THIRD PART

Special sitting concerning the application by Myanmar of the Forced Labour Convention, 1930 (No. 29), in application of the resolution adopted by the International Labour Conference at its 88th (2000) Session

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The Chairperson recalled that the item which was being discussed at the present sitting of the Committee had been placed on the Committee’s agenda pursuant to paragraph 1(a) of the resolution adopted by the Conference at its 88th Session, under article 33 of the ILO Constitution, with a view to the adoption of measures to ensure compliance with the recommendation submitted to the Conference of the ILO on 13 May 1998, containing the text of an understanding for an objective assessment of the situation of forced labour in Myanmar. The resolution of the Conference stated: “The question of the implementation of the Committee of Experts’ recommendation and of the application of Convention No. 29 by Myanmar should be discussed at future sessions of the International Labour Conference at a sitting of the Committee on the Application of Standards specially set aside for the purpose, so long as this Member has not been shown to have fulfilled its obligations.”

For the examination of this case, the Committee had before it the following documents:

(1) the observation of the Committee of Experts on the application of Convention No. 29 by Myanmar;

(2) on the one hand, document D.6 (containing the document GB.2806/6, GB.2806/6 (Add. 1) and GB.2806/6 (Add. 2) (March 2001) regarding item 6 of the agenda of the Governing Body on “Developments concerning the question of the observance of Convention No. 29 by Myanmar”, which had been submitted to the Committee at the request of the Governing Body. Annex 5 to document D.7 contained the text of an understanding for an objective assessment to be carried out on how the legislative, executive and administrative measures reported by the Government were being applied in practice. This understanding made direct reference to the observation of the Committee of Experts.

A Government representative of Myanmar welcomed the general feeling that the situation surrounding the issue of Myanmar had radically changed and that the atmosphere in the Conference Committee had also changed a great deal from the atmosphere that had prevailed at the 88th Session of the Conference in June 2000 and the 279th Session of the Governing Body in November 2000. There was now much optimism and positive outlook shared by most of the member States and delegates on the Committee. This atmosphere of optimism and the positive outlook had been generated by a very important development, namely the agreement between the Government of Myanmar and the ILO that there would be an objective assessment of the situation of forced labour in Myanmar. The resolution of the Governing Body that it should review the measures taken under article 33 of the ILO Convention in light of the outcome of the visit of the ILO Team to Myanmar the previous month was highly questionable. He expressed the belief that the measures taken by the Government of Myanmar were concrete, comprehensive and effective. He warned, however, that the value of the application of sanctions was highly questionable. He expressed the belief that the best sanctions were those that were never used and never carried out. Sanctions were like nuclear weapons. Their value lay in their deterrent effect, not in their actual use. As a matter of principle, his Government opposed the application of sanctions against a member State as a means of resolving an issue. Now that there was an agreement between the Government of Myanmar and the ILO on the modalities of the objective assessment, the difficulties to which he had referred had been overcome.

He urged the Committee to continue to look back on the past, but to look to the future and move forward to resolve the issue step by step. Most member States and delegates had recognized that the Government had the genuine political will and commitment to resolve the issue of forced labour in Myanmar. In all, the objective assessment of the situation of forced labour in Myanmar had already put in place a comprehensive framework of legislative, executive and administrative measures to ensure that there was no practice of forced labour in Myanmar. In addition, the Government had filed an instrument, to which he referred, on 27 October 2000, clearly stipulated that the use of forced labour was illegal and that it was an offence under the existing laws of the Union of Myanmar. It directed responsible persons, including members of the local authorities, members of the armed forces, members of the police force and other public personnel, down to the village and ward levels, not to requisition forced labour or involuntary service. It also clearly set out the legal consequences for breach of the Order by explicitly stipulating that any person, including local authorities, members of the armed forces, members of the police force and other public personnel would have action taken against them under Section 374 of the Penal Code in consequence of a breach. Moreover, Secretary (1) of the State Peace and Development Council had himself issued a directive on 1 November 1998 establishing to examine the observance of the Forced Labour Convention, 1930 (No. 29) in Myanmar. The resolution of the Conference stated that: “The question of the implementation of the Committee of Experts’ recommendation and of the application of Convention No. 29 by Myanmar should be discussed at future sessions of the International Labour Conference at a sitting of the Committee on the Application of Standards specially set aside for the purpose, so long as this Member has not been shown to have fulfilled its obligations.”

The Worker members stated that the situation of forced labour in Myanmar concerned so many people that the Committee could discuss this case for three days, or even a week. It was essential that this case, as with all other cases, be seriously reviewed, according to the procedures of the Conference Committee. They noted that, as with the discussion on individual cases, it was important to know the position of the Employer members, even though they were convinced that in this particular situation they shared the same views. They deplored the fact that the case of Myanmar was once again before the Committee. Unfortunately, this case already had a long history, which had, for the first time in the existence of the ILO, required the use of a special procedure (article 33 of the ILO Constitution). They strongly regretted this situation, which was due to the persistence of unacceptable forced labour practices in Myanmar. They stated that they would continue to place this matter on the agenda of the ILO Governing Body in the hope that the recommendations made by the Commission of Inquiry were not implemented. With regard to the Commission of Inquiry, the Government of Myanmar was required to ensure that: (a) the legislation was brought into conformity with the provisions of Convention No. 29; (b) that practice was brought into line with the provisions of Convention No. 29; (c) that there was no practice of involuntary service. It also clearly set out the legal consequences for violation of the Order by explicitly stipulating that any person, including local authorities, members of the armed forces, members of the police force and other public personnel would have action taken against them under Section 374 of the Penal Code in consequence of a breach. Moreover, Secretary (1) of the State Peace and Development Council had himself issued a directive on 1 November 1998 establishing to examine the observance of the Forced Labour Convention, 1930 (No. 29) in Myanmar. The resolution of the Conference stated that: “The question of the implementation of the Committee of Experts’ recommendation and of the application of Convention No. 29 by Myanmar should be discussed at future sessions of the International Labour Conference at a sitting of the Committee on the Application of Standards specially set aside for the purpose, so long as this Member has not been shown to have fulfilled its obligations.”

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vention No. 29, in other words, that no compulsory or forced labour could be imposed by the authorities, and (c) that sanctions were provided against those found guilty of violating the prohibition against forced labour.

They added that they did not intend to review the history of this case, but recalled the serious, persistent and systematic violations of Convention No. 29, in other words, that no compulsory or forced labour could be imposed by the authorities, and (c) that sanctions were provided against those found guilty of violating the prohibition against forced labour.

They stated that they had not invented these violations and recalled that there was abundant proof of these practices.

The Worker members added that the Committee was once again discussing this very serious case of forced labour, after a two-year hiatus, during which time the severity of the situation and the chronic nature of the Government's lack of cooperation and compliance had driven the case to unprecedented levels of the ILO's supervisory machinery. The Committee, acting on the resolution adopted under article 33 of the ILO's Constitution at last year's Conference that charged it with keeping the spotlight on the practice of forced labour in Burma. The Committee's special session today was an essential part of the ILO's efforts to compel the Government to fulfill its treaty obligations under Convention No. 29 and to end the suffering of the tens of thousands of victims of forced labour. The Worker members considered this to be a very important responsibility.

The Worker members emphasized at the outset that, notwithstanding the comments made by the Government representative, only a few months ago the Government had continued to deny the existence of forced labour in the country. In its report to the United Nations Commission on Human Rights, the representative of the Permanent Mission of Myanmar in Geneva had stated that “Myanmar nationals believe that the contribution of labour is both meritorious and conducive to mental and physical well-being. Accordingly, the local populace contribute labour in village community works (…) The populace, who are contributing labour, look fresh and happy with full of mirth and laughter and in festive mood, not at all looking as if being forced to work against their will.” The Worker members noted that such statements by the Government had been a staple in past Committee discussions. Further, the “conciliatory” tone taken by the Government representative did not in any way concede that a problem existed or that one had ever existed.

Not surprisingly, the Committee of Experts had structured its rather extensive comments this year in accordance with the three recommendations made by the Commission of Inquiry. The first section of its report deals with the legal aspects of the case of forced labour and the Government's actions vis-à-vis the United Nations Commission on Human Rights, the representative of the Permanent Mission of Myanmar in Geneva had stated that “Myanmar nationals believe that the contribution of labour is both meritorious and conducive to mental and physical well-being. Accordingly, the local populace contribute labour in village community works (…) The populace, who are contributing labour, look fresh and happy with full of mirth and laughter and in festive mood, not at all looking as if being forced to work against their will.” The Worker members noted that such statements by the Government had been a staple in past Committee discussions. Further, the “conciliatory” tone taken by the Government representative did not in any way concede that a problem existed or that one had ever existed.

The Worker members emphasized that all three aspects of the Committee of Experts' recommendations be implemented in full before any consideration could be given to ending the measures adopted by last year's Conference under article 33 of the ILO Constitution. This meant that the legal framework providing for the widespread practice of forced labour had to be eliminated. The ILO had itself had to be demonstrably eliminated and all those found to be responsible for using forced labour had to be punished. Until such actions were taken, the regime had to be made to understand that the ILO would remain vigilant.

The ILO had demonstrated its willingness to assist the regime in any and every way possible to implement fully the recommendations of the Commission of Inquiry. But the bottom line had to be that only a few months ago the Government had continued to deny the existence of forced labour in the country. In its report to the United Nations Commission on Human Rights, the representative of the Permanent Mission of Myanmar in Geneva had stated that “Myanmar nationals believe that the contribution of labour is both meritorious and conducive to mental and physical well-being. Accordingly, the local populace contribute labour in village community works (…) The populace, who are contributing labour, look fresh and happy with full of mirth and laughter and in festive mood, not at all looking as if being forced to work against their will.” The Worker members noted that such statements by the Government had been a staple in past Committee discussions. Further, the “conciliatory” tone taken by the Government representative did not in any way concede that a problem existed or that one had ever existed.

In the first section of its report, the Committee of Experts once again reviewed the legal steps taken by the regime, namely the Order issued to disregard those provisions of the Village Act and the Towns Act that provided for forced labour. The Committee of Experts' view of this Order remained quite clear. Paragraph 4 of the report indicated that these orders “still reserved the exercise of powers under the relevant provisions of the Village Act and the Towns Act, which remain incompatible with the requirements of the Convention.” Paragraph 6 of the report then concluded that the amendment of these two Acts sought by the Commission of Inquiry and promised by the Government for many years had not been made.

Furthermore, the first part of the second section of the Committee of Experts' report expressed the repeated concern that the most responsible for the use of forced labour, namely the military, did not appear to be affected by this Order. The Worker members had heard the Government's statements that the military authorities no longer made use of forced labour. The fact was, however, that the military remained somewhat above the law. This had of course been the reality in the country for many decades, and until recently this situation was still in existence in the country.

The report devoted a few short, but extremely important paragraphs to the information available on actual practice. Paragraph 20 recalled that the documentary appendices contained in the ICFU report of last November, representing over 1,000 pages drawn from 20 different sources, included reports, interviews of victims, over 300 forced labour orders, photographs, video recordings and other material. The report noted that the overwhelmingly large proportion of the documents concerned the period from the ICFTU submission of June to November 2000. In other words, it concerned the period after the article 33 measures had been adopted at last year's Conference, leading to the November Governing Body session, when the regime and its supporters had lobby extensively to avoid having the article 33 measures take effect. The report emphasized that an essential part of the ICFTU submission consisted of hundreds of “forbidden labour orders”, issued mainly by the army, which were similar in kind, shallowness and volume as any examined by the Commission of Inquiry and found to be authentic.

The ICFTU had issued a second report for the March 2001 Governing Body, which consisted of another 300 pages of similar documentation, without question, well substantiated. As paragraph 26 of document D.6, the ICFTU report indicated that the authorities had used a method of numbers of methods to cover up the use of forced labour. These had included “issuing orders for villagers to attend meetings at the army camp, where they were requisitioned for forced labour, rather than issuing explicit orders for forced labour; issuing undated, unsigned and unsealed orders; demanding that written orders were returned to the issuing army person who then disposed of them; or showing the sufferer on behalf of the military; and arbitrarily arresting young, healthy persons, who after a few days in prison would be sent work as porters for the military, dressed in army uniforms…”.

There were other credible reports, such as a report to be issued by Amnesty International in two days, that included interviews with victims of forced labour this year. The Worker members pointed out that, while the time was taken to independently investigate whether or not forced labour was continuing, especially near ethnic border areas, it was not new evidence focused on specific aspects of the case. Instead, the new evidence demonstrated that the practice continued to flow out of the country. They reminded the Committee that, according to the Commission of Inquiry and the Committee of Experts, the practice in question particularly affected farmers and the most impoverished, as well as the non-Burmese ethnic communities. It was a practice that was especially cruel and inhuman to women, who had found themselves the victims of rape and other barbarities, and to children. People, including women and children, who had been used as forced labour in the military in its continuing military action against some of the ethnic communities.

Many speakers had reminded the Committee during its general discussion that its role was to go beyond the legal analysis of the Committee of Experts and to bring a dimension of reality to the situations discussed, and this was the reality in Burma today, a reality which had existed tragically for decades, a reality so pervasive that it affected virtually every community, indicated that the military in its continuing military action against some of the ethnic communities.

With regard to the Director-General's communications to the ILO's constituent groups and the responses given to his request (contained in document D.6), the Worker members expressed their extreme disappointment over the lack of action taken by member States. Citing the example of the Japanese Government, they stated that there were ever more reductions in the labor force and that the Director-General's request by doing precisely the opposite, by enhancing their relationship with the military regime through the resumption of development assistance. The Worker members found such action to be not only unfortunate, but deplorable. They noted that the statements made in defence of such actions that these governments saw the ILO, figuratively, as the north wind, while projecting the perpetrators of forced labour, these governments were indeed the south wind. However, they stressed that, from the point of view of those who committed the crimes, these governments were indeed the north wind. A regime that had been deporting thousands of refugees from the southern border had proceeded to deport those who were sent to the north. The Worker members expressed their strong concern that the blood of the victims of forced labour. The Worker members found such action to be not only unfortunate, but deplorable. They noted that the statements made in defence of such actions that these governments saw the ILO, figuratively, as the north wind, while projecting the perpetrators of forced labour, these governments were indeed the south wind. However, they stressed that, from the point of view of those who committed the crimes, these governments were indeed the north wind. A regime that had been deporting thousands of refugees from the southern border had proceeded to deport those who were sent to the north. The Worker members expressed their strong concern that the blood of the victims of forced labour. The Worker members expressed their strong concern that the blood of these victims be shed in vain.
ly before the Governing Body met in November 2000, the regime had begun a conversation with Ms. Daw Aung San Suu Kyi, who had been under virtual house arrest for almost a decade and remai-

ned so today. It was the view of the Worker members that the begin-

ning of these secret talks was no coincidence, and that the actions of the ILO, especially the adoption of measures under article 33, had coincided in such a way as to do what it had refused to do for over a decade. The ILO deserved credit for this.

Citing the example of the United States, the Worker members expressed their conviction that in late 2000, the United States Gover-

nment had been poised to impose a ban on imports from Burma in response to the Director-General's call. The emergence of the secret talks had delayed the imposition of such a ban. There was, however, bipartisan legislation introduced in the United States Sen-

ate to ban all imports from Burma to the United States. This legis-

lation specifically referred to the measures called for by the ILO. In addition, there was a coalition of groups in the United States that were communicating with major retail companies requesting them not to allow any apparel items produced in the country to be sold in their stores. The ILO's actions were cited in the letters to these companies. Thus far, nine companies, including a number of the largest and most well-known retailers in the United States, had agreed to this new type of requirement, to keep such products out of their stores. The same could not be said, unfortunately, about many extraction industry companies which had been entrenched in the country for many years. Recent-

ly, however, these companies had been involved in meetings support-
ing disinvestment because of the widespread practice of forced labour. One of these resolutions had been supported by 22 per cent of the shareholders, a significantly large and apparently growing percentage of this type of resolution.

The Worker members noted that all those present, except per-

haps the representatives of the military regime themselves, wanted talks to succeed, producing a transition back to civilian rule and the rule of law. The talks had been going on for nine months with no apparent result. They surely could not yet be described as recon-

ciliation talks given the fact that, as the Worker members had stated previously, Daw Aung San Suu Kyi remained under virtual house arrest. She could not travel, nor could she consult with large groups of her supporters. Accordingly, the Worker members ques-

tioned how long member States were waiting to wait, using the se-

cret talks as a pretext for inaction, before responding to the Direc-
tor-General's call. Would one year of no reported progress be sufficient, at which point would closures occur? The Worker mem-

bers considered that it was essential for the ILO to be able to send missions to the field regularly in order to guarantee an objective evaluation of the situation. Once this first condition had been met, the mission Team would need to be com-

posed of individuals of a high level, with outstanding expertise in the subject matter and familiar with the region and the situation of the country. One of the members of the Commission of Inquiry should take part in the mission.

The Worker members noted, in a recent development, that the regi-

me had agreed to accept a High-Level Team into the country in Sep-

tember 2001 to conduct an assessment of the extent to which forced labour had been eliminated. The Worker members viewed this mission as a potentially positive, if somewhat flawed, first step. They considered that, in order to ensure an effective outcome, the members of the mission should have access to all information, regions and persons they deemed it necessary to consult, a require-

ment which would probably be the greatest problem the mission faced. They asked that every possible measure be implemented in order to avoid, to the greatest extent possible, having any limita-
tions imposed on the mission. The Worker members noted that it should not be a pretext for restricting the mission's access to re-

gions in conflict. It was important that interpreters be placed at the mission meetings. They emphasized that, owing to its existence in many regions, the problem of forced labour was complex, particularly due to the problem of mass requisitioning by the military and children were poised to become the latest victims of the

mission. The Worker members reminded governments that the issue be-

ing considered at the Governing Body meeting was not a matter of me-

suring success or failure, but of providing an opportunity for the world to examine the very worst of the atrocities committed by the military and civil authorities systematically resorted to forced la-

bour for a series of tasks and services. Thousands of people were re-

quisitioned to carry out this work. From a legal standpoint, most of the violations of the Convention were based on the Towns Act and the Villages Act. As previously indicated, the law by which forced labour was imposed by the authorities at all levels and especially by the military. The Worker members considered that, after having described the problem, it was time to work towards solutions. To this end, they noted the promises made by the Gover-

nment including the declarations made by the Government repre-
sentative, according to which progress had been achieved and improvements made. They wished to remind governments that these initiatives and changes needed to be evaluated by the ILO. It was necessary for the ILO to be able to evaluate the practical imple-

mentation and real impact of the measures taken by the Govern-

ment in an objective and impartial manner.

The Worker members stressed that, as Burma was a large coun-

try, it was not possible to visit all regions in a short period of time, parti-

cularly if there were not many members of the mission Team. It

would be desirable for the Team to be large enough to distribute the work geographically and for the mission members to have contacts, not only in the country itself, but also in neighbo-

ring regions. They emphasized that, owing to its existence in many forms, the problem of forced labour was widespread and that the mission must be able to examine all the forms, including those which existed, which was another reason to send a large mission.

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must not be a pretext for restricting the mission's access to re-

gions in conflict. It was important that interpreters be placed at the

disposal of the mission, not only for translation purposes, but also from the languages of the ethnic minorities. It was the ethnic minorities who were the primary victims of forced labour in the country. In their view, the most important condition concerned the protection of witnesses. It was essential to guarantee effective pro-
tection for persons providing information on whom the mission might contact. This protection must be guaranteed not only at the time of the contact, but also and even more importantly, after contact. Creative means might be required to find the means to guarantee this protection, but it was only a way to ensure that the mission might continue to take place, taking the climatic conditions into account.

The Government of Burma wished to convince the Governing Body of its willingness to improve the present situation with a view to abolishing forced labour. The Worker members expressed
the hope that, in accepting a mission with the mandate described above, the Government would prove its political will. In any event, such a mission would not mark the end of this case. It represented only the beginning of a process, one step towards the improvement of the forced labour situation in the country. The Worker members recalled a suggestion made by a colleague during the general discussion to the Committee on the Application of Standards was a patient committee. They therefore undertook to follow the development of this particular case closely and to regularly request that the Government take measures until such time as it actually took those measures. All this pointed to the need for a new, more objective manner. Only on the basis of such objective evaluation could the ILO draw conclusions in respect of this case.

The Employer members thanked the Government representa- tive of Myanmar for his statement. They noted that, although he had predicted a certain optimism, it remained to be seen whether this prediction was premature.

The Employer members considered this to be an unusual case, not because of the circumstances involved in the case, but because it was never applied in practice. Although it provided for penalties for the imposition of forced labour, the Government had never applied these penalties. It was therefore concerned to resolve the core of the problem which had given rise to the application of article 33 of the ILO Constitution should enter into force. At the same time, the Government had requested the Director-General to continue his cooperation with the Government of Myanmar to promote the full implementation of the Commission of Inquiry's recommendations. The Employer members did not consider this article 33 was the only means to be adopted. They were also concerned to resolve the core of the problem which had given rise to the application of article 33 in order to put an end to forced labour. Moreover, they added that there should be no doubt that the Employer members considered the observance of these fundamental principles to be crucial, and particularly the principles contained in Convention No. 29.

In conclusion, they stated that any progress made must be clear- ly demonstrable, that the Government must cooperate fully and that the High-Level Team must be granted broad powers of verification. They hoped that, in the future, they would be able to confirm that the situation which had given rise to the application of article 33 had been resolved.

Labour Conference, at the recommendation of the Governing Body, had adopted its resolution under article 33 of the ILO Constitution: the recommendations of the Commission of Inquiry. All ILO bod- ies and member States were to be informed and review their coop- eration with Myanmar. The same applied to the United Nations and the specialized agencies. Further developments were to be dis- cussed in the Conference Committee.

The measures mentioned in the resolution had come into effect on 30 November 2000, after the Governing Body had determined that the measures announced by the Government until that date had been insufficient. At its November 2000 session, the Governing Body had examined the Government's Order of 27 Oc- tober 2000, supplementing the May 1999 Order to eliminate the use of forced labour. An ILO technical cooperation team had visited the country and recommended that this be supplemented with spe- cific orders or directives. In its report this year, the Committee of Experts had called for a detailed list of such specific orders or direc- tives. Only in this way could enforcement of the prohibition of forced labour be achieved in practice. There had then been an ex- change of correspondence between the Director-General and the Myanmar Government in which the Government had indicated its willingness to implement the recommendations of the Commis- sion of Inquiry. The Employer members referred to documents D.6 and D.7, which contained further details in this regard.

The Employer members indicated that they had listened carefully to the statements of the Worker members. They noted that, although they had followed the case of Myanmar for his statement. They noted that, although he had predicted a certain optimism, it remained to be seen whether this prediction was premature.

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The Employer members recalled that, in November 2000, under the authority delegated to it by the International Labour Confer- ence, the Governing Body had determined that the resolutions under article 33 of the ILO Constitution should enter into force. At the same time, the Government had requested the Director-General to continue his cooperation with the Government of Myanmar to promote the full implementation of the Commission of Inquiry's recommendations. The Employer members did not consider that article 33 was the only means to be adopted. They were also concerned to resolve the core of the problem which had given rise to the application of article 33 in order to put an end to forced labour. Moreover, they added that there should be no doubt that the Employer members considered the observance of these fundamental principles to be crucial, and particularly the principles contained in Convention No. 29.
The Government member of Sweden, speaking on behalf of the Member States of the European Union, the Central and Eastern European countries associated with the European Union, namely the Czech Republic, Bulgaria, Estonia, Lithuania, Poland, Romania, Slovakia and Slovenia, the associated countries, Cyprus, Malta and Turkey, as well as Croatia and Norway, said that, in view of the developments in the situation with respect to forced labour in Myanmar, the European Union supported the resolution adopted by the Conference in June 2000 which had led to the implementation of measures in November 2000 under article 33 of the ILO Constitution. He recalled that, four years earlier, the Committee of Inquiry on forced labour in Burma/Myanmar had made a series of clear recommendations to the Government on the issue, namely that the legislation should be brought into line with Convention No. 29, no use or undue influence or pressure should be imposed on the authorities in practice and that those enforcing forced labour should be brought to face criminal responsibility. The Government was therefore under an obligation to implement these recommendations fully.

On many occasions, the European Union had made it clear that, in order for the Conference to lift the measures taken under article 33 of the ILO Constitution, it needed to be assured that forced labour was completely eliminated, that the high-level team had implemented its programme of work, meetings and visits. He called upon the Government to resume cooperation with the ILO and to allow a full-time ILO presence in the country with a view to verifying whether the Government had provided the information on forced labour that it had put in place and the follow-up implementation measures and national monitoring activities, as well as the cooperation between the Government and the ILO. He expressed the conviction that the existing situation in Myanmar was not a situation of forced labour as defined in the ILO Constitution, and that the authorities in practice and those enforcing forced labour should have full freedom of access to speak to anybody it wished to, including Daw Aung San Suu Kyi and other NLD leaders.

The Government of Sweden, speaking on behalf of the ASEAN member States of the ILO, thanked the Director-General for the continuing efforts of all concerned, including the Director-General and the staff of the Office. He called upon the Government to continue to extend every cooperation to the ILO and the High-Level Team when it visited the country in September. He urged the members of the Conference to await the report of the Team’s visit in November before deciding upon any further action.

The Government member of Malaysia, speaking on behalf of the ASEAN member States of the ILO, thanked the Director-General for his readiness to cooperate with the Government of Myanmar. He noted with appreciation the visit by the Representative of the Director-General and his team to Myanmar in May 2001, and the fact that the visit had been a step in the right direction. But the usefulness and effectiveness of the visit of the High-Level Team had depended on the extent to which the Government fulfilled the commitments that it had undertaken. It had agreed to accord the High-Level Team its full cooperation. Such cooperation must include, at a minimum, the right of the High-Level Team to meet with the authorities in practice and to counter the resolution adopted by the Conference through campaigns of disinformation and deception. She noted that, despite its rejection of the Conference resolution, the Director-General had continued to extend cooperation to the Government in relation to Convention No. 29, as requested by the Conference and the Governing Body. She welcomed the fact that the Government had now agreed to receive a High-Level Team in September.

The Government member of Australia, speaking on behalf of the members of the Asia-Pacific Group, noted with interest the report to the Committee on the developments since the last session of the Governing Body. The Asia-Pacific Group welcomed the decision of the Government to receive a High-Level Team in September, following the High-Level Team’s visit to Myanmar in May 2001. He recalled that, four years ago, the Commission of Inquiry had recommended that the ILO should be allowed complete freedom of movement throughout the entire territory and the Government that it would implement the comprehensive framework of legislative, executive and administrative measures that it had put in place and the follow-up implementation measures and national monitoring activities, as well as the cooperation between the Government and the ILO. He recognized the political will of the Government to resolve the issue and to receive an ILO High-Level Team in September 2001 to carry out the objective assessment.

He concluded that the 282nd Session of the Governing Body in November 2001 should review the measures taken by the ILO under article 33 of the Constitution in the light of the outcome of the objective assessment, with a view to removing those measures. He also called upon the Government and the ILO to continue cooperation until the issue was completely resolved.

The Government member of the United States recalled that the previous year the Conference had adopted three recommendations, 282/1 issued by the Governing Body under article 33 of the Constitution to secure compliance with the recommendations of the Commission of Inquiry. The evidence of the continuing use of forced labour on a large scale was compelling. It had been recognized that it had to do otherwise would be to fail in the responsibility of the Conference towards the workers of the country and to the historic mission of the ILO. Her delegation had stated on that occasion that “to do any less would be toavatar our aura and to break faith with all that we are and hope to be”. At the Governing Body in November 2000, it had been decided that there was no reason to delay the implementation of the resolution, notwithstanding the fact that the authorities in practice and those enforcing forced labour should have full freedom of access to speak to anybody it wished to, including Daw Aung San Suu Kyi and other NLD leaders.

The Committee of Experts had thoroughly analysed the measures taken by the Government to bring the situation into line with Convention No. 29, and had concluded that the measures had been insufficient to enable the ILO to provide technical assistance to that end. In that context, the European Union had welcomed the decision taken by the Government to resume cooperation with the ILO and to allow full-time ILO presence in the country with a view to verifying whether the Government had provided the information on forced labour that it had put in place and the follow-up implementation measures and national monitoring activities, as well as the cooperation between the Government and the ILO. He expressed encouragement at the assurance given by the Government in response to the report of the mission, and particularly the agreement on the modalities of legislative, executive and administrative measures that it had put in place and the follow-up implementation measures and national monitoring activities, as well as the cooperation between the Government and the ILO. He noted with appreciation the visit by the Representative of the Director-General and his team to Myanmar in May 2001, and the fact that the visit had been a step in the right direction. But the usefulness and effectiveness of the visit of the High-Level Team had depended on the extent to which the Government had implemented its programme of work, meetings and visits. He expressed appreciation for the continuing efforts of all concerned, including the Director-General and the staff of the Office. He called upon the Government to continue to extend every cooperation to the ILO and the High-Level Team when it visited the country in September. He urged the members of the Conference to await the report of the Team’s visit in November before deciding upon any further action.
Myanmar could only change with the coming into play of new elements on the basis of an objective assessment carried out by the ILO. His delegation had also underlined the importance of a steadfast and unswerving support for the maintenance of action against the Government of Myanmar as long as it showed no willingness to change its position on forced labour. He was therefore heartened by the report before the Committee, which showed progress towards the achievement of the objective of eradicating forced labour in Myanmar. The report of the mission led by the Representative of the Director-General was quite encouraging and he commended the Government for their vision in taking the matter seriously.

The speaker urged the Office to remain vigilant and support the dispatch of the High-Level Team, which should be allowed complete discretion as to its activities during its work. He urged the Government of Myanmar to continue cooperation with the ILO Convention No. 29, the adoption of measures to stop the exaction of forced or compulsory labour in practice; and the imposition of penalties on those who had perpetrated the crimes. The time limit set by the Commission for compliance with the recommendations was 1 May 1999.

This historical review underlined the fact that the series of measures envisaged by the Conference the previous year were rooted very clearly in the implementation of all three of the broad recommendations of the Commission of Inquiry. The resolution adopted in June 2000 had been the decisive factor in promoting the Government to enter into discussions with the NLD leader, Daw Aung San Suu Kyi, and to accept the ICFTU’s representation under article 24 of the Constitution, its country had held tripartite consultations and reviewed its relations with the Government. Since its first response to the request for information the Government had been operating a programme of activities and meetings, as agreed in the understanding signed by the United Nations and Asian countries, including Japan, to promote and strengthen the ILO resolution and to request the Government of Japan to put pressure on the Government to eradicate all forms of forced and compulsory labour in the country.

The Government member of Canada welcomed the recently signed understanding on the ILO’s objective assessment, which was to focus on the practical implementation and actual impact of the framework of legislative and administrative measures. He emphasized that forced labour amounted to forced labour which the Government had announced that it would not be allowed to be used for the activities covered by Japanese overseas development aid and to accept an international group of inquiry to monitor its use.

The Worker member of Pakistan recalled that the resolution adopted by the Conference the previous year under article 33 of the ILO Constitution was the result of a process which dated back to 1995. The Government of Myanmar that the best sanctions were those that were made by the United Nations and Asian countries, including Japan, to restore dialogue between the ILO and the Government.

The Worker member of Pakistan stressed that under no circumstances could any government be allowed to proceed with the use of forced labour in the country in 1964, 1966 and 1967.

He expressed deep concern about the resumption of Japanese forced labour. They had also called on the Government of Japan to review its relations with the country. He expressed deep concern about the resumption of Japanese overseas development aid to the country, which had been halted in 1988 after the takeover of the military regime, and especially the grant for the Baluchaung hydroelectric power station. The aid was still pending until such a time as the Government of Myanmar would fully respect the agreed modalities and procedures.

The Worker member of Colombia regretted that the members of the Committee were once again required to address the issue of Myanmar due to the Government's stubborn refusal to comply with the resolutions adopted by the ILO.

He added that in 1997 Myanmar’s unacceptable conduct had forced the Committee on the Application of Standards to place its comments in a special paragraph, given the Government’s failure to effect any real change. He called for all workers to unite in the face of Myanmar’s failure to submit to the ILO supervisory mechanisms and expressed his solidarity with the workers of Myanmar, especially in their struggle to ensure that the conventions and recommendations of the ILO’s Fundamental Conventions and Recommendations, particularly Convention No. 29 on forced labour, were implemented.

He stressed that under no circumstances could any government in any part of the world justify work performed under conditions of slavery and exacted through the use of force. He agreed with the Government of Myanmar that the best sanctions were those that were not applied. However, when a Government systematically refused to play by the established rules, implementing sanctions was the only method left, although no one liked to apply such methods.
Speaking on behalf of the workers of Latin America and the Caribbean, he once again urged the Government of Myanmar to seriously consider the full implementation of the provisions of the 1994 Geneva Convention and the Swiss resolution on Myanmar. He also underlined the need for a constructive commitment on the part of the Government of Myanmar to respond to the recommendations of the ILO Commission of Inquiry. The Swiss Government therefore awaited with optimism the report that the Government would submit to the November 2001 ILO Governing Body and would evaluate at that time the real political will of the Burmese authorities.

The Worker member of Swaziland emphasized that forced labour was a very serious violation and flagrant disregard for human dignity and must not be forgiven for as long as it existed. Every effort to eradicate the evil of forced labour had to be supported by all advocates of humanity and social justice. The present case put to the test the fundamental obligation of the ILO and its mandate. The ILO needed to answer the question of what was the acceptable desired result of ratification. Was it merely the adoption of a statute that was in conformity with the obligations undertaken, or did it need to be applied in both law and practice? The ICFTU report had shown that forced labour was still prevalent on the ground. He affirmed that a law that only existed on the statute books, and was not applied in practice, was not worth the paper it was written on. Unless the Government accepted that it was out of line with the requirements of Convention No. 29, which it had ratified voluntarily 46 years ago, it would be impossible for it to correct the wrongs that it had committed. Nevertheless, as indicated in document D.6, the Government had written to the United Nations Secretary-General condemning the decision of the Governing Body as a “grave injustice” and querying the mandate of the Director-General and the Conference on this issue.

He reaffirmed that the ratification of any international covenant by any government was a direct undertaking that it would enforce the covenant in law and in practice and that it would accept being monitored and questioned in the event that it violated the provisions of the covenant. Convention No. 29 was one of the core labour standards which, when applied, gave dignity to the worker. Without such dignity there could be no decent work. Moreover, forced labour constituted slavery and a crime against human dignity, and as such was incompatible with the dignity which resulted from both economic conditions and forced labour. He said that governments which were prone to commit crimes against humanity did not readily desist from such practices without international pressure. If sanctions had not been applied against the apartheid regime in South Africa, the law that only existed on the statute books, and was not applied in practice, was not worth the paper it was written on. Unless the Government accepted that it was out of line with the requirements of Convention No. 29, which it had ratified voluntarily 46 years ago, it would be impossible for it to correct the wrongs that it had committed.

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He therefore implored all countries to support social justice and maintain the sanctions until the people of Burma enjoyed an environment which was free of forced labour, guaranteed democracy, and respected the human rights and the rule of law. Only when the evaluation process by the ILO confirmed that Convention No. 29 was applied in law and practice could the sanctions be lifted.

The Worker member of Thailand indicated that in his country, there were more than 1 million illegal immigrants and nearly 20,000 refugees from Myanmar. These migrations had taken place over many years. The persons affected suffered from very bad social and economic conditions and had migrated to Thailand to escape poverty which resulted from both economic conditions and forced labour in Myanmar. These immigrants from Myanmar were vulnerable and were often bad for the economic conditions and had migrated to Thailand to escape poverty which resulted from both economic conditions and forced labour. The United Nations High-Level Level Team which would monitor the forced labour situation in Myanmar. He urged the Government to establish the necessary mechanisms to enable them to help them. At the same time, employers used the illegal immigrants to replace Thai workers who were facing difficulties in maintaining their working standards, especially in the area of occupational safety and health, and who demanded that ILO standards be respected. The political, economic and social condition of Thai workers was affected by these illegal immigrants and refugees who were the result of the political, economic and social conditions in Myanmar. Unless there were worth the paper it was written on. The ILO resolution on Myanmar to be kept in place until forced labour was totally eradicated in that country.
The Government member of Namibia stated that his Government was deeply concerned and horrified by the continued incidence of forced labour in Burma and had been instrumental in pushing for ILO Conventions to be implemented by all its member States, now more than ever.

The Government member of Sweden expressed his full support for the ILO Convention No. 29. He recalled that the ILO had an unenviable task in its efforts to eradicate the critical situation in Myanmar. While he welcomed the statement of commitment and the assurance made by the representative of the Government of Myanmar, he strongly urged it to match this uttering with deeds. Furthermore, he welcomed the proposal for the ILO to send a team of experts to Myanmar to fully investigate the situation as soon as practicable. It was his firm view that this matter should remain on the ILO agenda until the Government of Myanmar fully complied with Convention No. 29.

The Government member of India stressed that her Government was strongly opposed to the practice of forced labour. Countries voluntarily adhering to the ILO Conventions should comply fully with them. In regard to the matter before the present Committee, her Government believed that the ILO's objectives could best be promoted through dialogue and cooperation and not through punitive measures or the threat of use of such measures.

Her Government, therefore, advocated the path of constructive dialogue and cooperation between the ILO and the Government of Myanmar. The speaker also took note of an ILO mission to Myanmar and had considerably slowed down its engagement in condemning the Burmese regime. It was for the Committee to decide how and when the morally abhorrent practice of forced labour in Burma could be ended.

The visit of the High-Level Team to Burma in September would be a first step in the assessment process, although three weeks was a very short time to ascertain whether forced labour had diminished or stopped in Burma. He reiterated the importance of the High-Level Team being granted freedom of access to witnesses. He stressed the importance of all interviews being conducted in conditions where the interests of witnesses could be protected. The High-Level Team should be able to visit all areas of the country, including difficult border areas such as Rakhine, Chin, Kayin, and Kayah. The High-Level Team should also be able to decide when was the most appropriate time to visit Burma and the Director-General should have full freedom in appointing members of the team.

In that context, he was attracted by the suggestion that members of the original Commission of Inquiry should participate in the team. One thing should be clear: if in November the High-Level Team was able to report that forced labour in Burma had ended, then article 33 measures would be lifted. If, however, the High-Level Team reported that forced labour still existed or that they had been impeded in carrying out their assessment, then the United Kingdom Government, like that of the Netherlands, would be forced to consider what further measures could be taken against the Burmese Government.

The Worker member of the United Kingdom endorsed his Government's sentiments that the visit of the High-Level Team member of this year was a step in the right direction. However, he did wish to raise certain issues. First of all, he wondered whether it would not be better for the High-Level Team to undertake this mission in the little later when the monsoon season had come to an end, in order for the High-Level Team to do its work effectively and visit various regions of Myanmar during a three-week period, it might be preferable to appoint five members rather than three to this High-Level Team. In addition, a single visit of a three-week duration might prove insufficient to get a comprehensive picture of the situation regarding forced labour in the country. Hence, it would be necessary to ensure that follow-up visits were undertaken. Preferably, a permanent ILO presence in the country could well prove necessary to ensure that the Junta's practices continued to be monitored.

Another important aspect was the requirement of full cooperation from the Government of Myanmar in providing access for the High-Level Team to the border areas. A very important issue was that of witness protection. The speaker stressed the importance of the High-Level Team being granted freedom of access to witnesses and their families.

The Government member of Japan indicated that the Government of Myanmar had been unstinting in expressing its concern about the practice of forced labour in Burma and had been instrumental in pushing for the ILO Conventions to be implemented and in carrying out their assessment, which would be a first step in the assessment process, although three weeks was a very short time to ascertain whether forced labour had diminished or stopped in Burma. He reiterated the importance of the High-Level Team being granted freedom of access to witnesses. He stressed the importance of all interviews being conducted in conditions where the interests of witnesses could be protected. The High-Level Team should be able to visit all areas of the country, including difficult border areas such as Rakhine, Chin, Kayin, and Kayah. The High-Level Team should also be able to decide when was the most appropriate time to visit Burma and the Director-General should have full freedom in appointing members of the team.

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The Government member of Portugal endorsed the interventions made by the Government member of Sweden on behalf of the European Union and the Government member of the United Kingdom on the measures taken by the European Union with regard to putting to effect article 33 of the ILO Constitution. The Commission of Inquiry had recommended that a series of administrative, legislative and administrative measures be taken for the practice of forced labour, and to ensure the implementation of Convention No. 29. The previous year, the Governing Body of the International Labour Organization had noted that such measures had not been taken and for the very first time referred to article 33 of the Constitution. That decision was taken in order to strengthen the role played by the ILO as well as enhance its credibility in the promotion of fundamental rights at work. In that context, there was reason to consider the potential of a High-Level Team, even if the option of a continued presence in the country would have been better. A step forward could be made by the Team provided that three conditions were fulfilled: the mission should be free to move; it should have access to all requested places; and finally, the Director-General should be free to select its members. As a member of the Governing Body, Portugal expressed its specific wish to participate in a constructive tripartite discussion on that question at the next session of the Governing Body.

The Government member of Brazil reiterated his support for constructive dialogue and cooperation as the way to resolve the question of forced labour in Myanmar. He had expressed the wish to get in contact with the High-Level Team, expressing the importance of the Memorandum of Understanding. In this respect, he underlined the need for the mission to be free to move, the need for the mission to have access to all requested places, and the need for the Director-General to be free to select its members. As a member of the Governing Body, Brazil expressed its specific wish to participate in a constructive tripartite discussion on that question at the next session of the Governing Body.

The representative of the Director-General indicated that he already had some clarifications on certain points raised. Regarding the participation and provision of information other than the government authorities in the process which lead to the Memorandum of Understanding and the High-Level Team, he underlined that Ms. Aung San Suu Kyi had been informed of the content and importance of the Memorandum of Understanding. In this respect, she had expressed her wish to get in touch with the High-Level Team. Moreover, regarding the representatives of civil society, a list of NGOs present in Myanmar had already been established. Regarding the period during which the High-Level Team would visit Myanmar, the month of September had been chosen after taking into consideration the climatic conditions and the need to have adequate time to prepare a report for the November Governing Body. These considerations were of a practical nature and the exact date could be re-examined later on.

The Employer members recalled, at the end of a detailed and serious discussion, that their position, as clearly presented at the outset, was fully in line with the steps taken by the various bodies of the ILO. It was their impression that there was today a rather uniform evaluation of many aspects of the case by different members of the Committee, which had expressed very cautious hope. They recalled that a considerable effort had been made to present to the Governing Body a rather uniform evaluation of many aspects of the case by different members of the Committee, which had expressed very cautious hope. They recalled that a considerable effort had been made to present to the Governing Body a rather uniform evaluation of many aspects of the case by different members of the Committee, which had expressed very cautious hope.

The Employer members considered that further developments in this case should be followed soberly and critically, with hope for the people in Myanmar.

The Worker members said that they had listened carefully to the various statements. Despite the information provided by the Government representative as to the situation regarding the conditions that would be followed soberly and critically, with hope for the people in Myanmar.

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review the measures taken against Myanmar under article 33 of the ILO Constitution in light of the outcome of the forthcoming visit of the High-Level Team, with a view to removing them.

The Worker members, referring to their earlier statements, indicated that they had not been convinced by the Government's plea.

The Employer members recalled that their hopes, expectations and demands had been summed up in their earlier declarations; positive results were still awaited and could not be taken for granted.

The Committee held a special sitting on the application by Myanmar of the Forced Labour Convention, 1930 (No. 29), further to the resolution adopted by the International Labour Conference at its 88th Session, concerning the application of article 33 of the Constitution. It noted the oral and written information submitted by the Government, and the discussion which followed. It recalled that this case had been discussed repeatedly in the Committee before the appointment of a Commission of Inquiry under article 26 of the Constitution, and deplored the lack of progress towards the elimination of forced and compulsory labour. The Committee noted the results of the Director-General's appeals to the ILO constituents, including employers' and workers' organizations as well as governments, and other international organizations, to review their relations with the Government of Myanmar in order to ensure that the Government of Myanmar could not take advantage of relations with them to perpetuate or extend the system of forced or compulsory labour referred to by the Commission of Inquiry. It also noted that, according to information submitted to the Governing Body in March 2001 and to the Committee, forced and compulsory labour was still being imposed on the citizens of the country. The Committee recalled that the Commission of Inquiry had called upon the Government to halt all use of forced or compulsory labour, to amend its legislation to render the practice illegal, and to punish all those who imposed forced labour. The Committee noted that Order No. 1/99 as supplemented by the Order of 27 October 2000 was a relevant but insufficient basis for improving legislation. The conditions spelled out by the Committee of Experts should be applied in good faith, and further measures would be needed to ensure that this was in fact done. The Committee welcomed the Government's decision to resume cooperation with the ILO. In this regard, it noted with interest that a recent mission by representatives of the Director-General (17-19 May 2001) had concluded an understanding for an objective assessment of the situation of forced labour following measures announced by the Government of Myanmar, and that the results of this objective assessment were to be brought before the Governing Body at its November 2001 session. It was pointed out that this was only a beginning, and the Committee called upon the Government once again to take all possible measures with the greatest urgency to eliminate forced and compulsory labour in all its forms, in following the recommendations of the Commission of Inquiry; to punish those responsible for imposing forced labour; and to give full cooperation to the High-Level Team which was to carry out the objective assessment referred to above. The Committee emphasized that, taking into account the discussion in the Committee, the High-Level Team should: (1) have sufficient authority to programme its activities; (2) have an appropriate composition which will allow the work to be distributed among its members; (3) be selected within the sole discretion of the Director-General; (4) be able to carry out its investigation in all the places in the country which it considered necessary to visit; and (5) have unrestricted access to all necessary sources of information. Those people who provided information to the Team must enjoy full protection. It was also noted that the United Nations Economic and Social Council had been asked to discuss the situation at its July 2001 session. The Committee requested the Governing Body to assess the report of the High-Level Team at its November 2001 session in order to consider what further steps were necessary to be taken at that time by the Government or by the ILO, and recalled that the Government should provide a detailed report to the Committee of Experts at its next session on all measures taken to ensure observance of the Convention in law and in practice.

The Government representative of Myanmar asked that the closing remarks of the President reflect the positive comments regarding the agreement reached by the Government and the ILO on the modalities for the objective assessment which had been made by delegates, including a number of Workers' delegates. This would introduce better balance into the text. He suggested therefore that the sentence in the conclusions beginning with "In this regard, it noted with interest ..." read "In this regard, it noted with appreciation ...". He also suggested that the phrase concerning Order No. 1/99 reflect the original wording of the Committee of Experts which read that the Order "... could provide a statutory basis for ensuring compliance with the Convention in practice ..." [paragraph 7]. The experts, who are internationally recognized independent persons, had made an objective assessment in moderate language which should be retained.

In response to several questions, the Chairman clarified that the phrase in the conclusions concerning Order No. 1/99 to which the Government representative referred, used different wording but did not modify the conclusions on the same subject in paragraph 7 of the Committee of Experts' observation, and was entirely compatible with the Experts' meaning. This clarification would figure in the report of the discussion in the Committee's report.

The Employer members proposed to insert a paragraph in the general part of the Committee's report to the Conference to indicate that the Committee had held a special sitting on the issue of forced labour in Myanmar. The proceedings of this sitting should be reproduced in a special Part Three of the report. The Worker members agreed with this proposal.