



FOURTH ITEM ON THE AGENDA

**Developments concerning the question
of the observance by the Government
of Myanmar of the Forced Labour
Convention, 1930 (No. 29)****I. Developments since June 2002**

1. At its 283rd Session (March 2002), the Governing Body endorsed an understanding reached that same month between the Government of Myanmar and the International Labour Office concerning the appointment of an ILO Liaison Officer in Myanmar, subject to a number of comments and clarifications made during its debate of the question, and on the understanding that this first step must develop into a full and effective ILO representation. The Director-General appointed Mr. Léon de Riedmatten as interim Liaison Officer on 6 May 2002. A summary of the activities carried out by Mr. de Riedmatten up to June was provided to the Committee on the Application of Standards of the International Labour Conference, at its special sitting set aside to consider this matter.¹ The conclusions of the Committee are reproduced in Appendix II.
2. As the Director-General stressed to the Minister for Labour of the Government of Myanmar in a meeting during the International Labour Conference, and in a subsequent letter dated 21 June, the decision on Mr. de Riedmatten's successor as Liaison Officer was an important one which required special care, as the choice of this person would be critical in achieving the common goal of eradicating forced labour in Myanmar. It was therefore agreed by the Director-General and the Myanmar authorities that Mr. de Riedmatten should continue in his functions until a choice on his successor was made.²

¹ See ILC, 90th Session (Geneva, 2002), *Provisional Record* No. 28, Part 3, section C, *Other developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)*. The relevant section is reproduced in Appendix I.

² As before, Mr. de Riedmatten continued at the same time in his function as representative of the Centre for Humanitarian Dialogue; the Centre generously agreed to an extension of the previous arrangement.

3. In his letter of 21 June, the Director-General also underlined to the Minister that there was no time to waste if a convincing picture of progress were to be presented to the Governing Body in November; therefore Mr. de Riedmatten should have the opportunity to immediately initiate discussions with all concerned with a view to developing an integrated plan of action to assist in the efforts to eradicate forced labour at the institutional level and through technical cooperation or other means.
4. The Director-General provided some further thoughts on this matter in a subsequent letter dated 22 July to the Minister (reproduced in Appendix III), emphasizing that the plan of action, which could initially be targeted to an agreed geographical region and be progressively extended on a step-by-step basis, would have to be carefully devised taking into consideration the analysis and recommendations of the 2001 High-Level Team (HLT) and should be discussed, adopted and subsequently implemented in such a way as to demonstrate the commitment of the authorities at the highest level and to receive the support of all other sectors concerned, including from the international community.
5. In a reply dated 9 August (reproduced in Appendix IV), the Minister for Labour informed the Director-General that plans were under way for a field observation trip to Tanintharyi Division, together with the interim Liaison Officer, and that such activities would be expanded on a step-by-step basis as the Director-General had suggested. It was pointed out by the Office to Ambassador Mya Than in Geneva, however, that the meaning and possible contribution of such field observation trips to the common objective would be better understood and appreciated by ILO constituents if they constituted an initial part of a coherent plan of action, to which the Director-General had referred. At this very late stage, time was more than ever of the essence, and the Director-General had therefore requested the interim Liaison Officer to follow up urgently on this matter with the authorities in Yangon.

II. Activities carried out by the interim Liaison Officer between June and October 2002

6. In order to follow up on his initial contacts in May, Mr. de Riedmatten, together with his assistant, held a number of meetings with various parties between June and October³ as well as conducting a field trip to Tanintharyi Division in the south of the country.
7. *The need to develop a coherent plan of action.* In a meeting on 23 August with the Implementation Committee,⁴ as well as in meetings on 6 and 18 September with the Minister for Labour, the interim Liaison Officer underlined the need for a coherent plan of action to be worked out between the ILO and the authorities. A mission from ILO, Geneva,

³ A total of 16 meetings were held in Yangon, including several with the Minister for Labour as well as meetings with the Minister for Home Affairs, the Deputy Minister for Foreign Affairs, a senior military intelligence official, a meeting with the Implementation Committee and several meetings with senior officials from the Department of Labour. A meeting was also held with Daw Aung San Suu Kyi, the General-Secretary of the National League for Democracy. In addition, meetings were held with representatives of a number of United Nations agencies and international NGOs.

⁴ For the composition and mandate of the Implementation Committee, see document GB.279/6/1(Add.1)(Rev.1). Not all members of the Committee were able to be present at the meeting on 23 August.

could perhaps be fielded for this purpose, but time was running short, and the authorities should therefore urgently consider this matter.

8. The view of the Implementation Committee on this point was that the plan of action would emerge naturally from discussions between the two sides at the working level. The Minister for Labour echoed these feelings, pointing out that it would be more useful and appropriate to discuss a plan of action for the whole country only once some concrete cooperation had begun in the field. The results of this initial cooperation could then be discussed with a team from ILO Geneva and a plan of action could be developed in the light of these results.
9. The interim Liaison Officer understood this point of view, but underlined the need to demonstrate clear progress to the Governing Body in November. It was of course for the authorities to decide when they wished to take up the proposal for a mission from ILO Geneva, but he stressed that if it was decided that the mission should come at a later time then it would be important for him to have a meeting at the level of the leadership of the SPDC, to discuss developments and seek to ensure that there was a clear commitment on this point.
10. *The need for a credible and effective response to allegations of forced labour.* In a meeting with the Minister for Home Affairs on 1 July, the interim Liaison Officer reported allegations that teenagers were being abducted in Yangon and forced to work as porters. The Minister indicated that he had already received similar allegations, and had discussed the matter with the commander of Yangon Division, Major-General Than Swe, as well as with the police and general administration staff. It appeared that the officer in charge of recruitment was responsible for these reprehensible activities, and he had been dismissed. The Minister stressed that the teenagers had been recruited into the army, not taken as porters. In a letter dated 24 July to the Minister for Labour (reproduced in Appendix V), and in a subsequent meeting on 30 July, the interim Liaison Officer drew attention to specific allegations of forced labour contained in a recent report by Amnesty International, and requested that the Implementation Committee dispatch teams to the various areas to start investigating these allegations. He also offered his cooperation and assistance to these teams, should this be required. In a further letter dated 7 August to the Minister for Labour, the interim Liaison Officer gave additional details of the allegations contained in the Amnesty International report, as well as drawing attention to credible reports of a worsening forced labour situation in parts of northern Rakhine State, recommending that the Implementation Committee also send a team to investigate these allegations. The interim Liaison Officer also received a letter of complaint concerning forced labour in Mon State. The letter was received through a third party in Yangon with the request that it be passed on to the ILO. It contained a complaint that vehicle owners were being requisitioned along with their vehicles to transport troops and supplies in the Kyaikto area as well as work on the construction of an artillery base. On 4 October the interim Liaison Officer sent a letter to the Implementation Committee giving the details of the complaint, without identifying the source, and requesting that the Committee investigate this matter urgently and inform the ILO of the result.
11. In his meetings with the various authorities, the interim Liaison Officer stressed the need for a credible and effective response to allegations that arose concerning the use of forced labour. In particular, he again raised the point that since the majority of the allegations concerned the army, it was vital for the Liaison Officer to have regular contact with an army representative, in order that these matters could be discussed and solutions found. In a meeting on 18 September with the Minister for Labour, the interim Liaison Officer pointed out that it was clear from the comments of the Implementation Committee itself that this Committee did not have the authority to investigate allegations that related to the army. The Minister indicated that in some cases, allegations related to areas that were not

safe for civilians to visit, and the Implementation Committee was therefore unable to investigate such allegations. The interim Liaison Officer pointed out that this did not mean, however, that there were no possibilities for investigating such allegations. One possibility would be for a structure to be set up within the army that could independently investigate allegations of this kind. Although, as the Minister himself pointed out, there may be some doubts expressed about the credibility of such a mechanism, the interim Liaison Officer stressed that it would ultimately be judged on its results and effectiveness (that is, its ability to bring offenders to account and put an end to particular occurrences of forced labour).

- 12.** In a meeting on 23 August with the Implementation Committee, the interim Liaison Officer had the opportunity to be briefed on progress that had been made since the last meeting in May. The Implementation Committee indicated that up to the end of July there had been no complaints to the Committee regarding forced labour, either directly, or through the courts, the local Peace and Development Councils or the police. The Committee was aware of various allegations, including those contained in the report by Amnesty International, but there was no information from the field about any such cases. While the Committee had no doubt about the integrity of Amnesty International, and felt that there could indeed be some truth in certain of the allegations, particularly in remote areas, it considered that most of the allegations were exaggerated or had been fabricated by expatriate groups. The Committee would, however, take note of the point made in the report of the HLT and look into the situation in remote areas. The interim Liaison Officer replied that as had been pointed out before, the lack of complaints should not be taken as an indication that there was no forced labour. Forced labour was acknowledged to be a problem, even by the Government itself, and so the lack of complaints cast doubt on the credibility of the existing complaint mechanisms. This was why the HLT had proposed the idea of some alternative mechanism such as the Ombudsperson. It would be fruitful to return to this idea in future discussions. Finally, regarding the dissemination of the Orders in minority languages, the Implementation Committee indicated that this was being planned, but no definite timeframe could be given.
- 13.** *Field trip to Tanintharyi Division.* In the meetings on 30 July and 6 September with the Minister for Labour, the interim Liaison Officer had suggested that it would be important to make a field trip to one area of the country where there were allegations of forced labour and where there were some government projects, in order to look at the situation on the ground and explore concrete possibilities for ILO cooperation in the elimination of forced labour. The Minister proposed that Tanintharyi Division might be a good choice for a first trip. There were some security problems in this area, although not too serious, and there were allegations of forced labour, as well as a number of government projects. ILO involvement could begin here and then expand progressively north along the Thai border, since the security problems tended to increase from south to north. The interim Liaison Officer accepted this proposal, and a visit to southern Tanintharyi Division took place from 9 to 14 September.⁵
- 14.** The visit took place satisfactorily, and the interim Liaison Officer and his assistant were given the freedom to visit those places that they wished. As was pointed out both during the trip and on the return to Yangon, however, it was important on future trips of this kind, for the independence of the Liaison Officer, that the escort and security should be more discreet, and it would facilitate more frank and open discussions with the local population. The purpose of the current trip, however, had not been to conduct investigations into

⁵ The team consisted of the interim Liaison Officer, Mr. Léon de Riedmatten; his assistant, Mr. Richard Horsey; and a senior official from the Ministry of Labour, U Khin Maung Yee. The itinerary of this trip can be found in Appendix VI.

specific allegations, but was rather to gain an impression of the root causes of the problem (such as the economic situation) and explore the possibilities for ILO assistance in solving the problem.

15. The trip was important in giving a clearer understanding of the economic situation in southern Tanintharyi Division and the activities being undertaken by the authorities to address the forced labour issue. It also gave the opportunity to consider in more detail the form that technical cooperation between the ILO and the Government might take, and for this to be discussed with local officials. These considerations and discussions touched upon a tentative idea for a “pilot project” that could be undertaken with ILO technical cooperation.
16. Such a project could be in an area where the ILO had expertise, such as the use of labour-based technologies (LBT)⁶ in the construction of rural infrastructure. The project would address the forced labour situation in a number of direct and indirect ways, as required by the 1999 resolution. Direct effects might include: a reduction in forced labour simply because of the presence of the ILO in the area (which may tend to discourage the practice and which would also allow, for example, dissemination of information and training relating to the Orders banning forced labour, both to local officials and the general population), but also because significant employment would be provided to the rural labour force, which may give a certain degree of empowerment. The potential indirect effects could be even more significant. One aim of the project should be to demonstrate the inherent inefficiencies of forced labour and provide a concrete example to show that the Government’s legitimate development agenda can be implemented more efficiently through LBT-type projects without a major increase in resources being needed. A further aim must be to address cases of forced labour in the area that are not related to the project (for example, portering for the army). This is an important question of credibility both for the ILO and the authorities. This could be done by developing a credible complaint mechanism on an experimental basis and on a local scale; the presence of the ILO on the ground will enable the effectiveness of such a mechanism to be verified.
17. *Meeting with Daw Aung San Suu Kyi.* A meeting on 19 September with the General-Secretary of the National League for Democracy, Daw Aung San Suu Kyi, provided the opportunity to brief her on recent developments, including the field trip to Tanintharyi Division. The interim Liaison Officer mentioned that this first field trip had suggested some possibilities for initial cooperation on the ground between the ILO and the authorities, and gave some details of the possibilities.

III. Appointment of the Liaison Officer

18. In a letter dated 20 August, the Director-General formally confirmed to the Minister for Labour of the Government of Myanmar his intention to appoint Ms. Hông-Trang Perret-Nguyen as the ILO Liaison Officer in Myanmar.⁷ It was publicly announced on

⁶ LBT is a construction technology which aims to apply a labour/equipment mix that gives priority to labour, but supplements this labour with appropriate equipment where necessary to achieve acceptable standards of quality. While producing or maintaining infrastructure to a specified standard in a cost-effective manner, people are employed with fair working conditions.

⁷ Ms. Perret-Nguyen (France/Switzerland) was born in Viet Nam and holds degrees in political science and law from the Institut d’Etudes Politiques and the Sorbonne in Paris. She joined the ILO in the International Labour Standards Department where she became Chief of the Equality and

4 September and in a letter dated 29 August that the Minister for Labour reacted positively to this choice. Ms. Perret-Nguyen arrived in Yangon to take up her appointment on 7 October.⁸

19. An additional short document will be prepared to update the Governing Body on any developments following the appointment of Ms. Perret-Nguyen.

Geneva, 8 October 2002.

Rights Branch. She subsequently served as the Director of the ILO Caribbean Office and returned to Geneva where her last appointment was as Director of the ILO's Industrial Relations Department.

⁸ She is assisted by Mr. Richard Horsey, who arrived in Yangon in May 2002, following the appointment of Mr. de Riedmatten as interim Liaison Officer. Mr. de Riedmatten has agreed to continue to be of assistance as appropriate to the ILO and the authorities in his previous role as "facilitator".

Appendix I

Extract from document C. App./D.6(Corr.), Committee on the Application of Standards, ILC, 90th Session (June 2002)¹

[...]

III. *Activities carried out by the interim Liaison Officer to date*

15. Mr. de Riedmatten's mandate as interim Liaison Officer, on top of his functions with the Centre for Humanitarian Dialogue, is set out in the Director-General's letter dated 18 April to the Minister for Labour, which states that

... in this capacity he would not be called upon to discharge the full range of activities expected from the Liaison Officer as discussed by the ILO Governing Body last March. He would concentrate on settling all logistical issues in relation to the physical establishment of the Liaison Officer (premises, communication facilities, selection of local support staff), as well as establishing preliminary contacts with all institutions and persons with whom a Liaison Officer will have to deal.

The letter goes on to state that Mr. de Riedmatten had been asked to contribute to the preparation of the present report, and to that end could, in particular, organize consultations as appropriate between the competent ministries and ILO representatives to review developments as regards the substantive issues dealt with by the Governing Body with a view to reporting these to the Conference.

16. Consultations between the competent ministries and ILO representatives through an ILO mission to Yangon to review developments were considered impractical given the very limited time remaining before the Conference. However, these substantive issues were reviewed in meetings with the relevant authorities, including the Minister for Labour and the Implementation Committee, although it could be for a future ILO mission to pursue these matters further.
17. With regard to logistical issues, the first priority was to locate suitable premises for the future Liaison Officer and his staff. A number of options were considered on the basis that they should be accessible to all those persons with whom the Liaison Officer will wish to have contact, as well as allowing for expansion should this become necessary in the future. A suitable option has been identified, and a 12-month lease agreement is being negotiated with the owner. Arrangements are being made to procure all the necessary equipment so that the office can be fully functioning by July. No difficulties have been encountered in this regard, and the necessary support and assistance is being provided by the Ministry of Labour and the Ministry of Foreign Affairs.
18. As regards local support staff, it was felt that the future Liaison Officer might wish to be involved in recruiting his staff and therefore no permanent recruitment has been made at this stage. In order that the Liaison Officer has the necessary support and administrative assistance upon his appointment, however, arrangements have been made to recruit a receptionist/secretary and an administrative officer on a short-term basis.

¹ See ILC, 90th Session (Geneva, 2002), *Provisional Record* No. 28, Part 3, section C, *Other developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)*.

19. As regards the establishment of preliminary contacts, the Liaison Officer ad interim, Mr. de Riedmatten (hereinafter “the L.O. ad interim”), accompanied by his assistant, has had meetings with a broad range of people with whom the Liaison Officer will have to deal.²
20. In a meeting on 10 May with the Minister for Home Affairs, Col. Tin Hlaing, the L.O. ad interim noted that the actions taken by the authorities to date, including the Orders concerning forced labour, had centred on the Government’s administration. It was also important to address the problems that existed concerning the army, and for this reason he felt that it was of great importance for the Liaison Officer to have an interlocutor from the army. The Minister replied that the issue of forced labour was being given due emphasis by the authorities and was being discussed at the highest level. On large infrastructure projects, such as the railway construction project in southern Shan State, army personnel were being used instead of civilians.
21. In a meeting on 20 May with the Minister for Labour, U Tin Winn, the L.O. ad interim indicated that his first priority was to establish an office for the Liaison Officer and his staff. He was also developing initial contacts with those people with whom the Liaison Officer would have to deal. In this regard, he emphasized again that it was important to have contact with the army. Because such contacts were often difficult, he suggested that one possibility would be to include a representative from the army in the Implementation Committee, which currently had representatives only of the Government’s administration. It was also pointed out that at the International Labour Conference that would be taking place shortly in Geneva, it was likely that the question of the Ombudsperson and the alleged incident in Shan State would again be raised. Concerning the incident, there had been a detailed response from the group which reported the original allegations. One possible way to resolve this matter would be to have independent confirmation of the results of the investigation which had been conducted by the authorities. The Minister replied that concerning the question of the Ombudsperson the authorities had certain reservations which had already been made clear. The usefulness of such an institution would in any case be limited on practical grounds, because many parts of the country were extremely remote and the people would not have any way to contact the Ombudsperson. It was therefore more practical to have a mechanism that utilized existing administrative structures; even in extremely remote areas, the administration had assistant township officers vested with administrative and judicial power. As regards the allegations, the Minister felt that there was no reason to question the reply given by Secretary-1 particularly on the basis of a counter allegation by a group that should not be accorded equivalent status by the ILO. It would therefore not be acceptable to the Government to have any kind of external verification. Lastly, regarding discussions with the army, the Minister noted that military personnel were subject to both military and civilian law. Although the military did not distribute their orders publicly, if the ILO wished, it might be possible to obtain copies of such orders relating to forced labour.
22. A meeting on 27 May with the Minister at the Prime Minister’s Office, Brig.-Gen. David Abel provided a further opportunity to discuss these various issues. Regarding the interlocutor with the army, the Minister indicated that within the military there was an Inspector-General’s department which consisted, in addition to the Inspector-General, of a Judge Advocate General and a Military Secretary. These three appointments were made by the Cabinet, and they reported directly to the Commander-in-Chief (Senior General Than Shwe). All military investigations were carried out by this department and this would be the most suitable interlocutor for the Liaison Officer. With regard to the question of the allegations, it would be a different matter if the complaint had come through appropriate channels such as the Liaison Officer. But, given that neither the source of these allegations

² At the time this report was finalized, he had held a total of 24 meetings including with the Ministers for Home Affairs and Labour, Minister at the Prime Minister’s Office, senior officials from the Ministry of Foreign Affairs, the Prison Department and the Department of Labour, as well as with the Convention No. 29 Implementation Committee, chaired by the Deputy Ministers for Home Affairs and Labour. Meetings were also held with senior members of the National League for Democracy (NLD), including two with its General-Secretary Daw Aung San Suu Kyi, as well as with a number of ethnic representatives from the Chin, Kachin, Kayah, Kayin, Rakhine and Shan States. Meetings were also held with 16 members of the diplomatic community in Yangon (Australia, France, Italy, United Kingdom, United States, Japan, Russian Federation, Brunei, Cambodia, Indonesia, Lao People’s Democratic Republic, Malaysia, Philippines, Singapore, Thailand, Viet Nam), the United Nations Resident Coordinator, and representatives of the UNHCR, the ICRC and a number of international NGOs working in Myanmar. In addition, meetings were held with representatives of the international business community and with local religious representatives.

nor the organization through which they had been transmitted could be regarded as credible, the Government would not be in a position to accept an external inquiry into the matter.

23. Two meetings were held with the General-Secretary of the NLD, Daw Aung San Suu Kyi, on 14 and 23 May. The second of these meetings included Central Committee members of the NLD. The L.O. ad interim indicated that one of his priorities was to establish contacts with the army. He also noted that Daw Aung San Suu Kyi had mentioned on a number of occasions that one of the NLD's priorities should be improving the living conditions of the people, and he wondered to what extent the problem of forced labour could be relevant in this regard. Daw Aung San Suu Kyi indicated that once substantive issues were being discussed with the authorities, such questions as forced labour could certainly not be ignored, since they were all part of the issue of development. In the NLD's view, forced labour was not an isolated problem. One reason for the use of portering was that, in the early days of the army during the struggle for independence, civilians had willingly provided their help, in part because they were paid for their services. But this use of civilians had now become a habit and they were no longer paid and had to be coerced. The problem had improved somewhat since the early 1990s and the ILO had definitely played a role in this. She agreed that it was important for the Liaison Officer to have contacts with the army. The point needed to be made to the army that forced labour was not necessary, provided the required resources were provided to replace it, and that other countries as poor as Myanmar did not use this practice. In addition to dealing with forced labour, Daw Aung San Suu Kyi indicated that she was very keen for the ILO to become involved in the situation of factory workers, as the NLD had heard many complaints of poor conditions. She also stressed the importance of looking at the question of prison labour, in particular the poor conditions in labour camps.
24. In a meeting on 22 May with the International Committee of the Red Cross (ICRC), the head of delegation, Mr. Michel Ducraux, explained that the ICRC mandate extended to the question of forced labour; for example, it could be viewed as deprivation of freedom. Portering was particularly central to the ICRC mandate, since it was often in conflict situations that such practices occurred. Mr. Ducraux also noted that the question of portering by villagers was now included in the ICRC's confidential reports to the authorities. He stressed the importance in his view of confidentiality in facilitating the work of the ICRC, and noted that without such guarantees of confidentiality the work of the ILO Liaison Officer would be much more difficult.
25. The L.O. ad interim requested a meeting with the Implementation Committee in order to review developments since the HLT visit and report these as appropriate to the Conference.³ Chairing the Committee, the Deputy Minister for Labour indicated that the Orders had been distributed throughout the country, down to the village-tract level. On two further occasions since the visit of the HLT, a number of teams headed by directors in the Department of Labour had visited the field to assess the situation and explain the Orders to the people of the area. As was explained by another member of the Committee, however, these teams did not generally meet with local military commanders. Up to this point, there had been no instances of prosecutions under section 374 of the Penal Code. There had, however, been two cases of violations of the Orders. In the first case, a township chairperson in Ayeyarwady Division had been found guilty of requisitioning rice from farmers and had been demoted. In the second case, a township officer in Magway Division had been purchasing rice at a fixed price lower than the market rate. This was found to be a criminal breach of trust and he was prosecuted under the Penal Code (though not section 374) and dismissed. Regarding evidence of budgetary provision for the payment of labour in public works projects, it was again explained that according to the Myanmar budgetary system there was no separate budget line for labour costs, and it was therefore not possible to provide such evidence. Regarding

³ The ILO technical cooperation mission that visited Myanmar in February had not had an opportunity to meet the Convention No. 29 Implementation Committee, and so had submitted a reminder of the outstanding questions raised in the HLT's report. These questions related to: (1) new or additional cases of violations of the Orders concerning forced labour; (2) prosecutions of offenders, in particular under section 374 of the Penal Code; (3) evidence of budgetary provision for payment of labour on public works projects; (4) further publicity given to the Orders, including dissemination via the mass media (newspapers, radio, television) and dissemination in all appropriate languages, including major ethnic languages; and (5) any additional texts of instructions issued to the military or other authorities containing specifications of the kinds of tasks for which the requisition of forced labour was now prohibited, as well as the manner in which the same tasks were henceforth to be performed.

dissemination of the Orders via the mass media, it was explained that newspapers had a circulation of only about 200,000 and televisions and radios were not widely owned. For this reason, dissemination through the local government administration was more effective. Regarding dissemination in the major ethnic languages, the Committee indicated that, in addition to being distributed on paper in English and Burmese, the Orders had been announced publicly by town criers, and meetings had been called at which verbal explanations had been given to the people in the language that they understood, including various ethnic languages. Regarding additional instructions, none had been issued since the visit of the HLT, but further briefings had been given to administrative officials called to Yangon. The Deputy Minister for Home Affairs wished to point out that there were certain traditions and practices of community work in Myanmar but that, because of the new Orders, people were now reluctant to take part in such work in case it incurred someone's displeasure. A number of members of the Committee also requested clarification of under what conditions the "emergency provision" could be applied.

26. It seems appropriate before concluding this report to present certain comments and ideas regarding the future development of the ILO presence in Myanmar. As the L.O. ad interim stated in all his various meetings, it was important that the ILO role with regard to the eradication of forced labour be approached in a constructive manner. He stressed in various meetings with the authorities that they should not regard the elimination of forced labour as being just a response to external pressure and demands. Forced labour was an internal problem which it was vital for the authorities to solve, particularly given their stated desire to progress to a modern and democratic nation. Because the army would have to play a key role in any solution to this problem, it was vital for the Liaison Officer to have an interlocutor from the army. It would also be important for the Liaison Officer to be able to meet with regional and local commanders when he travelled to the field. Although the role of the Liaison Officer was to assist the Government in its efforts to eliminate forced labour, it would also be important to have close contact with the NLD and the ethnic nationalities, as well as with the international community, in order to develop effective and appropriate solutions and projects. It is also worth noting that the current reconciliation process in Myanmar could have an impact on the work of the Liaison Officer, and that positive developments in this process, particularly in addressing some of the root causes of the forced labour problem, could contribute to the eradication of this practice.
27. It is important also to note some of the constraints on the activities to be carried out by the Liaison Officer, in particular the resolution adopted by the Conference at its 87th Session (June 1999). While this resolution remains in place, for example, the question of factory conditions, raised by Daw Aung San Suu Kyi, cannot be addressed except to the extent that violations of the forced labour Convention are alleged to be involved. As regards the question of conditions in labour camps, raised by Daw Aung San Suu Kyi, it would appear that the matter falls more directly within the mandate of the ICRC, with whom the Liaison Officer might wish to cooperate on this issue. On the question of prisoners being used as porters, the L.O. ad interim stressed that this should not be seen as an acceptable alternative to the use of civilians.
28. Although it would be premature at this stage to make any concrete proposals concerning the kinds of projects that the Liaison Officer could implement, it is nevertheless possible to give certain general indications based on the various discussions held to date. One important role for the Liaison Officer could be in developing training programmes. For example, training to all sectors, including the administration, military, and the general population could both increase awareness of the Orders and increase the capacity to implement them, and thus represent a useful complement to the institutional measures recommended by the HLT. Such training could address the problem of the recurrent blurring of the borderline between compulsory and voluntary labour which was evident most recently in the comments and questions raised by the Implementation Committee. It was also mentioned by a number of observers that the armed forces of certain countries in the region had developed various

solutions to the problem of transporting supplies across similarly difficult terrain to that found in Myanmar, without the use of civilian porters. Increased mechanization possibly combined with a reduction in the size of the armed forces was perhaps the long-term solution, but in the interim, regional experience suggested other possibilities.⁴ It might be fruitful to investigate these possibilities further.

⁴ Ideas that had been suggested included the use of mules; the provision of salaries to porters which could, if combined with significant improvements in conditions, result in people who were fit and able to do the job volunteering for this work; and the use of soldiers not directly involved in combat for portering.

Appendix II

Conclusions of the special sitting of the Committee on the Application of Standards, ILC, 90th Session (June 2002)

After noting the information provided by the Government representative, the Committee noted with deep concern the observation of the Committee of Experts evaluating the effect given to the three recommendations of the Commission of Inquiry, taking into account the information contained in the report of the High-Level Team. With regard in the first place to the Village Act and the Towns Act, which had not yet been amended, the Committee of Experts had noted that Order No. 1/99, as supplemented, had been given considerable publicity and may momentarily have affected certain civil infrastructure projects, but had not brought an end to the exaction of forced labour, particularly by the military. The specific and practical instructions and the budgetary provisions that were lacking had not yet been adopted, or even prepared, with a view to replacing in practice recourse to forced labour by the offer of decent wages and conditions of employment to make it possible to attract the necessary labour freely. Finally, no sanction had been imposed under section 374 of the Penal Code or any other provision, in accordance with Article 25 of the Convention, on those responsible for the exaction of forced labour, while the means of recourse available to complainants were not effective.

The Committee also noted the information on the High-Level Team and its follow-up contained in the supplementary report submitted to the Committee. It noted that as a result of the cooperation of the authorities, it was possible for the first time to have available, through this report, an evaluation conducted freely in the country and on the other side of the border on the impact of the new regulations on the real situation of forced labour throughout the country. It also welcomed the fact that one of the recommendations of the High-Level Team intended to ensure the presence of the ILO in Myanmar had been followed up and that the ILO's presence had already been ensured in practice through the appointment of the interim Liaison Officer and the report that he had already been able to produce. However, it emphasized that this presence was only a means and would have no significance unless the future Liaison Officer rapidly had the capacity and administrative support, as well as the facilities, to conduct the various activities that could contribute to the effective implementation of the prohibition of forced labour. These facilities needed to include freedom of movement and access and required the cooperation of all the authorities, including the military. The Committee further regretted that no practical effect had yet been given to the other important proposals made by the High-Level Team with regard, on the one hand, to the murder of victims of forced labour in Shan State and, on the other hand, the establishment of an independent and credible form of mediation to offer a new means of recourse in which future victims could have confidence. Such an institution was particularly necessary in the absence of freedom of association, the significance of which for the situation of forced labour had been emphasized by the High-Level Team. The Committee also regretted that the provisions prohibiting forced labour had not been disseminated more broadly through all channels and in all appropriate languages, as called for by the High-Level Team. In general terms, the Committee emphasized the need for real, rapid and verifiable progress, not only at the procedural level, but also and in particular at the level of the persistent reality of forced labour and the widespread impunity of those responsible, and particularly the military. It encouraged the Office and the Director-General to pursue their efforts resolutely on all these issues, as well as their dialogue with the Government and all the parties concerned, and to report to the Governing Body, which would be responsible for examining, as appropriate, the conclusions to be drawn from the progress or lack of progress at its session in November 2002.

In this respect, the Committee noted that the Government representative, at the end of the discussions, had expressed the will of his Government to discharge its international obligations and to pursue the dialogue with the ILO.

Finally, it recalled that the Government would have to supply a detailed report for examination by the Committee of Experts at its next session on all the measures adopted to ensure compliance with the Convention in law and practice.

Appendix III

Communication dated 22 July 2002 from the Director-General to the Minister for Labour of Myanmar

Dear Minister,

I refer to our discussion during the Conference and my subsequent letter of 21 June 2002, in the light on which I have been giving further thoughts about how best to fulfil the renewed mandate bestowed on the Office in the conclusions of the Applications Committee.

Read together with the discussion in the Committee, these conclusions indeed make it clear that our constituents, while acknowledging the importance of developments such as the High-Level Team and the appointment of a Liaison Officer, are impatient to see concrete evidence of progress in the eradication of forced labour, and have an open mind about the consequences that would have to be drawn from such evidence.

It would thus seem fully consistent with the mandate I have received from the Conference this year as well as through previous resolutions, to examine with the authorities in the coming weeks how the ILO technical assistance and support, in the many fields where it has recognized expertise, could be mobilized to assist the efforts of the authorities in the form of a coherent plan of work and action capable of making a concrete and verifiable impact towards the complete elimination of forced labour.

Such a plan, which could initially be targeted to an agreed geographical region and be progressively extended on a step-by-step basis, would obviously have to be carefully devised taking into consideration the analysis and recommendations of the High-Level Team. It should be discussed, adopted and subsequently implemented in such a way as to demonstrate the commitment of the authorities at the highest level and to receive the support of all other sectors concerned, including from the international community.

But again time is of the essence. This is why I have asked Mr. Léon de Riedmatten and his assistant to examine with you and other relevant authorities how and with whom discussions could be conducted to successfully define such a mutually acceptance plan of action. I wish to thank you very much in advance for the cooperation and assistance you will no doubt wish to extend to him.

Yours sincerely,
(Signed) Juan Somavia.

Appendix IV

Communication dated 9 August 2002 from the Minister for Labour of Myanmar to the Director-General

Excellency,

I wish to acknowledge the receipt of your letter dated 22 July, 2002.

In this regard, I have the pleasure to inform you that since early July, the ILO Affairs Working Committee and the ILO/Convention No. 29 Implementation Committee have been making necessary preparations for field observation trips to various areas throughout the country as they have made in the last two years.

Consultations with the government departments and personnel concerned including the interim ILO/Liaison Officer, Mr. Léon de Riedmatten have now been made for choice of the area, proper work schedule and travel arrangements.

Upon consideration from the security point of view Tanintharyi Division is our first priority for the field visit to observe the situations concerning the progress made towards the elimination of forced labour practices in the area. Moreover, the existence of major development projects such as road construction, gas pipeline project and large palm-oil plantation projects is also an important factor that has been taken into consideration. Above all, Tanintharyi is one of those areas where various allegations on the use of forced labour emanated.

Thanks to the cooperation of all concerned, this first field visit to Tanintharyi will be made very soon. We will have to expand and widen these activities on a step-by-step basis as you have suggested.

Looking forward to the furtherance of our cooperation.

Regards,

Yours sincerely,

(Signed) U Tin Winn.

Appendix V

Communication dated 24 July 2002 from the interim Liaison Officer to the Minister for Labour of Myanmar

Excellency,

I wish to refer to a recent report by Amnesty International entitled “Myanmar: Lack of security in counter-insurgency areas” (17 July 2002). As you will no doubt be aware, this report contains a number of specific allegations of human rights abuses by the Myanmar armed forces, including allegations of forced labour. These allegations relate primarily to areas of the Shan, Kayin and Mon States and the Tanintharyi Division.

I take note of a response by the Myanmar Government to this report entitled “Myanmar Government appreciates Amnesty’s concern on human rights development in Myanmar” (Information Sheet No. C-2288, 18 July 2002) in which it is pointed out that proper assessment and judgement is essential before drawing conclusions with regard to such allegations.

I agree with the Government’s view that these allegations require proper assessment. This is particularly so given that Amnesty International is a respected organization and the allegations it reports thus tend to be regarded as credible by the international community. The allegations concerning forced labour are also largely consistent with those reported to the ILO High-Level Team. I would therefore like to recommend that the Convention No. 29 Implementation Committee dispatch Field Observation Teams to the areas mentioned in the report in order to carry out a thorough investigation of these allegations, which should of course include discussions with the battalions referred to in these allegations. I would also like to offer our cooperation and assistance to these teams, should this be required.

It is my conviction that a swift and credible investigation of these allegations will constitute an important demonstration of Myanmar’s commitment to the elimination of forced labour and can be a positive contribution to human rights development in Myanmar.

Yours sincerely,

(Signed) Léon de Riedmatten.

Appendix VI

Itinerary of visit to southern Tanintharyi Division, 9-14 September

9 September

- 07.30 – Arrive Myeik airport
- 09.20-10.50 – Meeting with Supervisory Committee for the elimination of forced labour in Tanintharyi Division
- 11.00-11.30 – Meeting with local officials
- 13.30-16.30 – Visit to villages in Myeik area
- 16.40-17.00 – Daily wrap-up meeting

10 September

- 07.30-08.30 – Visit to Kyweku-Kyaukphya bridge construction site (north of Myeik)
- 11.00-13.00 – Visit to Tanintharyi town (about 55 km south of Myeik)
- 13.00-16.45 – Visit to villages and a private oil-palm plantation on the road from Tanintharyi to Myeik

11 September

- 09.00-12.00 – Visit to a number of joint venture and private companies in Myeik
- 14.30 – Arrive Kawthaung airport
- 16.00-16.40 – Meeting with committee supervising the elimination of forced labour in Kawthaung District
- 16.40-17.00 – Meeting with local officials

12 September

- 12.00-15.30 – Visit to a number of private palm-oil plantations

13 September

- 09.00-13.00 – Visit to a number of private companies in Kawthaung

14 September

- 09.00-10.00 – Final wrap-up meeting