated to the World Confederation of Labour. Moreover, the complaint having been filed in the names of the latter organisation, which enjoys consultative status with the ILO, its receivability in this instance cannot be open to the doubt that the Government appears to imply.

96. With regard to the allegations relating to the measures taken against Messrs. Caracas Ricaurte and Mejía, the Committee has noted the Government's statement to the effect that these measures were taken because the persons concerned had been caught in the act of sticking up subversive posters.

97. The Government does not indicate, however, what was subversive about the posters in question, and the attestation by the Police Magistrate appended by the Government to its reply is no more explicit on this point. Accordingly the Committee, in order to have all the facts before it when forming its opinion, considers it necessary to recommend the Governing Body to request the Government to be good enough to give details of the subject-matter of the incriminating posters.

98. Having noted, moreover, that the Government makes no reply to the allegations mentioned in paragraph 92 above to the effect that the Ministry of Labour appears to have taken sides in a dispute between the workers and the firm of "El Porvenir", and that this undertaking has been "subjecting its employees to harsh military discipline", the Committee recommends the Governing Body to request the Government to be good enough to forward its observations on this aspect of the case.

99. Lastly, the Committee recommends the Governing Body to adjourn its examination of the case on the understanding that the Committee will report again as soon as it is in possession of the additional information to which reference is made in the two preceding paragraphs.

Case No. 664

Complaint Presented by the World Federation of Trade Unions against the Government of Colombia

100. The complaint of the World Federation of Trade Unions (WFTU) is contained in a communication dated 7 April 1971 addressed direct to the ILO. This complaint was transmitted to the Government, which sent its observations in a communication dated 5 May 1971.

101. Colombia has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

102. The complainants give the following account of the matter. The leaders of the two large central organisations, the Union of Colombian Workers (UTC) and the Confederation of Colombian Workers (CSTC), having met on 9 February 1971, decided to organise a twenty-four hour strike throughout the country on 8 March as a protest against the high cost of living, unemployment and low wages. The strike was also intended to claim from the authorities and the employers an increase in salaries and wages, the freezing of prices for consumer goods and public services, improved social security benefits, the observance of trade union rights and the suppression of compulsory arbitration tribunals.

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1 See First Report, paras. 27-28.
103. According to the WFTU, on 23 February 1971 the UTC and the CSTC publicly confirmed the nature of the strike in a joint declaration which stated: “It will be peaceful and will have no other aim than to protest against the anti-labour and anti-trade-union policy and against the present state of affairs in general”.

104. The WFTU alleges that, in spite of the peaceful nature of the demand of the movement, the Government declared that the strike was subversive and decreed that all trade union funds should be frozen. At the same time, according to the complainants, making use of the state of emergency proclaimed on 27 February, the Government began a violent campaign of repression against the workers and trade union leaders who were supporting the strike initiative; thus, throughout the country, hundreds of persons had been arrested before 8 March.

105. The WFTU declares that, in spite of the measures of repression and intimidation, the strike of 8 March assumed large proportions, and over 900,000 workers stopped work on that day “thus bringing their support to the claims of the National Strike Committee platform”.

106. In spite of this, says the WFTU, the Government maintained its repressive measures as well as the measures taken against the trade unions. Ten days after the strike about 100 workers and trade union leaders were still being detained, including: Jaime Parra, a worker at the Boyacá power station; Guillermo Niño, President of the Boyacá Soft Drinks Company Union; Raúl Baquero, President of the Paz de Río Steelworks branch at Samacá; Isabel Parada de Guevara, a labour leader; Raúl Tapia and Rafael H. Lara, trade union leaders of the cement workers at Boyacá; Víctor Acosta, President of UTRAL of Barranquilla; Leopoldo Montes and Benjamín Rizo, union leaders from Barranquilla, “as well as many other militant trade unionists from Bogotá, Bucaramanga and Barrancabermeja, Cúcuta, Huila, Girardot, Arbeláez and Puerto Tajada”.

107. The complainants allege that the Government also took other measures against trade union organisations that had supported the strike. The first trade unions against which such measures were taken, the WFTU states, were those from the following firms: La Rosa (Pereira), Cervecerías Águila, Industrias Simán Hermanos (Barranquilla), Colombiana de Cerámica (Cundinamarca) and Industria Lícorera de Boyacá (Tunja). “The decree signed by the Minister of Labour, Mr. Jorge Mario Eastman,” the complainants continue “suspends for six months the right of the trade unions to be legally recognised thus enabling the employers to dismiss any staff that they wish, including in particular, trade union leaders, after first discussing the matter with the ministry and the labour tribunals in the latter case.

108. “Many other trade unions” according to the WFTU “are threatened with similar sanctions, particularly the central trade union organisation UTC, which is threatened with the withdrawal of its legal personality. As for the CSTC, the Minister of Labour has discriminated against this organisation by refusing to grant it legal personality even though it has complied with all the conditions required by law”.

109. In its observations the Government first points out that only 42 trade unions out of the 5,302 in the country took part in the strike of 8 March. It also declares that it is because of the state of emergency that decrees were adopted in accordance with the provisions of the Labour Code, suspending the legal personality of the trade unions implicated in the strike and freezing their funds.

110. Since then, states the Government, recent measures have been taken removing the sanctions which penalise certain trade unions and, it points out, at the present time no trade union is subject to sanctions.

1 This particular aspect of the case has already been dealt with in connection with Case No. 514 (103rd Report, paras. 219-226).
111. It would appear from the information supplied by the Government that the trade unions' funds that had been frozen have been released and that the trade unions whose legal personality had been suspended have had this restored.

112. With regard to the suspension of legal personality, it appears to the Committee that this had been done by decrees adopted by virtue of the provisions of the Labour Code, which seem to be of a permanent nature and independent of the existence or non-existence of a state of emergency. The Committee wishes to draw attention to the fact that the measures suspending legal personality—which is essential to enable the trade unions to function—which the Government admits having taken, are contrary to the generally accepted principle that trade unions shall not be liable to be suspended by administrative authority.

113. Considering, however, that the measures of suspension in question have been revoked, the Committee recommends the Governing Body, subject to what is stated in the previous paragraph, to decide that no purpose would be served in pursuing its examination of this aspect of the case.

114. As for the allegations concerning the arrest of trade union leaders and militant trade unionists, analysed in paragraph 106 above, the Committee notes that the Government makes no reference to them in its reply.

115. In the circumstances, the Committee recommends to the Governing Body to request the Government to be good enough to submit its observations concerning this aspect of the complaint, indicating, in particular, the present situation of the persons named by the WFTU.

116. With regard to the case as a whole, the Committee recommends the Governing Body—

(a) to decide, subject to the observations contained in paragraph 112 above, that the allegations relating to the suspension of legal personality of certain trade unions and the freezing of their funds do not call for further examination;

(b) to request the Government to be good enough to submit its observations concerning the allegations of the arrest of trade union leaders and militant trade unionists indicating, in particular, the present situation of the persons named by the WFTU and mentioned in paragraph 106 above;

(c) to take note of the present interim report, it being understood that the Committee will submit a further report when it has received the supplementary information referred to in the previous paragraph.


(Signed) Roberto Ago,
Chairman.

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1 ILO Legislative Series, 1950—Col. 3 A, section 397 (1), para. 2(c).
INTRODUCTION

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 25 May 1971 under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body. The member of the Committee of Belgian nationality was not present during the examination of the case relating to Belgium (Case No. 655).

2. In accordance with the procedure laid down in paragraph 12 of its 29th Report, as amended by paragraph 5 of its 43rd Report, the Committee recommends the Governing Body to examine the present report at its session to be held immediately following the conclusion of the 56th (1971) Session of the International Labour Conference. 

3. The Committee considered fourteen cases in which the complaints had been communicated to the Governments concerned for their observations, namely the cases relating to Turkey (Case No. 631), Spain (Case No. 637), Colombia (Case No. 641), United Kingdom (British Honduras) (Case No. 642), Colombia (Case No. 643), Costa Rica (Case No. 646), United Kingdom (Saint Vincent) (Case No. 648), El Salvador (Case No. 649), Argentina (Case No. 651), Philippines (Case No. 652), Portugal (Case No. 654), Belgium (Case No. 655), Spain (Case No. 661), and Nicaragua (Case No. 662).

Cases the Examination of Which the Committee Has Adjourned

4. The Committee adjourned until its next session its examination of the cases relating to Spain (Case No. 637), Colombia (Case No. 641), Costa Rica (Case No. 646), Argentina (Case No. 651), Belgium (Case No. 655), Spain (Case No. 661), and Nicaragua (Case No. 662), concerning which it is still awaiting information or observations requested from, or promised by, the Governments in question. As regards the case relating to Argentina (Case No. 651), the Committee has taken note of a communication from the Government indicating that the matter in question is under examination by the competent national authorities.

5. The Committee also adjourned its examination of the case relating to Turkey (Case No. 631), with regard to which the reply of the Government was received too late to be examined in substance, and the information requested from the complainants has not been received.

Cases for Which the Committee Submits Its Conclusions to the Governing Body

6. In the present report, the Committee submits for the approval of the Governing Body the conclusions which it has now reached concerning the remaining cases before it, namely the cases relating to United Kingdom (British Honduras) (Case No. 642), Colombia (Case No. 643), United Kingdom (Saint Vincent) (Case No. 648), El Salvador (Case No. 649), Philippines (Case No. 652), and Portugal (Case No. 654). These conclusions may briefly be summarised as follows:

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1 See footnote 1, p. 1.

*The 125th Report of the Committee on Freedom of Association was examined and approved by the Governing Body at its 183rd Session (May–June 1971).*
(a) the Committee recommends that, for the reasons indicated in paragraphs 7 to 14 of the present report the case relating to Colombia (Case No. 643) should be dismissed as not calling for further examination;

(b) with regard to the cases relating to United Kingdom (British Honduras) (Case No. 642), United Kingdom (Saint Vincent) (Case No. 648), and El Salvador (Case No. 649), the Committee, for the reasons indicated in paragraphs 15 to 59 of the present report, has reached certain conclusions to which it wishes to draw the attention of the Governing Body;

(c) with regard to the cases relating to Philippines (Case No. 652) and Portugal (Case No. 654), the Committee, for reasons indicated in paragraphs 60 to 92 of the present report, has presented an interim report containing certain conclusions to which it wishes to draw the attention of the Governing Body.

CASE WHICH THE COMMITTEE RECOMMENDS SHOULD BE DISMISSED AS NOT CALLING FOR FURTHER EXAMINATION

Case No. 643

Complaint Presented by the International Federation of Employees in Public Service against the Government of Colombia

7. The complaint by the International Federation of Employees in Public Service is contained in a communication dated 26 October 1970 sent direct to the ILO.

8. This communication was transmitted to the Government, which replied by means of two communications dated 9 December 1970 and 25 January 1971 respectively.

9. Colombia has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

10. The complaint stated that the Minister of Labour had ordered the dismissal from the Ministry of Labour of Mr. Silvio Vela Valencia, General Secretary of the National Federation of Workers in Government Service (FENALTRASE) and President of the Ministry of Labour Staff Union. This act was described by the complainants as being designed to impede any form of intense trade union activity and as a reprisal against statements made by the trade union organisations in which Mr. Vela Valencia held office.

11. In its communication of 9 December 1970 the Government stated that it had attempted to take Mr. Vela Valencia back into the service of the Ministry, having offered him the post of Chief of Section in the Departmental Labour and Social Security Division at Medellín or Cali, but that he had rejected these proposals by a letter of 4 November 1970. With its communication of 25 January 1971 the Government supplied a copy of a letter from Mr. Vela Valencia. In it he stated that he could not accept the posts offered in view of his function as General Secretary of FENALTRASE, with headquarters in Bogotá, which precluded his performing the relevant duties in another town. He added that the Executive Committee of the Federation had confirmed this position and had requested the right to the free exercise of trade union activities in a conversation with the President of the Republic. He stated that any change in his place of appointment would be harmful to freedom of association by preventing him from performing his functions as General Secretary of FENALTRASE.

12. At its session in February 1971 the Committee considered that both the dismissal of Mr. Vela Valencia and the offer of appointment to a different town from that in which he performed his trade union functions constituted acts which, unless fully justified, were liable to cause serious infringement of the principle that workers' organisations should enjoy the right freely to choose their representatives and to organise their administration and
activities. The Committee accordingly, with a view to obtaining the elements it required in order to formulate conclusions, requested precise information from the Government concerning the motives which led to the dismissal of Mr. Vela Valencia and the subsequent offer to reinstate him in the Ministry, but elsewhere than in Bogotá, where he performed his duties as General Secretary of FENALTRASE.

13. In a further communication dated 29 April 1971 the Government stated that, by Resolution No. 0188 dated 2 February 1971, Mr. Vela Valencia had been appointed lawyer in the Department of Labour Inspection of the Ministry of Labour and Social Security in the city of Bogotá.

14. In the circumstances, and with regard to the case as a whole, the Committee recommends the Governing Body:

(a) in drawing the attention of the Government to the principle expressed in paragraph 12 above, to note that Mr. Vela Valencia has been reinstated in a Government post in Bogotá; and

(b) to decide that the allegation, and accordingly the case as a whole do not call for further examination.

DEFINITIVE CONCLUSIONS IN THE CASES RELATING TO THE UNITED KINGDOM (BRITISH HONDURAS) (CASE NO. 642), THE UNITED KINGDOM (SAINT VINCENT) (CASE NO. 648) AND EL SALVADOR (CASE NO. 649)

Case No. 642

Complaint Presented by the Democratic Independent Union against the Government of the United Kingdom (British Honduras)

15. This complaint by the Democratic Independent Union of British Honduras is set forth in a letter sent to the ILO dated 29 September 1970. Additional information in connection with the complaint is contained in four further communications sent to the ILO, dated 27 October and 2 December 1970 and 24 March and 8 April 1971, respectively. The complaint was duly referred to the Government for its comments and these were received in the form of a communication dated 10 March 1971.

16. The United Kingdom has ratified the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and has declared them to be applicable without modification to British Honduras.

17. In the communication dated 29 September 1970 the complainants allege that, on 11 September 1970, the domestic staff of the Belize City Hospital held a sit-down strike following the Government’s refusal to negotiate with the complainants in respect of higher wages and better working conditions.

18. In particular, the complainants allege that written representations were made several times to the hospital authorities and to the Minister of Health requesting a meeting between the complainants and the medical authorities to discuss the issue, but that the Minister of Health refused to meet the complainants’ request.

19. As a result of this refusal the complainants reported the matter to the Governor of British Honduras, who stated that he had no legal power to intervene and that the dispute should be referred to the Minister of Labour. The complainants accordingly informed the Minister of Labour of the situation in a letter dated 21 August 1970, to which no reply was received. A further letter dated 7 September 1970 was addressed to the Minister of Labour in which the complainants stated that, according to the law relative to essential services, he
should act and settle the dispute within 21 days. The complainants allege that this letter was also ignored by the Minister.

20. The complainants state that the Minister of Health sought the intervention of the Commissioner of Police, who broke up the sit-down strike and removed the maids from their place of work. The strikers were replaced by others ("scabs") who were escorted through the pickets by the police. Because of the refusal of the Government to negotiate, the strike was, at the date of the complainants' first communication, in its twentieth day.

21. The complainants also allege that as a result of the strike, the Minister of Health had issued instructions for the dismissal of the strikers and advertised the vacant posts in a newspaper.

22. On 27 October 1970, in a further communication, the complainants stated that the strike was then in its fiftieth day, no attempt having been made by the Government to negotiate. According to the complainants, the Minister of Health had made "an appalling statement" in the House of Representatives against the maids because they had gone on strike, and in taking charge of the matter, he had acted ultra vires, any matter relating to labour disputes being the responsibility of the Minister of Labour.

23. In a communication dated 2 December 1970 the complainants repeated that numerous communications which they had addressed to the Government had been ignored. The strike was now in its eighty-seventh day and the Government still refused to negotiate. Enclosed with the same communication was a copy of a dismissal notice dated 5 November 1970 addressed to one of the domestic staff, in which it was stated that the person concerned was being dismissed consequent on her absence from domestic duties in the Medical Department since 11 September 1970, resulting in the employment of a person to fill the post made vacant by her absence. The complainants allege that their objection to this kind of action proved useless, and that their lawyer, Mr. A. Lindo, would shortly initiate court proceedings.

24. In a communication dated 24 March 1971 the complainants state that no change has taken place in the situation. They allege that the Minister of Labour has still taken no action to settle the dispute despite numerous requests to take action. The matter, say the complainants, was brought before the Supreme Court of British Honduras on 12 and 15 March 1971 and was adjourned for a further two weeks.

25. The Government, in its communication dated 10 March 1971, states that there was no question of a "sit-down strike" on 11 September 1970 since all the strikers sat off-post in groups and in various places on the hospital premises.

26. The Government also states that the Ministry of Health was aware of the grievances presented to it in writing by the domestic staff but intended to attempt to settle them within the Ministry's machinery itself, and was dealing with the matter when the strike was called. The Government points out that the complainants wrote for the first time direct to the Minister of Health on 7 October 1970. It states that, on 9 September 1970, a Medical Department official called the domestic staff together telling them that it was understood by the Ministry that a strike was contemplated and that the matter had been referred to the Minister of Health. Asked to refer the matter to the complainants, the official stated that they had already been written to. Thus, states the Government, the Medical Department had already made an attempt to avert a strike in the matter. The Government adds that, later, the Department of Health spoke to the President of the Union offering to help in averting the strike but was told by him that nothing could be done.

27. The Government further states that the complainants wrote to the Minister of Labour on 21 August 1970. The Minister, however, adds the Government, hesitated to reply to a letter which threatened a strike and which showed no feeling for the people occupying the hospital beds.
28. The Government admits that the Minister of Labour received from the complainants a further letter dated 7 September 1970, which contained the following passage: “unless this dispute is settled in the manner prescribed in Chapter 146 of the said 'Laws of British Honduras' by 10 September 1970, the date on which the 21 days' notice given for the settlement of disputes in 'Essential Services' will end, you leave us no choice but to withdraw our labour on the 11th day of September 1970 until you are prepared to deal with the dispute in the appropriate manner prescribed by law with the view of reaching an amicable and early settlement.” The Minister, states the Government, did not reply to this letter because the domestic staff of the hospital went on strike before he could do so. This strike, the Government contends, was clearly illegal.

29. As a result of the strikers' obstruction of other members of the staff in the performance of their duties, the police ordered them to leave the building. The Commissioner of Police, the Government points out, was carrying out his duty in preserving law and order and it could not be said that he intervened and “broke down” the strike. Subsequently the strikers set up picket lines outside the hospital compound, although some still remained inside.

30. The Government further states that in view of the refusal of the domestic staff to return to work it was found necessary to utilise the services of staff from the Seaview (Mental) Hospital and also of student nurses from the Bliss School of Nursing. Volunteers were supplied from the Red Cross Corps, and helpers also had to be employed, some of whom had been on the waiting list, one being recruited through the Labour Department.

31. The Government adds that, on 19 October 1970, the President of the Union was informed by the Ministry of Health that—

(1) despite several invitations sent in goodwill, the strikers had refused to go back to work while their case was being considered;
(2) the union had failed to take the opportunity to show goodwill by asking the staff to comply with the Government’s request;
(3) the hospital services, classified as essential, had to be continued without serious interruption for the sake of the patients, and that steps had therefore to be taken to fill the strikers’ places with new workers and, as there were no longer any vacancies, that it had been decided to pay their terminal benefits to all the workers who had the required amount of service and were eligible under the Government Workers’ Rules, and not to re-engage other workers who did not qualify for such benefits, most of whom had short service in any case. On the termination of their services the strikers concerned were offered pay in respect of all their accrued vacation leave and from one to four weeks’ pay in lieu of notice, depending on their particular service. The Government states that none were dismissed as alleged, although absent from work without authority or legal right.

32. In its communication the Government states that no official request was made to any newspaper for domestic staff vacancies to be advertised.

33. The Government explains that the Minister of Health has responsibility for the general direction and control of the departments within his portfolio and has every right to act in the settlement of a dispute in the Medical Department. The Minister of Labour has authority to intervene if he so wishes. In the present case, states the Government, the Minister of Labour was of the opinion that the Minister of Health was taking steps to settle the dispute when he was advised of it by the complainants on 21 August 1970, and that he would not act in furtherance of an illegal strike once that had commenced on 11 September 1970.

34. The Committee observes that the complainants had, on 28 July and 6 and 11 August 1970, addressed communications to the medical authorities setting forth the grievances of the domestic maids at Belize City Hospital. The Committee also notes that, in a letter dated
17 August 1970, the chief medical officer stated that these communications had been passed to the Permanent Secretary, Ministry of Health. In a letter dated 20 August 1970 addressed to the complainants by the Governor of British Honduras it was stated that the Governor had no authority to act in the dispute, such authority having been transferred to the Minister of Labour in accordance with section 11 of Chapter 196 of the Consequential Amendments Ordinance 1963, promulgated by Statutory Instruments, No. 4 of 1964.

35. The Committee notes the Government's explanation that the Ministry of Health intended to settle the dispute within the Ministry's machinery and was dealing with the case when the strike was called on 11 September 1970. The Committee also notes the Government's admission that the Minister of Labour did not reply to the complainants' letter dated 21 August 1970, and that he was satisfied that steps were being taken by the Minister of Health and his Department to settle the dispute.

36. As regards the allegation that the strikers were dismissed by the medical authorities and replaced, the Committee notes the Government's statement that, despite several invitations sent in goodwill, the strikers had refused to go back to work, while their case was being considered and that the hospital services, being essential, had to be continued without serious interruption for the sake of the patients. Steps, therefore, had to be taken to fill the strikers' places with new workers, and to terminate the services of the strikers.

37. The Committee observes that, while the Government refers in general terms to the matter being under consideration by the Ministry of Health with a view to settlement of the dispute, no details are given of what negotiations were taking place, or of how settlement was to be effected. From the information supplied it would appear to the Committee that even if machinery exists for the settlement of labour disputes in the hospital service, this does not in the present case appear to have been utilised in such a way as to provide the complainants with any possibility of participation in the negotiations concerning the grievances submitted on behalf of the domestic staff of Belize City Hospital.

38. The Committee has always applied the principle that allegations regarding the right to strike lie within its competence so far, but only so far, as they affect the exercise of trade union rights, and has pointed out on several occasions that the right of workers and their organisations to strike as a legitimate means of defending their occupational interests is generally recognised. In this connection, the Committee has stressed the importance it attaches, where strikes are prohibited or are subject to restrictions in essential services or in the civil service, to the establishment of adequate safeguards to protect the interests of the workers who are thus deprived of an essential means of defending their occupational interests, and has pointed out that such restrictions should be accompanied by adequate,

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1 See, for example, 28th Report, Case No. 143 (Spain), para. 109, Cases Nos. 141, 153 and 154 (Chile), para 202, and Case No. 169 (Turkey), para. 297; 47th Report, Case No. 143 (Spain), para. 66; 58th Report, Case No. 221 (United Kingdom - Aden), para. 109; 65th Report, Case No. 266 (Portugal), para. 77. 66th Report, Case No. 294 (Spain), para. 481; 69th Report, Case No. 285 (Peru), para. 63.

2 See Second Report, Case No. 28 (United Kingdom - Jamaica), paras. 65-70, and Case No. 32 (United Kingdom - Uganda), paras. 87-92; Fourth Report, Case No. 5 (India), paras. 18-51; Sixth Report, Case No. 117 (India), paras. 723-726, and Case No. 50 (Turkey), paras. 862-865; 12th Report, Case No. 60 (Japan), paras. 10-83; 25th Report, Case No. 152 (United Kingdom - Southern Rhodesia), paras. 179-248; 26th Report, Case No. 136 (United Kingdom - Cyprus), paras. 112-145; 28th Report, Cases Nos. 141, 153 and 154 (Chile), para. 202; 30th Report, Case No. 177 (Honduras), paras. 76, Case No. 181 (Ecuador), para. 94, Case No. 143 (Spain), para. 130, and Case No. 172 (Argentina), para. 178; 36th Report, Case No. 178 (United Kingdom - Aden), para. 56; 47th Report, Case No. 143 (Spain), para. 66; 49th Report, Case No. 229 (Union of South Africa), para. 92; and Case No. 192 (Argentina), para. 168; 54th Report, Case No. 179 (Japan), para. 54; 58th Report, Case No. 221 (United Kingdom - Aden), para. 109, and Case No. 192 (Argentina), para. 447; 65th Report, Case No. 226 (Portugal), para. 77; 66th Report, Case No. 294 (Spain), para. 481; 69th Report, Case No. 285 (Peru), para. 63.

3 See First Report, Case No. 32 (United Kingdom - Uganda), paras. 87-92; Fourth Report, Case No. 29 (United Kingdom - Kenya), paras. 137-139; Sixth Report, Case No. 11 (Brazil), para. 75, and Case No. 73 (United Kingdom - British Honduras), para. 72; 22nd Report, Case No. 148 (Poland), para.
impartial and speedy conciliation and arbitration procedures in which the parties concerned may participate at every stage \(^1\) and that the awards given should in all cases be binding on both parties. Since, therefore, the considerations set forth above are relevant to the present case, the Committee wishes to draw the Government’s attention to them and it recommends the Governing Body likewise to draw the Government’s attention to the importance which the Governing Body attaches to these considerations.

39. In these circumstances, and with regard to the case as a whole, the Committee recommends the Governing Body to draw the attention of the Government to the importance which the Governing Body attaches to the considerations set forth in the preceding paragraph regarding, in particular, the establishment of adequate safeguards to protect the interests of the workers where strikes are prohibited or are subject to restrictions in essential services or in the civil service.

Case No. 648

Complaint Presented by the Saint Vincent Workers’ Union against the Government of the United Kingdom (Saint Vincent)

40. The complaint of the Saint Vincent Workers’ Union was contained in a communication dated 5 November 1970 addressed to the Director-General of the International Labour Office. The observations of the Government on the allegations contained in the complaint were received in a communication dated 16 March 1971.

41. The Committee previously had this case before it at its 57th Session (February 1971), at which it decided to adjourn its examination of the case pending receipt of the observations of the Government.

42. The Government of the United Kingdom has ratified the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The provisions of Conventions Nos. 84 and 98 have been declared by the Government to be applicable without modification to Saint Vincent, and the provisions of Convention No. 87 have been declared to be applicable with certain modifications in connection with Article 3 of the Convention (namely as regards trade union votes, voting by secret ballot and trade union funds).

43. The complainants allege that an employee in the general clerical service of the Government of Saint Vincent, Eldwardo Lynch, was elected President of the Saint Vincent Workers’ Union, whose headquarters are in Kingston, Saint Vincent, and his election was duly intimated, as required by law, to the Registrar on 7 September 1970. On 28 September 1970, the complaint continues, the Financial Secretary of Saint Vincent, Cecil A. Jacobs, called Lynch to his office, asked him to resign as President of the Union, and told him that he should not be “active”, apart from retaining his ordinary membership of the Union.

44. The complainants add that Lynch had previously been denied a transfer to the Revenue Office at Georgetown, some twenty-four miles away, which he had requested to enable him to be near his ailing mother. This transfer had been granted within twenty-four hours of the notification to the Registrar of his appointment as President of the Union.

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66-106; 24th Report, Case No. 136 (United Kingdom - Cyprus), paras. 122-145; 27th Report, Case No. 143 (Spain), paras. 85-187; 30th Report, Case No. 172 (Argentina), para. 178; 54th Report, Case No. 179 (Japan), para. 54; 58th Report, Case No. 192 (Argentina), para. 447; 63th Report, Case No. 266 (Portugal), para. 77.

\(^1\) See, for example, 25th Report, Case No. 151 (Dominican Republic), para. 305; 35th Report, Case No. 172 (Argentina), para. 179; 54th Report, Case No. 179 (Japan), para. 56; 56th Report, Case No. 192 (Argentina), para. 448; 65th Report, Case No. 266 (Portugal), para. 77; 69th Report, Case No. 285 (Peru), para. 63.
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45. On 29 September 1970 the Union wrote to the Ministry of Finance informing the Financial Secretary that the Union had accepted Lynch's request to be relieved of his duties as President of the Union. This letter added that the Union considered that the Financial Secretary's action constituted a violation of the Freedom of Association Conventions. The complainants state that the Executive Council of the Union was forced to relieve Lynch of his duties as President, for the time being, in order to avoid further victimisation.

46. In response to the allegation the Government states that the Financial Secretary is responsible, as head of the Ministry of Finance, for all departments falling within the scope of the Ministry, one of which is the Accountant General's Department. Lynch was employed at the Revenue Office in Georgetown, which is a sub-office of the Accountant General's Department. It was in his capacity as Head of the Ministry of Finance that the Financial Secretary called Lynch to his office to discuss with him matters pertaining to his work at Georgetown.

47. The Government states that the Financial Secretary denies categorically having asked Lynch to resign his trade union office, or that he was acting under any kind of political pressure. The Government adds that "In the course of his conversation with Mr. Lynch in connection with his duties at the Revenue Office in Georgetown generally, the Financial Secretary did suggest to him that, as a very junior officer in the Service, he should consider carefully whether it was in his interest and that of his department to accept office as President of the Saint Vincent Workers' Union". Mr. Lynch, the Government continues, indicated that he was not fully aware that his name had been put forward as a candidate for the presidency of the Union, and offered to go immediately to the Registrar and inform him that he no longer wished to be associated with the Union as its President. The Government states that Mr. Lynch left the Financial Secretary's office on the most cordial terms after promising to do his best to assist in the smooth running of the office in Georgetown.

48. The Committee can only conclude, in the light of the Government's explanation of the meeting which took place between the Financial Secretary and Lynch, that the Financial Secretary's remarks were intended to dissuade Lynch from accepting the appointment as President of the Saint Vincent Workers' Union by creating the impression that acceptance of the post might be detrimental to his own interests or those of the Department. It is the Committee's view that such action on the part of the Financial Secretary constituted an interference in the right of the Saint Vincent Workers' Union to elect its representatives in full freedom, a guarantee provided by Article 3 of Convention No. 87.

49. The Committee has on several occasions emphasised the importance which it has always attached to the principle that workers' organisations should have the right to elect their representatives in full freedom and that the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof.

50. In the circumstances, and with regard to the case as a whole, the Committee recommends the Governing Body—

(a) to express the view that the Financial Secretary's remarks to Lynch constituted an infringement of the free exercise of trade union rights in violation of Article 3 of Convention No. 87, so far as it concerns the right of workers' organisations to elect their representatives in full freedom; and

(b) to draw the attention of the Government to the principles expressed in paragraph 49 above in order to ensure that the election of trade union representatives may be free from any interference, either direct or indirect, by the public authorities.

\[1\] See First Report, Case No. 2 (Venezuela), paras. 127-129; Fourth Report, Case No. 30 (Malaya), para. 156; Sixth Report, Case No. 40 (Tunisia), paras. 308-314; 14th Report, Case No. 105 (Greece), paras. 135-137; 23rd Report, Case No. 111 (USSR), para. 157; 27th Report, Case No. 159 (Cuba), para. 380 (a); 32nd Report, Case No. 179 (Japan), para. 20 (a); 36th Report, Case No. 185 (Greece), para. 168; 49th Report, Case No. 211 (Canada), para. 247; 58th Report, Case No. 234 (Greece), para. 571, and Case No. 253 (Cuba), para. 639.
Case No. 649

Complaint Presented by the Latin American Federation of Workers of the Construction and Wood Industry against the Government of El Salvador

51. The complaint of the Latin American Federation of Workers of the Construction and Wood Industry was contained in a communication dated 17 November 1970 addressed to the Director-General of the ILO. The complaint was communicated to the Government for observations on 4 December 1970 and when the case first came before the Committee at its session in February 1971, the Committee decided to adjourn its examination of the case since the Government's observations had not been received. The Government's observations were received in the form of a letter dated 15 March 1971 addressed to the Director-General of the ILO.

52. El Salvador has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

53. The complaint was signed by Mr. Marcelo Luvecce, General Secretary of the Latin American Federation of Workers of the Construction and Wood Industry, who, the complaint states, on 1 October 1970, in his official capacity, was on mission in accordance with a plan of technical assistance for the member organisations of the Federation. This mission began in Guatemala, from where Mr. Luvecce proceeded to Honduras, where he stayed until 14 October 1970. On that day, the complaint continues, Mr. Luvecce flew to Ilopango airport in El Salvador, where, upon showing his passport, he was told that the Government had issued instructions not to permit him to enter the country. The complaint adds that his travel ticket was taken from him and he was deported to Costa Rica, the nearest country he could enter without a visa. The complaint points out that Mr. Luvecce, being a Chilean citizen, had no need of a visa to enter El Salvador, which he had visited on two previous occasions.

54. The complaint explains that the purpose of Mr. Luvecce's visit to El Salvador was connected with technical assistance to the two member organisations of the Federation which had invited him. Furthermore, as Secretary of Workers' Action of the Latin American Federation of Christian Trade Unions, he was to visit and make contact with comrades from the national organisation affiliated to this federation.

55. The complaint continues that Mr. Luvecce protested to officials at the airport and pointed out that their action constituted an infringement of freedom of association. In addition to being mistreated, Mr. Luvecce's technical assistance plans were upset as a result of his arrival in other countries being advanced.

56. The Government, in its reply, states that the Minister of Labour and Social Welfare was informed of this complaint and a detailed inquiry was subsequently carried out. As a result of this inquiry the Government states that it views with great concern the incident reported on behalf of Mr. Luvecce. The Government admits that Mr. Luvecce may indeed have been mistreated as alleged but that the matter must have arisen solely in connection with immigration formalities. The Government deplores and regrets that such an incident should have been interpreted as an interference in the exercise of freedom of association, a principle which, the Government states, it has accepted as one of the bases of its policy of peace and social harmony.

57. The Committee notes the Government's statement that Mr. Luvecce's inability to enter El Salvador must have arisen solely in connection with immigration formalities. The Committee also notes, however, that no explanation is given by the Government in reply to the statement that Mr. Luvecce was informed that the Government had issued instructions not to permit him to enter the country. Nor does the Government specify the immigration formalities with which Mr. Luvecce seems to have failed to comply.
58. The present case concerns an official of an international trade union organisation who apparently wished to make contact with two affiliated national member organisations. In previous cases of this kind, the Committee has applied the principle that the right of national workers' organisations to affiliate with international organisations—a right embodied in Article 5 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)—carries with it the right of national unions to make contact with the international organisations with which they are affiliated and to take part in the work of such organisations. The right of affiliation is not, in the present case, in question. The Committee has, in the past, considered that it was not competent to deal with measures deriving from national legislation on aliens unless these measures had direct repercussions on the exercise of trade union rights. The measures taken by the authorities in this case could, in the opinion of the Committee, indeed have repercussions on the exercise of trade union rights. The Committee considers that in order to avoid the danger of these rights being restricted the authorities should check up on each specific case as quickly as possible and should aim—on the basis of objective criteria—at ascertaining whether or not there exist facts which might have a real effect on public order and security.

59. Accordingly, the Committee recommends the Governing Body, as it has done on previous occasions, to draw the Government's attention to the fact that it would be desirable, in situations of this kind, to seek an agreement through appropriate discussions, in which the authorities as well as the leaders and organisations may clarify their position.

INTERIM CONCLUSIONS IN THE CASES RELATING TO THE PHILIPPINES (CASE NO. 652) AND PORTUGAL (CASE NO. 654)

Case No. 652

Complaint Presented by the Airline Pilots' Association of the Philippines against the Government of the Philippines

60. The complaint of the Airline Pilots' Association of the Philippines (ALPAP) is contained in a communication dated 17 December 1970. This complaint was transmitted to the Government, which forwarded its observations thereon in a communication dated 27 January 1971.

61. The Philippines has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and also the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

62. The complainants state that the airline pilots of the Philippines are locked in a struggle with the Philippine Airlines Management (PAL) over the principle of trade unionism and freedom of association. Following the settlement of a strike on 22 October 1970, state the complainants, when the pilots, in conformity with the decision of the Court of Industrial Relations, returned to work, the management dismissed the President, Mr. Gaston, and the officials of the Airline Pilots' Association for their trade union activities. The International Federation of Airline Pilots sent its Vice-President and its Deputy President who "found PAL guilty of harassment, victimisation and union busting acts". The complainants continue that the pilots exhausted every legal remedy to resolve the problem but that the management remained intractable. The pilots, in desperation, resigned en masse in order to protest against the infringement by PAL of trade union rights.
63. In its observations the Government indicates that, under the country’s legislation, three courses of action are open to a workers’ organisation which considers that there has been an infringement of trade union rights: it may have recourse to the government conciliation services to seek redress for its grievances; it may engage in concerted action to compel the management to desist from infringing trade union rights; or it may bring the management before the Court of Industrial Relations on charges of unfair labour practices. In the present case, the Government points out, the ALPAP, under Captain Felix Gaston, availed itself of the government conciliation services.

64. The Government gives the following account of the facts. The Bureau of Labour Relations, which is the conciliation body of the Department of Labour, the Secretary of Labour himself and even the President of the Philippines tried for several months to conciliate the dispute between the ALPAP and the management of the Philippines Airlines. When all these efforts at conciliation failed, the union engaged in concerted action by going on strike to force the management to grant its demands. Again, the Government continues, during the strike, the Bureau of Labour Relations, the Secretary of Labour, and the President of the Philippines tried to conciliate but no solution emerged. The Government states that, in the meantime, up to 85 per cent of air transport services in the Philippines was paralysed, thus creating a crisis in the whole transport industry. Faced with such a crisis, the Government indicates, the President of the Philippines had to use his powers under section 17 of the Industrial Peace Act—by referring the strike to the Court of Industrial Relations for compulsory arbitration. The Court, after hearing the parties, ordered a return to work pending examination of the main issues raised before it. Instead of complying with this return to work order, the union filed a motion for reconsideration with the full Court, claiming the return to work order of the trial judge was not executory. After the hearing, the Government states, the full Court upheld the return to work order issued by the trial judge and the striking union substantially complied with it. However, the Government indicates, for “supposed technical failure” to return to work, Captain Gaston was dismissed by the management, thus creating a hostile climate for the implementation of the return to work order of the Court. Reacting to the dismissal of Captain Gaston, the ALPAP threatened to make its members resign en masse and later on actually did so when the management refused to reinstate Captain Gaston.” In conclusion, the Government states that the issues involved in the dispute between ALPAP and the management of Philippines Airlines are now pending in the Court of Industrial Relations.

65. Having taken note of the explanations supplied by the Government, the Committee considers that, before pursuing its examination of the case, and in order to be fully acquainted with the facts, it would be necessary, on the one hand, to obtain more detailed information regarding the exact reasons which the management of PAL claim to have justified the dismissal of Captain Gaston, President of ALPAP, and on the other hand, to be informed of the result of the proceedings before the Court of Industrial Relations concerning the dispute in question. Accordingly, the Committee recommends the Governing Body to request the Government to supply further information on the above matters.

Case No. 654

Complaint Presented by the International Confederation of Free Trade Unions and the World Federation of Trade Unions against the Government of Portugal

66. The complaints are contained in two communications addressed to the Director-General of the ILO by the International Confederation of Free Trade Unions (ICFTU) and the World Federation of Trade Unions (WFTU) dated 18 December 1970 and 8 January

1 Among the allegations submitted by the WFTU, some relate to questions which the Committee has already examined in the context of Case No. 266 (see 113th Report). In the present case the Committee confines itself mainly to examining matters regarding which new allegations have been made.
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1971 respectively. A number of documents were enclosed with the communication of the ICFTU in support of its complaint. The texts of these communications were forwarded to the Government of Portugal, which, in a communication dated 24 April 1971, sent its observations on the allegations contained in the complaints.

67. Portugal has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), but not the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

68. Further, the Committee examined the comments furnished by the Government concerning the recommendations adopted by the Governing Body in Case No. 266 (Portugal), contained in the 113th Report of the Committee. The observations of the Committee regarding these comments are to be found as an appendix to the present report.

Allegations relating to the Suspension from Office of Trade Union Officers

69. In its communication of 18 December 1970 the ICFTU criticised the provisions of Legislative Decree No. 502/70 (published on 14 October 1970), especially those concerning the suspension and removal from office of trade union officials, stating that these provisions ran counter to the conclusions reached by the Committee when it examined the trade union situation in Portugal in the context of Case No. 266 (see 113th Report, paragraphs 73-75). This Decree, added the complainants, was promulgated as a regulation under Legislative Decree No. 49058 (promulgated on 28 May 1969). On 15 November 1970, the complaint continued, a number of Portuguese unions sent a note to the Prime Minister containing criticisms of certain provisions of Legislative Decree No. 502/70. Exception was taken by these unions to the provisions contained in the following sections of this enactment: section 3, which provides that when a member of a trade union organisation, or the National Institute for Labour and Social Welfare, has grounds to believe that an officer of the trade union organisation has seriously impaired his rights or the rights, interests or principles which the organisation must respect, further or defend, he (it) may request the labour court to suspend that officer until a final judicial decision is given on the removal of the officer; section 5, which provides that if the suspension is requested by the National Institute for Labour and Social Welfare such a request must be preceded by an inquiry carried out by the Inspectorate of Corporate Organisations; section 6, providing that the judge must order the suspension within 48 hours if the formal requirement of section 5 has been fulfilled; section 7, which establishes that the trade union official may file an appeal against the decision to the same judge, but only on the grounds that the formal requirement has not been fulfilled. In the above-mentioned note the unions alleged that these provisions gave the administrative authorities scope for excessive intervention in the judicial field. The judge, they claimed, was required to reach his decision without being able to inquire into the substance of the complaint against the trade union official concerned.

70. A specific instance of dismissal of trade union officials was cited both by the ICFTU and the WFTU. This case concerned the National Trade Union of Technicians, Metallurgists and Metal Workers of the Lisbon district, which, on 8 June 1970, elected a new executive. Among the new directors were Antonio dos Santos Junior (Chairman), Carlos Augusto das Neves Alves (Secretary) and Luis Manuel Ferreira Faustino (Treasurer). On 13 November 1970, the complaint continues, the Labour Tribunal suspended these three persons, the pretext being that they had refused to sign a collective agreement with the Portuguese Air Transport Company, negotiated by the previous executive. Furthermore, they were accused of having issued a communiqué destined for persons employed by the above airline company, the language used having been full of “class spirit”, and running counter to the corporative principles on which the Portuguese State reposes.

71. In this connection the ICFTU communicated copies of a memorandum from the Ministry of Corporations and Social Welfare addressed to the press and dealing with this matter, a reply to this memorandum signed by the three suspended officers and a communi-
qué published by the national union concerned. In its communication of 8 January 1971 the WFTU referred to this incident, adding that the reason behind the offensive on the part of the Portuguese Government was that the metal workers, through their union, had submitted the draft of a new contract of employment on account of the continual deterioration in their living and working conditions, and the Government had not agreed to the workers’ proposals. Both complainants state that the action of the Government constituted a flagrant breach of the principles of freedom of association.

72. In its communication dated 24 April 1971 the Government contended that the assertion that Portuguese trade union legislation permitted the removal from office of trade union officers by administrative authority was manifestly erroneous. In fact, stated the Government, subsections 5 and 6 of section 21 of Legislative Decree No. 23050, as amended by Legislative Decree No. 49058, explicitly vest exclusive competence in this respect in the labour courts, and the procedure is entirely in conformity with Article 4 of Convention No. 87 since the parties concerned are afforded all the guarantees inherent in normal judicial proceedings. Hence, the Government continued, officials suspended as a precautionary measure by the labour courts are entitled to appeal to the Supreme Administrative Tribunal.

73. With regard to the case of the suspension of the three officers of the National Trade Union of Technicians, Metallurgists and Metal Workers of the Lisbon district, the Government stated that the officers in question were becoming dissociated from the membership of the union and were in fact engaged in subversive activities, having been found in possession of a memorandum calling for revolutionary action. The suspension of these officers was ordered by the competent labour court and the proceedings for their removal from office were at present the subject of an appeal to the Supreme Administrative Tribunal. The Government stated that the judgments handed down in respect of these proceedings would, in due course, be made known to the Committee.

74. The Committee had previously observed (113th Report, paragraph 74) that section 21 of Legislative Decree No. 23050, as amended, provided for the suspension and dismissal of members of the governing body of a union through an action brought before the appropriate labour tribunal by any member of the union or by the National Institute of Labour and Social Welfare. Such actions, it noted, could be brought only on the ground that the member in question had violated the provisions of Legislative Decree No. 49058, more particularly section 20 and section 10, which provide, inter alia, that trade unions shall carry on their activities at the national level while respecting “the higher interests of the nation and the common good”. The Committee, on this question, had recommended the Governing Body to draw the attention of the Government to the desirability of deleting the provisions of section 10 in view of the fact that they were drafted in terms so wide that they failed to afford any precise criteria for judicial decision (paragraph 170 (c) (ii) of the 113th Report).

75. The Committee notes the Government’s explanation that such a provision must be interpreted and understood within the context of the basic provisions governing the organisation of the economic and social system of Portugal and the principles upon which this is based. The Government states that a provision such as that referred to above does no more than place trade union activities within the context of the principles enshrined in the Constitution and the National Labour Code, which serve as a basis for the interpretation of the law and for court proceedings. Furthermore, states the Government, “it does not appear possible to view national unity otherwise than as a simple unity of purpose, a welding together of actions and relations oriented towards the common good of the nation, and it is in this sense that the reference made in section 1 of the National Labour Code to the aims and interests of the nation should be construed”. “In particular,” adds the Government “as far as the corporative system is concerned it is of interest to draw attention on the one hand to the autonomy of the corporative bodies vis-à-vis the State, and on the other hand to the existence of a power of co-ordination which, acting to a certain extent as a counterweight to this autonomy, makes it possible for the State to unite the efforts of all for the benefit of the common good of the nation.”
76. The Committee observes that where the suspension of trade union officers is required by the National Institute of Labour and Social Welfare, such suspension is ordered by a judicial authority. This authority, however, apparently cannot review the grounds for the suspension as established by an administrative inquiry carried out by the inspectorate. It would seem that the sole function of the judge is to issue the order of suspension upon receipt of the request from the Institute together with the results of the inquiry. His role would therefore appear to be confined to ensuring that the formality of the inquiry has been fulfilled.

77. The Committee has taken the view in the past that the principles established in Convention No. 87 do not prevent supervision or control of the internal acts of a trade union to ascertain whether those internal acts violate the law of the land; at the same time the law of the land must not be such as to infringe the principles of freedom of association. However, the Committee has also considered that it is of the greatest importance that, in order to guarantee an impartial and objective procedure, control should be exercised by the relevant judicial authority. In view of the circumstances set out in the preceding paragraph the Committee is of the opinion that in the present case such judicial control is inadequate in respect of the suspension of trade union officers.

78. In addition, the Committee considers that the legislation should contain provisions which lay down criteria sufficiently precise to enable the judicial authority to determine whether a trade union officer has been guilty of such acts as would justify his suspension or dismissal from office. The Committee continues to believe that provisions such as those contained in section 10 of Legislative Decree No. 49058 are vague and afford no such precise criteria for objective judicial decision.

79. In these circumstances, the Committee recommends the Governing Body to draw the attention of the Government to the above considerations and to point out the desirability of reconsidering the legislation concerning the suspension or dismissal from office of trade union officers, in order to safeguard the right of workers to elect their representatives in full freedom as well as the right of trade unions to organise their administration and activities.

80. In the case of the appeal proceedings taken by the three trade union officers of the National Trade Union of Technicians, Metallurgists and Metal Workers of the Lisbon district to the Supreme Administrative Tribunal, the Committee recommends the Governing Body to request the Government to supply copies of the judgments in this case with statements of the grounds upon which these judgments are based.

Allegations Relating to Collective Bargaining

81. The ICFTU alleged in its communication that, on 15 November 1970, twenty-three Portuguese trade unions met in general assembly to consider Legislative Decree No. 492/70 (published on 22 October 1970) which, the complainants stated, was promulgated to fill the gaps and shortcomings in Legislative Decree No. 49212 concerning the conclusion of collective agreements. Its provisions, the complaint alleged, virtually eliminate all freedom in the negotiation of collective contracts. The complaint added that the assembly's comments on this legislation were sent to the Minister of Corporations and Social Welfare on the same day (15 November 1970). A copy of these comments was enclosed with the complaint. Both these decrees, stated the complainants, represented an interference by the State in the free negotiation of collective contracts. The complaint added that the assembly's comments on this legislation were sent to the Minister of Corporations and Social Welfare on the same day (15 November 1970). A copy of these comments was enclosed with the complaint. Both these decrees, stated the complainants, represented an interference by the State in the free negotiation of collective agreements and, in both the letter and the spirit, ran counter to Convention No. 98, ratified by Portugal. The WFTU in its letter dated 8 January 1971 also referred to the restriction of the right to bargain collectively due to the fact that the National Labour and Social Welfare Institute continued to bring inadmissible pressure to bear upon the parties. Recently, the complaint alleged, the time limits to be observed in the renewal of collective agreements had been extended, thereby giving the Government further scope to intervene. The requirement that all agreements should be approved by the Ministry before they could be enforced conferred upon the Ministry the authority to decide whether an agreement was valid or not.
82. Amongst the comments submitted to the Ministry by the trade unions' assembly mentioned above were allegations concerning the requirements of administrative approval for collective agreements. It was also alleged that under section 12 of Legislative Decree No. 49212, as amended, a maximum of 105 days was allowed for employers to reply to claims made by workers. When this reply was received the collective bargaining process must be concluded within six months, although this period could be extended by a further period not exceeding six months by the National Institute of Labour and Social Welfare.

83. In its reply the Government stated that section 10 of Legislative Decree No. 49212 (as amended by Legislative Decree No. 492/70 of 22 October 1970) provided that “the National Labour and Social Welfare Institute may render any necessary assistance to the parties involved in the conclusion of a collective agreement or its revision, or to the bodies responsible for conciliation and arbitration, in particular with respect to legal assistance and the study and analysis of statistical data and indices of cost-of-living trends”. It was in this light, stated the Government, that one should view its intervention, which took place only at the request of the parties concerned and did not restrict their freedom of action in any way. As for the possibility of extending the time limits to be observed in negotiations and for the issue of arbitration awards, the Government added that provision for such a possibility was made in the legislation of most countries.

84. In its reply the Government also stated that, as regards the approval of collective agreements by the Minister, under municipal law this practice continued to be adopted since it was indispensable for the purposes of the registration and publication of collective agreements. Similar provisions, contended the Government, were to be found in the legislation of other countries. In any case, added the Government, the requirement of ministerial approval never empowered the Minister to replace or amend texts that had been freely agreed upon by the parties.

85. Should approval of a collective agreement prove to be impossible by reason of some irregularity or inequity therein, the National Labour and Social Welfare Institute could return the agreement for amendment, or if the agreement contained any illegalities the Government might be obliged to issue a ministerial order regulating the work in question. Where the Government had recourse to issuing regulations or orders it always endeavoured, stated the Government, to align the terms it used with those agreed upon or set forth in conciliation awards which were the most favourable to the workers. The refusal to approve an agreement, the Government added, could always be appealed against to the Supreme Administrative Tribunal.

86. The Committee notes with interest the explanations supplied by the Government in this connection. The Committee notes, however, that Legislative Decree No. 492/70 reaffirms the principle established by the previous legislation as regards the requirement of ministerial approval in order that a collective agreement may come into force. It also notes that section 3 of Legislative Decree No. 49212 establishes as a ground for refusing approval the existence in a collective agreement of a clause which interferes with “the right reserved to the State to co-ordinate and have the over-all control of the economic life of the nation”. In the opinion of the Committee, such a provision involves the risk of seriously restricting the voluntary negotiation of collective agreements.

87. Moreover, considering that, in Portugal, workers are unable to go on strike in support of their claims, the Committee is of the opinion that it would be desirable for the Government to examine the possibility of reducing the period within which employers must reply to workers' claims, as well as the period laid down for the conclusion of collective agreements, in order to encourage and promote the development of voluntary negotiation.

88. The Committee accordingly recommends the Governing Body to draw the attention of the Government to the above considerations and to invite the Government to consider the possibility of amending its legislation in order to encourage the full utilisation of machinery for voluntary collective bargaining.
89. In its communication of 18 December 1970 the ICFTU alleged that action had been taken by the authorities to prevent trade unions from holding meetings. It stated that, at the general assembly referred to above, consideration was given to the decision of the authorities to prevent the holding of assemblies and meetings convened, in accordance with the law and with their statutes, by several trade unions. A letter of protest, stated the complainants, was accordingly signed and sent to the Prime Minister. A copy of this letter was also enclosed with the communication of the complainants. Copies were also sent of circulars issued by the Bank Employees' Union and National Union of Commercial Employees of the Lisbon district protesting against the action taken by the authorities to prevent a number of trade union organisations from holding meetings. These circulars contained the text of communications addressed, inter alia, to the Minister of Corporations and Social Welfare, giving specific examples of cases where these trade union organisations were prohibited by the authorities from exercising their right of assembly. The banning by the authorities of meetings and assemblies convened by unions to discuss conditions of life and work was, the complaint alleged, yet another breach of Convention No. 87.

90. The Government, in its reply to this aspect of the complaint, stated that where the authorities had intervened to authorise in advance the holding of assemblies, they had done so in accordance with the general provisions governing all public meetings. In doing so, added the Government, the authorities fully respected the principles of freedom of association. Governments were required to decide whether, in certain circumstances, meetings—including trade union meetings—might constitute a threat to public order and security and to take such precautionary measures as they considered appropriate.

91. The Committee has often in the past expressed the view that the right to hold meetings in freedom is an integral part of the right of trade unions to function freely and that the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof. In recommending the Governing Body to draw the attention of the Government to this principle, it also recommends the Governing Body to request the Government to supply detailed information concerning the circumstances which, in the Government's view, justified the refusal to authorise the trade union meetings referred to in the complaint.

* * *

92. In all these circumstances, the Committee recommends the Governing Body—

(a) with regard to the allegations relating to the suspension from office of trade union officers,

(i) to draw the attention of the Government to the considerations set out in paragraphs 77 and 78 above, and to point out the desirability of reconsidering the legislation concerning the suspension or dismissal from office of trade union officers, in order to avoid the danger of serious limitations on the right of workers to elect their representatives in full freedom as well as the right of trade unions to organise their administration and activities;

(ii) to request the Government to supply copies of the judgments in the appeal to the Supreme Administrative Tribunal of the three trade union officers of the National Trade Union of Technicians, Metallurgists and Metal Workers of the Lisbon district, with statements of the grounds upon which these judgments are based;

(b) with regard to the allegations relating to collective bargaining,

to draw the attention of the Government to the considerations set out in paragraphs 86 and 87 above, and to invite the Government to consider the possibility of amending its legislation in order to encourage the full utilisation of machinery for voluntary collective bargaining;
(c) with regard to the allegations relating to freedom of assembly,
   (i) to draw the attention of the Government to the principle that the right to hold
   meetings is an integral part of the right of trade unions to function freely and that
   the public authorities should refrain from any interference which would restrict this
   right or impede the lawful exercise thereof;
   (ii) to request the Government to supply detailed information concerning the circum-
   stances which, in the Government's view, justified the refusal to authorise the
   meetings referred to in the complaint;

(d) to take note of this interim report, it being understood that the Committee will submit a
   further report once it has received the additional information requested from the
   Government under clauses (a) (ii) and (c) (ii) of this paragraph.


(Signed) Roberto Ago,
Chairman.
APPENDIX

Case No. 266 (Portugal)

1. In its 113th Report, entirely devoted to its last examination of Case No. 266 (Portugal), the Committee re-examined the trade union situation in Portugal in the light of new legislation which had recently been promulgated, dealing with the matter essentially under the same chapter headings as had been used in connection with the original complaint presented by the International Confederation of Free Trade Unions in 1961.

2. In its 113th Report the Committee took up each of the points arising out of its earlier examinations, recalling the allegations made and the Government's replies with respect thereto, recalling also the conclusions it had reached on earlier occasions, assessing the implications of the changes in the legislation and making observations and recommendations.

3. By a communication dated 1 May 1970 the Government furnished its comments upon the observations made and the conclusions reached by the Committee concerning each of the questions raised. These comments are analysed below.

4. It should however be pointed out before proceeding further that throughout its reply the Government insists upon the fact that it is not bound by the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which it has not ratified, but only, in this connection, by the general principles embodied in the Declaration of Philadelphia.\(^2\)

5. The Government declares, inter alia, in this respect that "... since it has already been shown that Portuguese legislation does, in fact, respect the principles proclaimed in Philadelphia, there can be no reason to consider the complaint any further, on the grounds that the system adopted in Portugal is not that expressly provided for in a Convention (not ratified by Portugal) used solely for purposes of comparison ".

6. It would appear to be desirable at this point for the Committee to clear up what seems to be a misunderstanding. It was not in fact the intention of the Committee in its 113th Report to accuse Portugal of failure to carry out international obligations formally incumbent upon it under ratified Conventions. It endeavoured to evaluate the situation which existed in law and in practice and to indicate the measures which in its view needed to be taken to ensure full respect for freedom of association by Portugal, basing its conclusions on criteria deriving from the generally accepted principles on the subject.

7. It should be recalled in this connection that the Committee has always considered that it should, in discharging the responsibility which has been entrusted to it to promote the principles embodied in the Declaration of Philadelphia "be guided in its task, among other things, by the provisions relating thereto approved by the Conference and embodied in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which afford a standard of comparison when examining particular allegations "\(^3\).

8. It is in the spirit indicated in the two preceding paragraphs that the Committee has examined in the past the case which it has before it, and it is in this spirit also that it intends

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\(^1\) See para. 68 above.

\(^2\) Portugal has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

\(^3\) Cf. 113th Report, para. 11.
to pursue its examination. It feels bound to recall in this connection that it was precisely in order to supplement the machinery of supervision established with a view to ensuring the application of ratified Conventions that it was decided to institute special machinery, of which the Committee on Freedom of Association is an essential element and which—following the principle that "the function of the International Labour Organisation in regard to trade union rights is to contribute to the effectiveness of the general principle of freedom of association as one of the primary safeguards of peace and social justice"—is empowered to examine complaints relating to freedom of association lodged against States Members of the Organisation, whether they have ratified the Conventions relating to it or not.

9. Under these circumstances, and in view of the fact that the Government has furnished its observations on the substance of the case, the Committee feels it appropriate, in the light of the considerations set forth above, to resume its examination of the case.

Examination of the Substance of the Case

(a) Restriction of the Number of Trade Union Organisations That May Be Formed.

10. When it last examined the case the Committee reached the following conclusions in respect of this point:

...the Committee recommends the Governing Body—

(a) to take note that the legislation has been modified in the following respects:

(i) the provisions of section 1 of Legislative Decree No. 23050 whereby a trade union could be established only by more than 100 workers engaged in the same profession have been deleted;

(ii) the provisions of section 3 have been amended so as to make it possible for trade unions to extend their geographical coverage beyond a district;

(iii) section 3 has been further amended in such a way as to make it possible for one trade union to represent more than one occupation in the same district or for two or more trade unions to represent the same occupation in the same district;

(b) to draw the attention of the Government to its view that in order to give effect to the generally accepted principle that workers should have the right to establish and join organisations of their own choosing without previous authorisation it would be necessary to take the following steps:

(i) to delete the provisions in section 3 whereby the approval of a government agency must be obtained before either one trade union may represent more than one occupation in the same district or two or more trade unions may represent the same occupation in the same district;

(ii) to remove the restrictions imposed on trade unions in section 4 whereby only those of a certain minimum size and financial solveney may legally exist.

11. In its observations the Government stresses that the principle of freedom of association, as enshrined in the Declaration of Philadelphia, "would not seem to provide grounds for requirements of the kind recommended by the Committee, since the Declaration nowhere lays down as a general rule that there must be no regulation of trade union affairs, and since the principle in question is in no wise affected by the legislation in force ".

12. In answer to point (b) (i), quoted above, the Government points out that section 3 of Legislative Decree No. 23050, as amended, expressly requires that attention be paid to "the will of the workers, clearly manifest", and demands for this purpose that "those concerned be given a hearing". Accordingly, in the Government’s view, intervention by the National Institute of Labour and Social Welfare is necessary to prevent the whole system from falling into disorder as would happen "if other interests were not at the same time

1 Cf. 113th Report, para. 17.
2 Cf. First Report, para. 32.
3 Cf. 113th Report, paras. 19-37.
4 Ibid. para. 38.
taken into consideration”. The trade unions, states the Government, are part of a complicated corporative structure within which workers and employers have to be given equal representation. It adds that in addition trade unions have public responsibilities which should be safeguarded when parallel bodies are established. Lastly, the Government declares that it is through intervention by the National Institute of Labour and Social Welfare that the Government can protect the unions against possible interference from employers’ organisations.

13. As for section 4, the Government declares that “this contains, not a restriction, but a requirement of an almost formal kind, designed to ensure that the workers are effectively represented”. In the Government’s view such a clause in no way restricts organisation on the basis of occupations, since subsections 2 and 3 render possible the setting up of nuclei organised in whatever manner those concerned may feel most suitable, with the added advantage of enjoying common services. “In brief,” declares the Government “this is a system the possibility of which is provided by law to make the organisation of workers easier and not more difficult, and to ensure that such associations enjoy financial independence”.

14. The concluding paragraph of the Government’s observations on this aspect of the case is worded as follows: “The Portuguese Government has now begun consideration of the first reports on the results achieved by this new legislation, so different from that previously in force. It takes the view that there is no call whatever for any change in the new system, which allows full freedom of association”.

15. As concerns those of the Government's comments analysed in paragraph 12 above, it is indeed conceivable that the corporative system in operation in Portugal might make necessary some kind of supervision on the part of the National Institute of Labour and Social Welfare so as to ensure that the machinery functions in the manner and for the purposes intended. While all the effects of the system are not necessarily harmful (in particular as concerns protection against interference from employers’ organisations), the Committee observes nevertheless that the effect of the legislation in force is to make the forming of trade unions subject to prior authorisation from a government agency, which is inconsistent with the generally accepted principles of freedom of association.

16. With regard to those of the Government’s observations analysed in paragraph 13, the Committee considers that measures designed to ensure the financial independence of trade unions can be evaluated only within the context of and in the light of the trade union system under which they operate. With this viewpoint in mind, the Committee feels bound to point out that, notwithstanding the provisions of subsections 2 and 3 of section 4, mentioned in paragraph 10 above under point (b) (ii), any trade union “nuclei” that may be set up still form part of the existing trade unions as defined by the legislation, and that the effect of this legislation is nevertheless to curtail, through the restrictions it imposes, the right of workers to establish and join organisations “of their own choosing”, which, yet again, is inconsistent with the generally accepted principles of freedom of association.

17. Lastly, the Committee notes the Government’s statement implying that it has no intention of amending its legislation to meet any of the points raised in this section.

18. In these circumstances, the Committee notes the explanations furnished by the Government, expresses its regret that the Government does not deem it appropriate to consider altering its legislation in this respect and, for the reasons stated in paragraphs 15 and 16 above, adheres to the conclusions reached previously as quoted under point (b) in paragraph 10 above.

(b) Obligation to Submit Trade Union Rules for Approval by the Authorities.\(^3\)

19. When it last examined the case the Committee reached the following conclusions in respect of this point:

\(^3\) Cf. 113th Report, paras. 39-53.
the Committee recommends the Governing Body—

(a) to take note of the following changes effected in section 15 of Legislative Decree No. 23050:

(i) the deletion of subparagraph (e) requiring a trade union to limit the payments to the union by its branches to 50 per cent of the contributions received by such branches;

(ii) the deletion of subparagraphs (b) and (c), requiring the inclusion in trade union rules of a declaration of respect for the principles and purpose of the national community, an express renunciation of any and every form of activity, internal or external, which was contrary to the interests of the Portuguese nation, and a recognition of the fact that the trade union constituted a factor required for active co-operation with all the other factors of the national economic system, and consequently a repudiation of the class war;

(b) to draw the attention of the Government to its view that in order to comply with the generally accepted principles that workers' organisations should have the right to draw up their constitutions and rules, to organise their activities and to formulate their programmes, that the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof, and that the law of the land should not be such as to impair, or be so applied as to impair, the effective enjoyment of this right, it would be necessary to take the following further steps:

(i) to delete the provisions of section 9 of Legislative Decree No. 23050, in accordance with which "national trade unions shall subordinate their respective interests to the interests of the national economic system";

(ii) to delete the provisions of section 18(3) of Legislative Decree No. 23050, in accordance with which approval of trade union rules can be given only after the National Institute of Labour and Social Welfare has reported that the proposed trade union is "justified in view of the economic and social interests of the community".1

20. In its observations the Government points out that Convention No. 87 makes no claim to be a code of regulations governing trade union rights, but merely sets forth, very briefly, certain basic principles. States remaining free to provide in their legislation for such formalities as they may consider most likely to ensure the proper working of occupational organisations. "If this is true for countries which have ratified Convention No. 87", continues the Government, "it must be even truer for those which, like Portugal, have not ratified, and merely have to show respect for the general principles enshrined therein". The Government further points out that Convention No. 87 itself, in Article 8, contains a specific proviso calling for respect for the law of the land, "which may be embodied in national rules and regulations".

21. The Government declares that it is for these reasons that Portuguese legislation has continued on these lines by laying down, in the new section 15 of Legislative Decree No. 23050, the general principle that occupational organisations shall be free to decide on their rules, embodying in sections 9 and 18 the requirement that there shall first be a check to ensure that the union concerned does not intend to infringe the general standards established for the defence of the nation's economy. The Government goes on to state that the same prerequisite is established for the setting up of employers' organisations, being designed in this case to ensure that there shall be no breach of basic rules embodied in legislation governing such things as monopolies, trusts, illicit agreements, collective agreements, minimum wages, social security, working hours, and so on.

22. "Thus it is" declares the Government "that approval of trade union rules is a formality equivalent to the registration practised in many countries." The Government "is prepared to admit that the wording of sections 9 and 18 might conceivably be improved. This is a point which will certainly be taken care of in due course. But in view of the way in which these provisions have always been interpreted, it was not felt necessary, when introducing amendments by means of Legislative Decree No. 49058, to make any textual changes".

23. To illustrate its point, the Government states that since 1933 (when Legislative Decree No. 23058 was promulgated) "no single case of prohibition has ever been recorded.

1 Cf. 113th Report, para. 54.
This in itself should suffice to show that the Government has ever been mindful of the provisions to which reference has been made. The Government adds that under the ordinary law the parties concerned are free to lodge an appeal with the competent courts against any decision which goes against them.

24. It would appear from the explanations furnished by the Government that occupational organisations which it is intended to set up are allowed to draw up their rules in full freedom and that the required approval of these rules by the National Institute of Labour and Social Welfare is a mere formality equivalent to registration.

25. There would admittedly be no infringement of freedom of association if the above-mentioned requirement were purely formal in character and were intended merely to correct possible drafting errors, easily put right, or if its purpose were simply to check whether the rules complied with legislative provisions which were themselves in conformity with the principles of freedom of association.

26. It would be otherwise, however, if this requirement conferred upon the public authorities more extensive powers of judgment and authorised them to refuse to approve a union's rules, and so to prohibit the founding of an organisation, in pursuance of statutory provisions which constituted in themselves an infringement of the principles of freedom of association.

27. It does appear that the concepts of "the interests of the national economic system" and "the economic and social interests of the community", as stated in sections 9 and 18 of Legislative Decree No. 23050, are generalisations so vague as to allow for interpretation in broad terms which are clearly fraught with danger.

28. It is obvious, since the essential aim of a trade union should be to defend and further the interests of its members—which do not necessarily always coincide with what the public authorities consider to be the interests of the community as a whole—that a broad interpretation of the concepts mentioned in the preceding paragraph and a requirement that regard be specifically had thereto in the drawing up of trade union rules might run counter to the generally accepted principle that trade unions should be able to draw up their rules in full freedom, and subsequently to perform without hindrance their function of defending the interests of their members.

29. It would not appear from the Government's statements that this is in fact the intention behind the provisions objected to, and in practice no case of refusal to approve the rules has ever been recorded.

30. In these circumstances, bearing in mind that the Government itself (see paragraph 22) admits that the wording of the sections in question might be improved, the Committee takes note of the explanations furnished by the Government. It considers that it would be desirable for the Government to examine the possibility of amending its legislation in such a way as to remove all ambiguity as to the interpretation and the true scope of the provisions in question and, with this end in view, of deleting the provisions of section 9 and section 18 (3) of Legislative Decree No. 23050 to which reference is made under points (b) (i) and (ii) quoted in paragraph 19 above.

(c) Restrictions on the Right of Trade Unions to Elect Their Representatives.

31. When it last examined the case the Committee reached the following conclusions in respect of this point:

...the Committee recommends the Governing Body—

1 Cf. 113th Report, paras. 55-74.
125th Report

(a) to take note of the following changes introduced into the legislation:

(i) Legislative Decree No. 25116 has been repealed and section 15 (5) of Legislative Decree No. 23050 has been amended, the previous system of ministerial approval of the results of trade union elections being replaced by a system of verification of the conditions of eligibility of candidates by credentials committees elected at trade union general assemblies;

(ii) Legislative Decree No. 32820 has been repealed and section 21 of Legislative Decree No. 23050 has been amended, the previous system, which permitted the substitution of government appointees for elected governing bodies of trade unions, being replaced by another system, providing for the suspension and dismissal of governing bodies through court action;

(b) to draw the attention of the Government to the desirability of the following measures:

(i) in order to avoid the danger of serious limitations on the right of workers to elect their representatives in full freedom, plaints brought before labour courts by the National Institute of Labour and Social Welfare in accordance with subsection 8 of the new section 15 challenging the results of trade union elections should not—pending the final outcome of the judicial proceedings—have the effect of suspending the validity of such elections;

(ii) in order to avoid a similar danger with regard to the right of workers to elect their representatives in full freedom as well as to the right of trade unions to organise their administration and activities, it would be necessary to delete the provisions contained in the new section 10 enjoining respect for “the higher interests of the Nation and the common good”, on the basis of which labour courts are to decide whether the conduct of trade union officers warrants their dismissal, in view of the fact that these provisions are drafted in terms so wide that they fail to afford any precise criteria for judicial decision.1

32. In its observations the Government states that the suggestions made in the Committee’s report “relate to procedural matters and are of course open to discussion should difficulties arise. For the time being, however, they are of no interest, since the courts have not yet had to consider any such problem”. “Be that as it may,” continues the Government “they do not have to be considered part and parcel of this complaint, since they do not run counter to the general principle” set forth in the Declaration of Philadelphia.

33. In these circumstances, as the Government has furnished no new evidence on the substance of the question, the Committee feels bound to abide by its earlier conclusions, quoted under (b) in paragraph 31 above.

(d) Suspension and Dissolution of Trade Union Organisations by Administrative Authority.2

34. When it last examined the case the Committee reached the following conclusions in respect of this point:

...the Committee recommends the Governing Body:

(a) to take note of the changes introduced into section 10 of Legislative Decree No. 23050, whereby the provisions on “immediate dissolution” of trade unions by administrative authority have been removed;

(b) to draw the attention of the Government to its view that in order to secure fuller compliance with the principle that trade unions should not be dissolved or suspended by administrative authority it would be necessary to amend the new section 20 of Legislative Decree No. 23050 so that a decision by a non-judicial authority such as the Corporative Council to dissolve a trade union should not become effective until the statutory period has expired without an appeal being lodged against this decision or until it has been confirmed by a decision of the court.3

35. In its comments the Government states that “a trade union can today be wound up only if its own appropriate organ so decides, or, should government action be required, by virtue of a decision taken by the Council of Ministers; in the latter event, an appeal can always be made to the courts, and the legal ruling (when the parties so request) has

1 Cf. 113th Report, para. 75.
2 Ibid., paras. 76-86.
3 Ibid., para. 87.
suspensive effect. This was the system adopted by the enactment of Legislative Decree No. 49058. There can be no doubt but that it is fully in harmony with the general principles enshrined in the ILO Constitution. It might well be that were Portugal to ratify Convention No. 87, Article 4 of the latter would force it to reject the second reason for dissolution under the existing legislation despite its great soundness. But the Committee on Freedom of Association has recognised... that since Portugal has not ratified Convention No. 87, it cannot be expected to shoulder the obligations which would be incumbent on it if it had. And it is in these terms that Legislative Decree No. 49058 provides for action by the Corporative Council (in fact, a Council of Ministers), subject to safeguards whereby a union can carry on its normal activities as before, whenever it seeks the authorisation of the competent court to do so and this authorisation is accorded “.

36. The Committee has taken note with interest of the explanations furnished by the Government concerning this aspect of the case, especially as regards the suspensive effect of appeals to the courts against decisions of the Corporative Council as to dissolution. The Committee nevertheless points out in this connection that it would appear from the Government’s statements that the suspensive effect becomes operative only if the courts accede to a request made to that effect by the parties concerned.

37. The Committee considers that the suspensive effect should operate automatically, firstly, throughout the period during which an appeal may be lodged and, secondly, until the final judgment is pronounced in the event of an appeal against a decision for the winding up of a union, and this was the meaning it intended to convey in the observation quoted under point (b) in paragraph 34 above.

(e) Compulsory Trade Union Contributions.1

38. When it last examined the case the Committee reached the following conclusions in respect of this point:

...the Committee recommends the Governing Body to draw the attention of the Government to its view that in order to secure fuller compliance with the principle that workers should have the right to constitute and join organisations of their own choosing, it would be necessary to amend Legislative Decree No. 29931 of 15 September 1939, removing the obligation imposed on all the workers in the category concerned to pay contributions to the single national trade union which it was permitted to form in any one occupation in a given area.2

39. In its observations the Government states that the statutory system whereby workers who are not members of a union are required to pay union dues is by no means an essential feature of the Portuguese corporative system. It was introduced during the last world war in an attempt to cope with the economic problems caused by that conflict, and according to the Government has been maintained for purely practical reasons. The Government admits, however, that “compulsory payment of union dues might invalidate the principle that a man should be free to join the union of his choice”.

40. In these circumstances, while taking note of the explanations furnished by the Government, the Committee, guided by the criteria which it has always observed in evaluating a particular situation, cannot do otherwise than abide by the conclusion quoted in paragraph 38 above, for the reasons stated in that conclusion.

(f) Supervision of Collective Bargaining and Approval of Collective Agreements by the Public Authorities.3

41. When it last examined the case the Committee reached the following conclusions in respect of this point:

1 Cf. 113th Report, paras. 88-102.
2 Ibid., para. 103.
3 Ibid., paras. 104-129.
...the Committee recommends the Governing Body—

(a) to note Legislative Decree No. 49212, whereby the mandatory intervention of the National Institute of Labour and Social Welfare in the drafting of collective agreements, the guidance of negotiations and the drafting of terms is replaced by optional intervention at the request of the corporation with a view, in particular, to providing the parties with legal and technical advice;

(b) to draw the Government's attention to the fact that Legislative Decree No. 49212 has not changed the previous situation as regards the requirement of ministerial approval in order that a collective agreement may come into force, and to request the Government once again to state whether the competent minister may refuse this approval and, if so, in what circumstances and on what grounds, and whether there is any possibility of appealing against refusal to approve a collective agreement.

42. In its observations the Government states that the examination of a collective agreement by the Ministry of Corporations is designed to ensure that the agreement does not run counter to public order or to the rules enacted to defend the workers' minimum rights. "Ministerial approval cannot entail the replacement of, or changes to, texts freely agreed upon between the parties concerned." The Government points out that provision is not even made for refusal of approval in Legislative Decree No. 49212, which merely lays down, in sections 2 and 3, rules which collective agreements must not infringe. "It follows" concludes the Government "that only if a collective agreement runs counter to such rules can approval be refused. And since refusal, if it occurs, can only be by ministerial decision, an appeal against this decision can always be lodged with the Supreme Administrative Tribunal in accordance with the general provisions of the law."

43. The Committee thanks the Government for the explanations that it has furnished concerning this aspect of the case and takes note of them with interest. It nevertheless draws the attention of the Government to the risk of limiting the voluntary negotiation of collective agreements by provisions such as those of section 3 of Legislative Decree No. 49212, which allows the presence of a clause interfering with "the right reserved to the State to co-ordinate and have the over-all control of the economic life of the nation" to be taken as a ground for refusing approval.

(g) Restrictions on the Right of Trade Unions to Affiliate with International Organisations of Workers.

44. When it last examined the case the Committee reached the following conclusions in respect of this point:

...the Committee recommends the Governing Body to bring the attention of the Government to its view that in order to give full effect to the generally accepted principle that trade union organisations should have the right to affiliate with international organisations of workers it would be necessary to delete the provisions of the new section 10 [of Legislative Decree No. 23050] subjecting the exercise of this right to the discretionary authority of the National Institute of Labour and Social Welfare.

45. In its comments the Government declares that intervention by the National Institute of Labour and Social Welfare is intended merely as a means of ensuring that the same interests are not represented twice over (by the corporation and by the unions). The Government adds that by intervening, the Institute should be able to ensure that representation through some monolithic organisation shall not exclude the individual representation of smaller bodies. The Government points out that the corporate State is organised in the form of a pyramid, which explains why, when conflict threatens, the State has to intervene with a view to ensuring the most appropriate and the most equitable settlement.
46. In addition to giving these explanations, the Government points out once again that since Portugal has not ratified Convention No. 87 it does not consider itself bound by Article 5 of that Convention. It further observes that, from the simple principles enshrined in the Declaration of Philadelphia, it cannot possibly be deduced that the bodies have the right to affiliate with international organisations, much less supposing this right to exist, that it must be free of certain legal conditions. In saying this the Portuguese Government by no means wishes to assert that what is said in Article 5 is unjustifiable. It simply wishes to affirm that Portuguese legislation, if in this regard it departs somewhat from a ruling which deserves respect, is not for that reason to be considered a breach thereof”. The Government concludes by stating that it sees no reason to amend the legislation now in force.

47. The Committee expresses its regret at the Government’s attitude and stands by the opinion it expressed earlier, to the effect that it would be more consistent with the generally accepted principle that trade union organisations should have the right to affiliate freely with international occupational organisations to delete the provisions of the new section 10 of Legislative Decree No. 23050 subjecting the exercise of this right to the discretionary authority of the National Institute of Labour and Social Welfare.

(h) Prohibition of Strikes under Portuguese Legislation.

48. When it last examined the case the Committee reached the following conclusions in respect of this point:

...the Committee recommends the Governing Body to draw the attention of the Government once again to its view that the right of workers and their organisations to strike is a legitimate means of defending their occupational interests and that it would therefore be necessary to amend the present legislation, in particular Legislative Decree No. 23870, which prohibits strikes altogether.*

49. In its observations the Government recalls that conciliation and arbitration machinery exists in Portugal for the solution of collective labour disputes, and that Legislative Decree No. 49212, in particular, lays down detailed rules and fixes time limits in this respect.

50. The Government argues that the system operated in Portugal is justified on the ground that “all Portuguese legislation is based on the following principle, defended in the International Labour Organisation: whenever strikes are forbidden or subject to restrictions, the workers must be offered adequate safeguards for the defence of their interests. Swift and impartial arbitration procedures, involving participation by all concerned at every stage, must be devised.”

51. The Portuguese Government would appear to have misunderstood the Committee’s viewpoint in that it apparently takes to be the rule what the Committee regards as an exceptional measure. In fact, the rule, in the Committee’s view, is that the right to strike, where exercised for the defence and furtherance of the workers’ interests, should be recognised to be a legitimate means of action for workers and their organisations. It is only in special cases such as those of essential services and of the civil service that the Committee has admitted that there is justification for not according the right to strike, and it is with these cases only in mind that it has emphasised that—the workers being deprived of an essential means of action which would normally be open to them—conciliation and arbitration procedures should be so designed as to compensate for the lack of such a means of action.

52. In view of the above, the Committee cannot do otherwise than maintain the position it adopted earlier and reaffirms the conclusion quoted in paragraph 48 above.

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1 Cf. 113th Report, paras. 144-157.
* Ibid., para. 158.