



International Labour Conference

Provisional Record

Ninetieth Session, Geneva, 2002

28

PART THREE (contd.)



INTERNATIONAL LABOUR OFFICE

Governing Body

GB.282/4/Appendices
282nd Session

Geneva, November 2001

D. Report of the High-Level Team (HLT) (Appendixes)

Appendix I

Understanding on an ILO objective assessment

Recalling previous discussions which were reported to the Governing Body at its March 2001 session relating to the possibility of an objective assessment being carried out by the ILO with respect to the practical implementation and actual impact of the framework of legislative, executive and administrative measures reported by the Government, within the overall objective of the complete elimination of forced labour in law and in practice;

Recognizing now the desirability of such an assessment being carried out as soon as practicable;

Noting the importance in this connection of the observation made by the ILO Committee of Experts on the Application of Conventions and Recommendations in its 2001 report;

Aware of the need to respect the sovereign right of the country as well as the independence of the Organization in the discharge of its functions;

The Government of Myanmar agrees to receive a high-level team (HLT) to carry out an objective assessment under the following conditions designed to ensure its credibility:

1. The team will be composed of high-level persons appointed by the ILO Director-General on the basis of their recognized qualifications, impartiality and knowledge of the region.
2. Taking into consideration seasonal weather conditions, the assessment shall be carried out in September 2001. The time needed to carry out the assessment in Myanmar could involve up to three weeks.
3. The members of the HLT shall enjoy, for the purpose and duration of the mission, the same protection and status accorded to officials of comparable ranks in the United Nations.
4. The HLT shall have complete discretion to establish and implement its program of work, meetings and visits, taking into account the indications provided, inter alia, in the aforementioned observation of the Committee of Experts on the Application of Conventions and Recommendations, and subject only to valid considerations of security. For this purpose, the HLT shall be accorded full cooperation from the relevant Myanmar authorities. During the establishment and implementation of the HLT's programme, the HLT and the Government may call upon the assistance of a facilitator recognized by all parties concerned as being a knowledgeable and fair intermediary.
5. Based on the results of the assessment, the HLT may provide such advice and comments as it deems appropriate.
6. The report of the HLT will promptly be made available to the Director-General and the Government and transmitted to the Governing Body for consideration at its November 2001 session.

19 May 2001.

(Initialed) U. Soe Nyunt,
Chairman of the Myanmar,
Negotiating Team.

Francis Maupain.

Appendix II

Biographical information of the members of the HLT

The Right Honourable Sir Ninian STEPHEN, KG, AK, GCMG, GCVO, KBE (Australia),

former Governor-General of Australia; former Justice of the High Court of Australia; former Chairman, Strand Two of the Talks on Northern Ireland; former Judge of the United Nations International Criminal Tribunals for the former Yugoslavia and Rwanda; former Commonwealth of Nations Special Envoy to Bangladesh; Former Chairman, United Nations Expert Group on Cambodia; Former Australian Special Ambassador for the Environment; former Chairman, Constitutional Centenary Foundation, Antarctic Foundation, National Library of Australia, Australian Banking Industry Ombudsman Council, Australian Citizenship Council; Chair, Australian Blood and Blood Products Review; member of the Ethics Commission of the International Olympic Committee.

Ms. Nieves ROLDAN-CONFESOR (Philippines),

former Philippines Secretary of Labour and Employment; former Presidential Adviser on International Labour Affairs; former Chair, ILO Governing Body; former director of the Philippine National Bank, the Landbank of the Philippines; board member of the Social Security System Commission; Chairperson, National Wages and Productivity Commission, the Technical Education and Skills Development Authority, the Philippine Agrarian Reform Council, and the National Economic Development Authority; former head of the Panel of Experts to the Congressional Commission to amend the Labour Code; former Chair, ASEAN Labour Ministers' Meeting; Expert-adviser to the ILO Governing Body on the follow up to the ILO Declaration on Fundamental Principles and Rights at Work; member of the Operating Council of the Global Alliance for Workers and Their Communities; consultant/expert/external collaborator to the World Bank, the Asian Development Bank, the UNDP, the ILO, the ASEAN Secretariat, and various national and regional institutes and NGOs on social policy, social protection strategies, human resource development, institutional reform and governance, conflict prevention, and management; faculty, Asian Institute of Management (Philippines).

Mr. Kulatilaka Arthanayake Parinda RANASINGHE (Sri Lanka),

retired Chief Justice of Sri Lanka; former member of Judicial Tribunal to inquire into allegations made against the then Head of the Judiciary of Malaysia; former Visiting Expert, United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders, Tokyo; member of several Arbitral Tribunals dealing with Commercial Arbitration; President, Sri Lanka Chapter of the Asia Crime Prevention Foundation.

Mr. Jerzy MAKARCZYK, LL.D (Poland),

Judge, European Court of Human Rights; Professor of Public International Law, Institute of Legal Sciences, Polish Academy of Sciences; former Deputy Minister of Foreign Affairs; former Secretary of State, Ministry of Foreign Affairs; in charge of negotiations with USSR and then Russia on withdrawal of troops from Polish territory; in charge of negotiations for the admission of Poland to the Council of Europe; former President, International Law Association; member, Institute of International Law; has given lectures, seminars and acted as a consultant at various universities in Japan, South Korea, Sri Lanka, India, Thailand and the Philippines.

Appendix III

Communication dated 31 August 2001 from the HLT to the Minister for Foreign Affairs of Myanmar

Dear Minister,

In my capacity as Chairperson of the ILO High-Level Team, I am pleased to confirm, after consultations with the Permanent Mission of Myanmar in Geneva, that the Team will arrive in Yangon in the morning of 17 September and will spend the first week in the capital. We will then be in a position to give you further details concerning our plans for the following two weeks.

I also wish to inform you that the Team discussed other arrangements, and in particular the matter of precautionary measures as regards persons whom the Team may wish to contact, which was raised in the letter dated 28 August 2001 from the ILO Director-General to Ambassador Mya Than. In this connection, the Team asked me to seek confirmation of a solemn commitment on the part of the authorities of Myanmar which would be made through us to the international community that no action of any kind will be taken against persons or their families, or organizations, who may directly or indirectly contribute information to the Team or to the discharge of its mandate, nor indeed seek to identify such persons. This protection extends, but is of course not limited to, the fact that the authorities should not seek to interfere with arrangements by the Team to meet certain persons in private.

The High-Level Team also came to the conclusion that the most efficient way to carry out its mandate would be to have a chartered plane at its disposal in Myanmar. Accordingly an aircraft will be chartered in the region and the cooperation of the authorities will obviously be required so that the plane and its crew can go about their duties in a safe and efficient manner. We trust that, with your kind cooperation, the High-Level Team will thus be able to travel at the time it wishes to the places that it identifies.

I am looking forward to the opportunity of meeting you in Yangon.

Yours sincerely,

(Signed) Sir Ninian Stephen,
Chairperson, ILO High-Level Team.

Appendix IV

Communication dated 7 September 2001 from the Permanent Mission of Myanmar to Sir Ninian Stephen

Your Excellency,

I wish to refer to your letter Ref: BIT/ILO of 31 August 2001, addressed to the Minister for Foreign Affairs of the Union of Myanmar, in which you have stated that the High-Level Team wishes to seek the confirmation of a solemn commitment by the Myanmar authorities with regard to the protection of the persons and their families who may contribute information to the Team.

In this connection, on behalf of the Honourable Minister for Foreign Affairs, I wish to confirm that the Government will see to it that any action of concern to the ILO High-Level Team, referred to in the letter under reference, does not take place and that the bona fide implementation of the mandate by the ILO High-Level Team will not be affected in any manner whatsoever.

May I take this opportunity to convey my warm regards to Your Excellency and the members of the High-Level Team.

Please accept, Your Excellency, the assurances of my highest consideration.

(Signed) Mya Than,
Ambassador/Permanent Representative.

Appendix V

Individual observation of the Committee of Experts on the Application of Conventions and Recommendations (2001 report)

Convention No. 29

Myanmar (ratification: 1955)

1. The Committee notes that the Government has not supplied a report on the application of the Convention. Following the recommendations of the Commission of Inquiry established to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), the Committee has, however, taken note of the following information:
 - the information presented by the Government to the Director-General of the ILO in communications dated 21 January, 20 March, 27 May, 29 October (as supplemented subsequently), and 3, 15 and 17 November 2000;
 - the information submitted to, and the discussions held in, the Governing Body of the ILO at its 277th and 279th Sessions in March and November 2000;
 - the information and discussion at the International Labour Conference at its 88th Session (May-June 2000);
 - the resolution adopted by the International Labour Conference at its 88th Session concerning the measures recommended by the Governing Body under article 33 of the ILO Constitution on the subject of Myanmar to secure compliance with the recommendations of the Commission of Inquiry, and the entry into effect of those measures on 30 November 2000, following consideration of the matter by the Governing Body at its 279th Session (November 2000);
 - the resolutions adopted by the General Assembly of the United Nations at its 54th Session (17 December 1999) and by the United Nations Commission on Human Rights at its 56th Session (March-April 2000) on the situation of human rights in Myanmar (extracts in International Labour Conference, 88th Session, Geneva, 2000, *Provisional Record No. 4*, Annex III);
 - the second report of the Director-General of the ILO to the members of the Governing Body on measures taken by the Government of Myanmar, dated 25 February 2000;
 - the interim report prepared by judge Rajsoomer Lallah, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar, dated 22 August 2000 [UN document A/55/359]; and the note by the Secretary-General of the United Nations on the same subject, dated 20 October 2000 [UN document A/55/509];
 - the reports of the ILO technical cooperation missions to Myanmar of May 2000 [ILC, 88th Session, Geneva, 2000, *Provisional Record No. 8*] and October 2000 [GB.279/6/1 and Add.1];
 - a communication dated 15 November 2000 in which the International Confederation of Free Trade Unions submitted to the ILO voluminous documentation referring to the imposition of forced labour in Myanmar during the period June-November 2000, a copy of which was sent to the Government for such comments as it may wish to present;
 - a press release issued on 17 November 2000 by the Ministry of Foreign Affairs of the Union of Myanmar in Yangon, and an information sheet issued by the Myanmar Information Committee in Yangon on a press conference held on 18 November 2000 by the Government on the decision of the ILO Governing Body to activate measures on the subject of Myanmar.
2. Information available on the observance of the Convention by the Government of Myanmar will be discussed in three parts, dealing with: (i) the amendment of legislation; (ii) any measures taken by

the Government to stop the exaction in practice of forced or compulsory labour and information available on actual practice; (iii) the enforcement of penalties which may be imposed under the Penal Code for the exaction of forced or compulsory labour.

I. Amendment of legislation

3. In paragraph 470 of its report of 2 July 1998, the Commission of Inquiry noted:

... that section 11(d), read together with section 8(1)(g), (n) and (o) of the Village Act, as well as section 9(b) of the Towns Act provide for the exaction of work or services from any person residing in a village tract or in a town ward, that is, work or services for which the said person has not offered himself or herself voluntary, and that failure to comply with a requisition made under section 11(d) of the Village Act or section 9(b) of the Towns Act is punishable with penal sanctions under section 12 of the Village Act or section 9(a) of the Towns Act. Thus, these Acts provide for the exaction of “forced or compulsory labour” within the definition of Article 2(1) of the Convention.

The Commission of Inquiry further noted that the wide powers to requisition labour and services under these provisions do not come under any of the exceptions listed in Article 2, paragraph 2, of the Convention and are entirely incompatible with the Convention. Recalling that the amendment of these provisions had been promised by the Government for over 30 years, the Commission urged the Government to take the necessary steps to ensure that the Village Act and the Towns Act be brought into line with the Convention without further delay, and at the very latest by 1 May 1999 (paragraph 539(a) of the Commission’s report).

4. In its previous observation, the Committee noted that by the end of November 1999, neither the Village Act nor the Towns Act had been amended, nor had any draft law proposed or under consideration for that purpose been brought to the knowledge of the Committee. However, an “Order Directing Not to Exercise Powers Under Certain Provisions of the Town Act, 1907 and the Village Act, 1907” (No. 1/99) was issued by the Government on 14 May 1999, which in fact 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.
5. The Committee notes from the report of the October 2000 ILO technical cooperation mission to Myanmar (GB.279/6/1, paragraphs 9 and 10, Annexes 13 and 19) that a draft text providing for the amendment of the Village Act and the Towns Act through an amendment of Order No. 1/99 was not retained by the Government. However, the same report (in Annex 19) reproduces the English text of an “Order Supplementary Order No. 1/99” made by the Ministry of Home Affairs under the direction of the State Peace and Development Council on 27 October 2000 which modifies Order No. 1/99 so as to order “responsible persons including members of the local authorities, members of the armed forces” etc. “not to requisition work or service notwithstanding anything contained” in the relevant sections of the Towns and Village Acts, except in cases of emergency as defined in Article 2(2)(d) of the Convention (GB.279/6/1, Annex 19). The Burmese text of this Order of 27 October, which was to be published in the Myanmar Gazette, has not yet been supplied to the ILO.
6. The Committee observes that the amendment of the Village and Towns Acts sought by the Commission of Inquiry as well as the present Committee and promised by the Government for many years has not yet been made. It again expresses the hope that the Village Act and the Towns Act will at last be brought into conformity with the Convention.
7. The Committee nevertheless notes that Order No. 1/99 as supplemented by the Order of 27 October 2000 could provide a statutory basis for ensuring compliance with the Convention in practice, if given effect bona fide not only by the local authorities empowered to requisition labour under the Village and Towns Acts, but also by civilian and military officers entitled to call on the assistance of local authorities under the Acts. This, in the view of the Committee, calls for further measures to be undertaken, as indicated by the Commission of Inquiry in its recommendations in paragraph 539(b) of its report.

II. Measures to stop the exaction in practice of forced or compulsory labour and information available on actual practice

A. *Measures to stop the exaction in practice of forced or Compulsory labour*

8. In its recommendations in paragraph 539(b) of its report of July 1998, the Commission of Inquiry indicated that steps to ensure that in actual practice no more forced or compulsory labour be imposed by the authorities, in particular the military, were:

... all the more important since the powers to impose compulsory labour appear to be taken for granted, without any reference to the Village Act or Towns Act. Thus, besides amending the legislation, concrete action needs to be taken immediately for each and every of the many fields of forced labour examined in Chapters 12 and 13 [of the Commission's report] to stop the present practice. This must not be done by secret directives, which are against the rule of law and have been ineffective, but through public acts of the Executive promulgated and made known to all levels of the military and to the whole population. Also, action must not be limited to the issue of wage payment; it must ensure that nobody is compelled to work against his or her will. Nonetheless, the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour is also required ...

9. The Committee notes from the report of the October 2000 ILO technical cooperation mission to Myanmar, the suggestion made by the mission of a Supplementary Order or directive from the Office of the Chairman of the State Peace and Development Council concerning requisition of labour or services (GB.279/6/1, Annex 13). The suggested text was to order all state authorities, including military, police and civilian authorities and their officers, not to requisition persons to provide labour or services for any purpose, nor to order others to requisition such labour or services, regardless of whether or not payment is made for said labour or services, except in cases of emergency as defined in Article 2(2)(d) of the Convention. The suggested prohibition was to include but not be limited to the requisition of labour or services for the following purposes:
- (a) portering for the military (or other military/paramilitary groups, for military campaigns or regular patrols);
 - (b) construction or repair of military camps/facilities;
 - (c) other support for camps (such as guides, messengers, cooks, cleaners, etc.);
 - (d) income generation by individuals or groups (including work in army-owned agricultural and industrial projects);
 - (e) national or local infrastructure projects (including roads, railways, dams, etc.);
 - (f) cleaning/beautification of rural or urban areas.

Similar prohibitions were to apply to the requisition of materials or provisions of any kind and to demands of money except where due to the State or to a municipal or town committee under relevant legislation. Furthermore, the suggested text was to provide that if any state authority or its officers requires labour, services, materials or provisions of any kind and for any purpose, they must make prior budgetary arrangements to obtain these by a public tender process or by providing market rates to persons wishing to supply these services, materials or provisions voluntarily, or wishing to offer their labour.

10. The Committee notes that the text suggested by the mission was not adopted, but that the English versions of several instructions dated 27 and 28 October 2000 and 1 November 2000 were forwarded to the ILO after the departure of the mission and reproduced in addenda to the mission's report (GB.279/6/1(Add.1)(Rev.1) and (Add.2)).
11. The instruction dated 27 October 2000 "Prohibiting Requisition of Forced Labour" is signed for the Director-General of the Police Force and addressed to all units of the police force. The instruction dated 28 October 2000 on the same subject is addressed by the Director-General of the General Administration Department of the Ministry of Home Affairs to all State/Divisional Commissioners and General Administration Departments and requires, inter alia, Order No. 1/99 and the order supplementing it to be displayed separately on noticeboards of all the levels of peace and development councils as well as the General Administration Departments.

12. The instruction dated 1 November 2000 “Prohibiting Requisition of Forced Labour” is signed at the highest level, by Secretary-1 of the State Peace and Development Council, and addressed to the Chairmen of all State and Divisional Peace and Development Councils. The latter instruction thus reaches beyond institutions that come under the authority of the Ministry of Home Affairs. It is, however, primarily directed to the enforcement of Order No. 1/99 and the Order of 27 October 2000 supplementing it, which are limited in scope to the requisition of forced labour under the Village Act and the Towns Act, i.e. not by civilian or military state officers but by local authorities, who may requisition labour under the Acts when called upon to provide assistance to civilian and military state officers. Nevertheless, the instruction dated 1 November interprets the Supplementing Order of 27 October 2000 as follows:

2. ... The Supplementing Order renders the requisition of forced labour illegal and stipulates that it is an offence under the existing laws of the Union of Myanmar. Responsible persons, including the local authorities, members of the armed forces, members of the police force and other public service personnel are also prohibited not to requisition forced labour and are instructed to supervise so that there shall be no forced labour.

It would appear to the Committee that a bona fide application of this prohibition should cover the typical case of members of the armed forces who order local authorities to provide labourers, even if the manner of complying with such order – through requisition or hiring of labourers or otherwise – is left to the local authorities.

13. The instruction dated 1 November 2000 continues as follows:

3. Therefore, it is hereby directed that the state and divisional peace and development councils shall issue necessary instructions to the relevant district and township peace and development councils to strictly abide by the prohibitions contained in Order No. 1/99 and the Supplementing Order of the Ministry of Home Affairs and also to effectively supervise to ensure that there shall be no forced labour within their respective jurisdictions.

4. Responsible persons, including members of the local authorities, members of the armed forces, members of the police force and other public service personnel who fail to abide by the said Order No. 1/99 and the Supplementing Order shall be prosecuted under section 374 of the Penal Code or any other existing laws.

It would appear to the Committee that again, as set out in paragraph 12 above, a bona fide application of the instruction would include, in the scope of point 4 of the instruction, members of the armed forces who order local authorities to supply labour.

14. It remains to be seen whether the “necessary instructions” yet to be issued by the state and divisional peace and development councils under point 3 of the instruction of 1 November will contain the kind of details necessary for a feasible implementation. Such details were set out by the Commission of Inquiry in paragraph 539(b) of its report and included by the October 2000 technical cooperation mission in its suggestion mentioned in paragraph 9 above.

15. The three instructions forwarded so far to the ILO do not yet contain any positive indication on the manner in which authorities that have been used to rely on forced and unpaid labour contributions of the population are hereafter to make realistic provision for the labour and services they may require.

16. Furthermore, the three instructions do not spell out the various forms of forced labour found by the Commission of Inquiry and this Committee to be mainly imposed in practice, as listed in paragraph 9 above. In this regard, the Committee recalls that most of the forms of forced labour or services requisitioned concerned the military. The Committee notes that “members of the armed forces” are specifically included among the responsible persons listed in point 4 of the instruction dated 1 November 2000 (quoted in paragraph 13 above). However, in point 3 of the same instruction, the order to issue the necessary further – and, hopefully, more detailed – instructions is addressed to the state and divisional peace and development councils (which in fact include officers of the armed forces), but not to the regional commanders of the armed forces in their military capacity.

17. In the absence of specific and concrete instructions to the civilian and military authorities containing a description of the various forms and manners of exaction of forced labour, the application of the provisions adopted so far turns upon the interpretation in practice of the notion of “forced labour”. This cannot be taken for granted, as shown by the various Burmese terms used sometimes when labour was exacted from the population – including “loh ah pay”, “voluntary” or “donated” labour.

The need for clarity on the point is underscored by the Government's recurrent attempts to link the pervasive exaction of labour and services by mainly military authorities to merit which may be gained in the Buddhist religion from spontaneously offered help. The Commission of Inquiry recalled in paragraph 539(c) of its report that "the blurring of the borderline between compulsory and voluntary labour, recurrent throughout the Government's statements" was "all the more likely to occur in actual recruitment by local or military officials".

18. Thus, clear instructions are still required to indicate to all officials concerned, including officers at all levels of the armed forces, both the kinds of tasks for which the requisition of labour is prohibited, and the manner in which the same tasks are henceforth to be performed. The Committee hopes that the necessary detailed instructions will soon be issued, and that, in the words of paragraph 539(b) of the Commission of Inquiry's report, provision will also be made for "the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour".

B. Information available on actual practice

(a) The practice August 1998 to December 1999

19. In his reports dated 21 May 1999 and 25 February 2000 to the members of the Governing Body, the Director-General indicated that all information on actual practice that was received (from workers' and employers' organizations, intergovernmental organizations and governments of member States of the ILO) in reply to his requests, referred to continued widespread use of forced labour by the authorities, in particular by the military.

(b) Information on the practice up to November 2000

20. In its communication dated 15 November 2000, the ICFTU refers to the persistence of severe breaches of the Convention by the military authorities. Documentary appendices enclosed by the ICFTU represent over 1,000 pages drawn from over 20 different sources and include reports, interviews of victims; over 300 forced labour orders, photographs, video recordings and other material. A few events described therein took place in the first half of the year 2000; an overwhelmingly large proportion of the documents concerns the period June to November 2000.

21. An essential part of the ICFTU submission consists of hundreds of "forced labour orders", issued mainly by the army but also by armed groups under its control and elements of the local administration. As stated by the ICFTU, these are similar in kind, shape and contents to the orders already examined by the Commission of Inquiry and the regular ILO supervisory mechanisms and found by same to be authentic. Documentary materials submitted refer to the persistence on a large scale of forced portering, including by women, and the murder of forced porters no longer able to carry their burden. In addition to forced portering, all other forced labour practices identified previously by the Commission of Inquiry are referred to for the period June to November 2000. A great number of specific reported instances include forced labour for the building and maintenance of roads, bridges, railroads, water canals, dikes, dams and reservoirs, as well as for the building, repair, maintenance and servicing of army camps; and the requisition of labour as well as seeds, fertilizer, materials and equipment for army-held agricultural land, forests and installations.

22. As indicated above, copies of the ICFTU communication of 15 November 2000, including the voluminous documentation submitted, were sent to the Government for such comments as it may wish to present.

III. Enforcement

23. In paragraph 539(c) of its recommendations the Commission of Inquiry urged the Government to take the necessary steps to ensure:

... that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced labour or compulsory labour be strictly enforced, in conformity with Article 25 of the Convention. This requires thorough investigation, prosecution and adequate punishment of those found guilty.

24. In practice, no action whatsoever under section 374 of the Penal Code has so far been brought to the knowledge of the Committee.

25. The Committee notes that point 4 of the instruction dated 1 November 2000 from the State Peace and Development Council to All State and Divisional Peace and Development Councils, reproduced in paragraph 13, provides for the prosecution of “responsible persons” under section 374 of the Penal Code. Similar clauses are included in point 3 of the instruction dated 27 October, and point 6 of the instruction dated 28 October, referred to in paragraph 11 above. Moreover, under points 4 to 6 of the instruction dated 27 October 2000, addressed by the Director-General of the Police Force to all units of the police force:
4. If any affected person files a verbal or written complaint to the police station of having been forced to contribute labour, the latter shall record the complaint in Forms A and B of the police station and send the accused for prosecution under section 374 of the Penal Code.
 5. It is hereby directed that the police stations and units concerned at various levels shall be further instructed to make sure their strict compliance with the said Order as well as to supervise so that there shall be no requisition of forced labour. A copy of the Order Supplementing Order No. 1/99 issued by the Ministry of Home Affairs on 27 October 2000 is enclosed herewith.
 6. It is instructed to acknowledge receipt of this directive and to report back actions taken on the matter.
26. With regard to point 4 of the latter instruction (dated 27 October 2000) the Committee hopes that prosecutions under section 374 of the Penal Code will be brought by the law enforcement agencies on their own initiative, without waiting for complaints by the victims, who may not consider it expedient to denounce the “responsible persons” to the police. The Committee hopes that in commenting on indications that the imposition of forced labour has continued beyond October 2000, the Government will also report on any concrete action taken under section 374 of the Penal Code.
27. The Committee has noted the assurance, in the Government’s letter dated 29 October 2000 to the Director-General of the ILO, of the “political will to ensure that there is no forced labour in Myanmar, both in law and in practice”. It also has taken due note of the Order Supplementing Order No. 1/99 and the three instructions issued between 27 October and 1 November 2000, and of the view of the Employer members of the Governing Body at its 279th Session (November 2000) that this was “too little too late”. At a press conference held 18 November 2000 in Yangon on the decision of the Governing Body of the ILO to activate measures on the subject of Myanmar, the Government indicated that it would no longer cooperate with the ILO in relation to the Forced Labour Convention, 1930 (No. 29), but that it would continue to take steps to prevent forced labour, as this was its policy. The Committee hopes that the Government will thus at last take the necessary measures to ensure the observance in law as well as in practice of the Convention, a basic human rights instrument freely ratified by Myanmar. It also hopes that the Government, which had failed to take part in the proceedings before the Commission of Inquiry, will avail itself of the opportunity to present its views and progress in reporting on the application of the Convention, in conformity with its obligations under article 22 of the ILO Constitution.

[The Government is asked to report in detail in 2001.]

Appendix VI

Detailed itinerary of the HLT

(a) Summary

During its stay in Yangon (17-22 September and 5-6 October) the HLT held 17 meetings, with the Chairman of the SPDC, Secretary-1 of the SPDC, Ministers and Deputy Ministers as well as the Attorney General, the Chief Justice, and senior officials. It met twice with Daw Aung San Suu Kyi and also had meetings with senior members of the NLD, elected representatives from ethnic nationalities parties, religious leaders, and representatives of four ceasefire groups. The HLT also met with representatives of seven UN agencies, 26 foreign diplomats, a number of representatives of the local and international business communities, a representative of the ICRC and representatives of eight international NGOs.

During its field trips (23-28 September and 30 September to 4 October) the HLT met with many representatives of peace and development councils (PDCs) at the state/division, district, township and village-tract levels. As summarised below, the HLT also met with members of the armed forces, police/prison officers and members of the judiciary at all levels:

PDC representatives	36 people (23 at the village level)
Armed forces personnel	24 people (7 with regional or divisional commanders)
Police/prison officers	7 people
Judges	5 people
Religious leaders	17 people

Furthermore, the HLT felt bound to hear what members of the general population had to say as regards the situation of forced labour in Myanmar. Many of the meetings it held were with groups of people. On some occasions, the HLT deemed it more appropriate not to ask for the identifying data of persons who were willing to provide it with information, but rather to try to form a general impression of the situation from these random discussions. The HLT obtained identifying data for at least 105 of the more than 120 meetings that it had in various public locations. The remainder were informal meetings held with one or more persons.

During its meetings and interviews across the border in Thailand, the HLT met with 96 persons from the general Myanmar population, including many community leaders. During its stay in Thailand, the HLT also met with representatives of 5 NGOs having relevant information, as well as a representative of one ceasefire group, the Kachin Independence Organization, and representatives of the National Democratic Front.

(b) Meetings in Yangon

Monday, 17 September

- 0955 Arrive Yangon
- 1215 Briefing with United Nations Resident Coordinator
- 1400 Meeting with HE U Win Aung, Minister for Foreign Affairs

- 1500 Meeting with ILO Mission Coordination Committee
[HE U Khin Maung Win, Deputy Minister for Foreign Affairs (Chair); Brig-Gen Win Sein, Deputy Minister for Labour (Vice-Chair); Director-General of the Department of Labour; Managing Director of Myanmar Airways; Deputy Director-General of the Department of Civil Aviation; Directors-General of the International Organizations and Economic Department and the Political Affairs Department, Ministry of Foreign Affairs; Director-General of the Attorney-General's Office; Director-General of the Department of General Administration, Ministry of Home Affairs; Director-General of the Department of Transport; two representatives of the Directorate of Defence Services Intelligence (DDSI), Ministry of Defence]

Tuesday, 18 September

- 0800 Meeting with United Nations Country Team [Representatives of UNAIDS, UNDCP, UNDP, UNHCR, UNICEF, WFP, WHO]
- 0930 Meeting with Ministry of Defence personnel
[Brig-Gen Kyaw Thein and Col Hla Min of the Directorate of Defence Services Intelligence (DDSI), Ministry of Defence]
- 1115 Meeting with Convention 29 Implementation Committee
[HE U Khin Maung Win, Deputy Minister for Foreign Affairs (Chair); Brig-Gen Win Sein, Deputy Minister for Labour (Vice-Chair); Director-General of the Supreme Court; Director-General of the Attorney-General's Office; Directors-General of the International Organizations and Economic Department and the Political Affairs Department, Ministry of Foreign Affairs; Director-General of the Department of General Administration, Ministry of Home Affairs; two representatives of the Directorate of Defence Services Intelligence (DDSI), Ministry of Defence; Chairman of the Social Security Board; Director-General of the Prisons Department; Deputy Director-General of the Police Force; Director-General of the Department of Labour; Deputy Director-General of the Department of Labour]
- 1315 Meeting with diplomats from the ASEAN+4 group
[Representatives of Malaysia, Thailand, Indonesia, Philippines, Singapore, Brunei, Vietnam, Cambodia, Laos, Republic of Korea, China, Japan]
- 1510 Meeting with HE U Tin Winn, Minister at Prime Minister's Office and acting Minister for Labour
- 1610 Meeting with HE Col. Tin Hlaing, Minister for Home Affairs
- 1710 Meeting with the Central Committee of the National League for Democracy (NLD)

Wednesday, 19 September

- 0800 Meeting with representatives of international NGOs (Group 1)
- 1010 Meeting with HE Maj-Gen Sein Htwa, Minister for Social Welfare, Relief and Resettlement
- 1105 Meeting with U Aung Toe, Chief Justice of the Supreme Court
- 1250 Meeting with Daw Aung San Suu Kyi, General Secretary of the National League for Democracy (NLD)
- 1500 Meeting with U Tha Tun, Attorney-General
- 1630 Meeting with the Myanmar National Committee on Women's Affairs (MNCWA) and the Myanmar Maternal and Child Welfare Association (MMCWA)
- 1730 Meeting with ethnic nationalities representatives of the Committee Representing People's Parliament (CRPP)

Thursday, 20 September

- 0810 Meeting with representatives of international NGOs (Group 2)
- 1010 Meeting with the Chamber of Commerce, Women's Entrepreneurs Association, and Myanmar Construction Entrepreneurs

- 1200 Meeting with the international business community
- 1315 Meeting with diplomats from the OECD countries
[Representatives of the United States, United Kingdom, Australia, Russia, Germany, France, Italy]
- 1500 Meeting with the Myanmar Human Rights Committee
[Chaired by HE Col Tin Hlaing, Minister for Home Affairs]
- 1700 Meeting with HE Brig-Gen David Abel, Minister at the Prime Minister's Office

Friday, 21 September

- 0810 Meeting with representatives of UNHCR
- 0930 Meeting with the ILO Mission Coordination Committee
- 1100 Meeting with HE Lt-Gen Khin Nyunt, Secretary-1 of the State Peace and Development Council
- 1330 Meeting with various members of the diplomatic community
[Representatives of Bangladesh, Egypt, India, Israel, Nepal, Pakistan, Sri Lanka, Yugoslavia]
- 1700 Meeting with the ICRC delegate

Saturday, 22 September

- 1400 Meeting with Church leaders
- 1530 Meeting with representatives of a number of cease-fire groups
[Representatives of the Kachin Defence Army, Wa National Unity Party, Pa-o National Organisation and the Padoh Aung San faction of the Karen National Union]

(c) Field trips in Myanmar

Sunday, 23 September

Team 1 (Sir Ninian Stephen and Justice Parinda Ranasinghe)

At 1400 Team 1 arrived at Dawei airport, Tanintharyi Division.

In the afternoon, the Team held a meeting with Maj-Gen Aye Kyway, Coastal Region Commander.

In the evening, the Team met with a number of local people in various locations in Dawei town.

Team 2 (Ms. Nieves Confesor and Judge Jerzy Makarczyk)

In the morning, Team 2 arrived at Sittwe airport, Rakhine State.

The Team met with Maj-Gen Aung Htwe, Western Region Comm had a meeting, and also with the Bangladesh Consul in Sittwe.

In the afternoon, Team 2 travelled to Maungdaw by boat.

Monday, 24 September

Team 1

Team 1 travelled to Myitta village by road, with stops at various places along the way to meet with local people. In Myitta, the Team held a number of meetings with local people, as well as with the commander of Myitta army camp. In the afternoon, the Team returned to Dawei, again stopping at various places along the way to meet with local people and a religious representative.

In the evening, Team 1 met with a number of local people in various locations in Dawei town.

Team 2

Team 2 held meetings during the day with various representatives of international NGOs and UN agencies in Maungdaw, various administrative officials of PDCs at the district, township and ward levels, as well as with local people.

Team 2 also visited a number of villages in Maungdaw South and met with VPDC officials and local people.

Tuesday, 25 September

Team 1

In the morning, Team 1 had meetings with the Divisional Judge, with the Dawei District Commissioner, and with a Lt-Col from the army.

In the afternoon, Team 1 flew to Mawlamyine airport, Mon State. The Team then had a meeting with Brig-Gen Myint Swe, Southeast Region Commander.

Wednesday, 26 September

Team 1

Team 1 travelled by road from Mawlamyine to Hpa-an, the capital of Kayin State, taking a route which passed through the villages of Zathabyin and Eindu. The Team stopped at several places along the way and met with villagers, VPDC officials and the leader of a faction of the KNU that had agreed a ceasefire with the authorities.

In Hpa-an, Team 1 met with the Kayin State Commissioner and the Kayin State Judge.

Team 1 then returned to Mawlamyine, this time via a different route, and again stopped along the way and met a number of villagers.

Thursday 27, September

Team 1

In the morning, Team 1 met with a number of local residents and religious representatives in Mawlamyine.

In the afternoon in Mawlamyine, Team 1 met with the Prison Group Director for southeast Myanmar and held a second meeting with Brig-Gen Myint Swe, Southeast Region Commander.

In the evening, Team 1 met with Nai Shwe Kyin, President of the New Mon State Party, which has agreed a ceasefire with the authorities.

Friday, 28 September

Team 1

In the morning, Team 1 returned to Yangon by air.

Team 2

Team 2 visited a number of villages by boat on the Naf river, where they met with VPDC members, NaSaKa and police officials, as well as several villagers.

Team 2 also met with a township judge in Maungdaw.

Team 2

Team 2 travelled by helicopter to two villages in the far north of Rakhine State, on the border with Bangladesh, where they met NaSaKa officials, VPDC officials, and a number of villagers.

Team 2 also visited a village in Rathedaung township, where they met villagers and a VPDC official.

In the afternoon, Team 2 travelled to Mrauk-U town, in the eastern part of Rakhine State.

Team 2

Team 2 visited a number of villages, towns and other locations on the road from Mrauk-U to Kyauktaw and Minbya.

The Team met with several military officers, police officers, VPDC officials and local residents in these areas.

Team 2

Team 2 met with a TPDC official, a township judge, and various other people in Mrauk U town.

In the afternoon, Team 2 returned to Yangon by air.

Sunday, 30 September

Team 1

At 1400 Team 1 arrived at Lashio airport in northern Shan State.

In the afternoon, Team 1 had a meeting with Brig-Gen Thiha Thura Tin Aung Myint Oo, Northeastern Region Commander.

In the evening, Team 1 visited a police station in Lashio.

Team 2

In the morning, Team 2 arrived at Loikaw airport in Kayah State.

In the afternoon, the Team met with Brig-Gen Nyunt Hlein, commander of an Infantry Division in Loikaw.

The Team also met with a prominent church leader; representatives of the Karenni National People's Liberation Front (KNPLF) ceasefire group; some military personnel and their mules at an Animal Transport Company; as well as a number of local residents.

Monday, 1 October

Team 1

In the morning, Team 1 travelled by car to Hsipaw, and stopped at a number of places on the way where they met VPDC officials and local residents.

At Hsipaw, the Team met with the TPDC Chairman. In the afternoon, the Team travelled from Hsipaw in the direction of Mong Yai, and stopped at a number of villages and army agricultural plantations.

In the evening, the Team met in Lashio with a number of local residents and representatives of religious groups.

Team 2

Team 2 visited a number of villages in Loikaw, Demawso and Hpruso townships, and met with local residents.

The Team also met in Loikaw with the Kayah State Judge.

Tuesday, 2 October

Team 1

In the morning, Team 1 drove south from Lashio to Nampong village, and stopped at various villages and army-owned plantations along the way. They met with a number of military personnel at these plantations, as well as talking to local residents in the area.

In Nampong, the Team met with VPDC officials, police officers, an army battalion commander, and local residents.

In the afternoon, Team 1 planned to fly to Myitkyina in Kachin State, but was prevented from doing so by bad weather conditions at the destination.

Team 2

In the morning, Team 2 drove from Loikaw to Taunggyi in southern Shan State, via Hsi Hseng. The Team stopped at various places along the road and met with a number of local residents.

The Team also stopped at a railway construction site (of the Taunggyi to Namhsam railway) where they met with the deputy minister for rail transportation.

Wednesday, 3 October

Team 1

In the morning, Team 1 again tried to fly to Myitkyina in Kachin State, but was again prevented by bad weather conditions at the destination. The Team therefore decided to fly back to Yangon.

Team 2

In the morning in Taunggyi, Team 2 met with Maj-Gen Maung Bo, Eastern Region Commander.

The Team then travelled to a number of villages in the Taunggyi area, and met with a number of residents of these villages.

Thursday, 4 October

Team 1

Yangon

Team 2

In the morning, Team 2 flew back to Yangon.

(d) *Wrap-up meetings in Yangon*

Friday, 5 October

- 1030 Meeting with Convention 29 Implementation Committee
- 1500 Meeting with HE Senior General Than Shwe, Chairman of the State Peace and Development Council, together with General Maung Aye and Lt-Gen Khin Nyunt
- 1800 Meeting with representatives of the international business community

Saturday, 6 October

- 1000 Meeting with Daw Aung San Suu Kyi, General Secretary of the National League for Democracy (NLD)
- 1200 Meeting with representatives of the Ministry of Home Affairs
- 1615 Meeting with the United Nations Country Team
- 1700 Meeting with the diplomatic community
- 1950 Depart Yangon for Bangkok

(e) *Meetings and visits across the Thai border*

Sunday, 7 October

- 0900 Meeting with representatives of the Burmese Border Consortium
- 1030 Meeting with researchers with information on the situation on the Myanmar-Bangladesh border

Monday, 8 October to Wednesday, 10 October

On the morning of Monday, 8 October, the HLT flew from Bangkok to Mae Sot. The HLT had a meeting with the Karen Human Rights Group and then spent three days in Mae Sot and the surrounding area interviewing 80 persons from Myanmar with recent information relevant to the HLT's mandate. The HLT also had the opportunity of meeting senior representatives from the National Democratic Front (NDF), an umbrella organization of ethnic nationalities groups.

Thursday, 11 October to Friday, 12 October

On the morning of Thursday, 11 October, the HLT flew from Mae Sot to Chiang Mai. Since the HLT had been unable to travel to Myitkyina in Kachin State, it took the opportunity in Chiang Mai of meeting with a representative of the Kachin Independence Organisation, a group which has a ceasefire agreement with the Myanmar authorities. The HLT also had a meeting with Burma Relief Centre and EarthRights International. The HLT then drove to the town of Fang. On Friday, 12 October, the HLT interviewed 26 persons from Myanmar with recent information relevant to its mandate.

Appendix VII

Map of Myanmar



Appendix VIII

Myanmar terms, acronyms, and alternative spellings of places visited

Places visited

Official spelling used in this report	Alternative spelling
Dawei (capital of Tanintharyi Division)	Tavoy
Hpa-an (capital of Kayin State)	Pa-an
Lashio (town in northern Shan State)	–
Loikaw (capital of Kayah State)	–
Mawlamyine (capital of Mon State)	Moulmein
Sittwe (capital of Rakhine State)	Akyab
Taunggyi (capital of Shan State)	–
Yangon (capital of Myanmar)	Rangoon
Kayah (State)	Karenni
Kayin (State)	Karen
Mon (State)	–
Rakhine (State)	Arakan
Tanintharyi (Division)	Tenasserim

Myanmar terms

kyat	unit of currency of Myanmar
Regional Commander	commander of one of the 12 military regions (the regional commanders, together with the other senior commanders of the armed forces, make up the SPDC)
township	town and the surrounding region and village tracts constituting an administrative unit
village tract	group of villages constituting an administrative unit

Acronyms

PDC	Peace and Development Council (administrative body operating at the village-tract, township, district, state/divisional and State levels)
SPDC	State Peace and Development Council (Myanmar's ruling body)
DPDC	District Peace and Development Council (administrative body at the district level)
TPDC	Township Peace and Development Council (administrative body at the township level)
VPDC	Village-tract Peace and Development Council (administrative body at the village tract level)
ATB	Animal Transport Battalion (military battalion of mules for transport of military supplies)
NaSaKa	Border security force (under the command of the military)
NLD	National League for Democracy

Appendix IX

Summary of the meeting between the HLT and Senior General Than Shwe

Friday, 5 October 2001, Yangon, 3.00-4.15 p.m.

Present: The HLT, Senior General Than Shwe, General Maung Aye, Lt-Gen. Khin Nyunt

1. Senior General Than Shwe expressed his pleasure at having the opportunity of meeting with the HLT. He explained that, in Myanmar, there was a great tradition according to which everything should be done to ensure that visitors were respected and welcomed. He added that the HLT had now been in the country for some time. It had been able to visit and interact with the people of Myanmar and make its own assessment of the situation.
2. Senior General Than Shwe provided the HLT with information concerning the situation prevailing in the country. He explained that, even though the army was governing the country, it never really intended to assume that responsibility. The conditions in the country compelled the army to do so. Myanmar was a country comprised of 135 different ethnic groups. The non-disintegration of the country was of the utmost importance. In this regard, the task of the army was difficult and complicated. Unity could only be ensured through a process of pacification and development of the country. However, this process had been from the outset of the country's independence jeopardized by the insurgency issue, which had created instability and unrest. For Senior General Than Shwe, peace and stability could only be achieved with a strong central government. This was why the army had launched massive military operations against the insurgents. However, they realised that the solution could not rely only on military means and had to include political elements. That was the reason why the army had initiated discussions with insurgent groups. These negotiations had turned out to be particularly complex and difficult and had lasted in some cases up to five years before an agreement was reached. Out of the 18 insurgent groups recognised by the government, only one group had not yet signed a ceasefire agreement. Senior General Than Shwe explained that discussions with this group were still going on since they knew that it was only through peace and stability that the country could be developed. The authorities had to use a lot of patience for the process to be successful. History revealed that previous governments were not successful in achieving peace because they were not willing to listen to the insurgents' wishes, such as the desire to maintain the control of their areas and the possibility of keeping their arms. This the present government understood. Ten years had been necessary to reach a certain level of understanding. As the HLT had surely observed, many areas of the country were very backward and the army really wanted to take all necessary measures to develop them, that is, provide them with schools, roads, hospitals, and so forth. Furthermore, the authorities were also seriously working on the drug issue and had undertaken a vast program of crop substitution. Senior General Than Shwe said that he was mentioning this issue in order to show that the army had not only to tackle the labour issue, but also a number of others that were affecting the well-being of the people of Myanmar.
3. As regards more specifically the assessment of the HLT, Senior General Than Shwe explained that the authorities of Myanmar were not discouraged by international scrutiny. In fact, he said that they had learnt a lot from it. Of course, the country had its own goals and objectives and it had to draw lessons from its history. Today, the goal on which the SPDC was focussing was the building of a strong democracy based on three prerequisites: stability and peace; strong central government; and a flourishing economy. For 27 years, the country had been governed by a socialist regime. In those times, the country received a lot of assistance. Now that the authorities were trying to build a democratic country, he observed that they were facing a lot of resistance from the international community. This reluctance, he believed, would only delay the process leading to democracy. He recalled his attachment to the teachings of Buddhism, and insisted on the fact that even if they were from the military, they were trying to govern according to the Rule of Law. Many of the laws that were being applied by the courts were inherited from the British time. The courts were not military, they were civilian. In concluding, he insisted on the fact that the military had no desire to persecute their own people and that they would never let the armed forces become the enemy of the people of Myanmar.
4. Sir Ninian thanked Senior General Than Shwe for having agreed to meet with the HLT. He also expressed the HLT's gratitude for the way the authorities had fulfilled their commitment not to

interfere with its work. He took note of Senior General Than Shwe's concern as regards the attitude of the international community and the additional delay in achieving democracy that this could imply. However, Sir Ninian insisted on the fact that the HLT visited the country with the aim of assisting it. The HLT had not come simply to blame the country. Sir Ninian thanked Senior General Than Shwe, since the arrangements made for it by the Government had proceeded very smoothly and that had surely involved a lot of hard work on the part of the authorities. Sir Ninian stressed that the HLT trusted that the authorities would honour in the same impeccable manner the other side of their solemn commitment, that regarding persons or organisations with whom the HLT had had contact and who sometimes seemed worried about their security despite the assurances of the Government which the HLT had transmitted. For Sir Ninian, this involved not only a moral obligation, but was an essential part of the confidence-building with the international community involved in the visit of the HLT.

5. Sir Ninian observed that the HLT had established many contacts during its visit to the country. However, it had not reached its conclusions yet; as the authorities were aware, these conclusions would take the form of a report addressed to the ILO. For the sake of full transparency, Sir Ninian informed Senior General Than Shwe that the HLT had been offered the possibility of having contact with other groups – “by no means friendly” – outside the country. The HLT had decided to avail itself of this opportunity and the authorities of Myanmar could rest assured that the HLT would exercise the same degree of critical judgement in that phase of its work as it had exercised during its time in Myanmar.
6. Sir Ninian stressed that the members of the HLT were not at this point in a position to definitely form a common judgement, since this would require a careful analysis of the notes of the respective visits carried out by its two groups. However, he said that the members of the HLT felt that the opportunity that had been given to them to meet with the Head of State provided them with the possibility to share with him some of their very preliminary impressions and to discuss possible ways in which the ILO and the international community could further assist the SPDC's efforts to eradicate the problem of forced labour.
7. Sir Ninian said that the HLT took note of the efforts which had been made to disseminate the Orders. He believed that even if these efforts had been uneven, it was an important step to show commitment. But for the HLT, it was not enough to have the Orders publicised. The most important issue was their effective implementation. In this regard, Sir Ninian said that the HLT was sceptical about the argument heard during the first week of its visit that the absence of criminal prosecution was evidence that forced labour had disappeared once the Orders had been made public. Further discussions and observations had revealed that violations were not dealt with as criminal offences as they were supposed to be, and that the Orders might not be being obeyed by the military in remote areas – or even not so remote areas – despite efforts to make them known and applied. Sir Ninian added, however, that the HLT was encouraged by Secretary-1's statement asking to be informed of violations and his willingness to accept the recommendations that the HLT might share with the authorities as regards obstacles that existed to full implementation of the Orders. Sir Ninian said that the HLT was acutely aware that hardly one year had passed since the adoption of the Supplementary Order and that this was not a very long time to eradicate a problem which had been endemic in the country. The real challenge would be to satisfy the international community that despite the shortcomings that the HLT might have observed, there was a positive and sustainable trend.
8. For Sir Ninian, it was obvious that this one-time exercise of the HLT could hardly be repeated in order to confirm a long-term trend. He believed that the best way to ensure appropriate assistance from the ILO and through it from the international community in this long-term process that the Head of State had ably described would be to allow the establishment of an ILO permanent presence. In itself, this idea was not new. It had been proposed in the past and did not meet with an official refusal. If there were an ILO presence – authorised to go everywhere without restrictions – Sir Ninian considered that this would surely have a positive impact on the general opinion of the international community. Of course, the HLT was aware that an ILO presence was only one among the many and complex steps that could contribute to the effective eradication of forced labour, as had been mentioned by the Head of State, i.e. pacification, economic development and modernisation of the country. However, the HLT was convinced that this step was key to the others. Sir Ninian said that he personally sincerely hoped that the ILO presence could be readily acceptable to the authorities. The establishment of an ILO presence with meaningful facilities would send a powerful message to the international community about the real commitment of the authorities to eradicate the problem of forced labour and beyond that to engage in a process of modernisation with which forced labour was completely incompatible. Sir Ninian added that the message would be all

the more powerful if this presence could be seen positively by all sides involved in the ongoing dialogue.

9. Sir Ninian took the opportunity of the meeting with the Head of State to inform the authorities that the HLT had committed itself to meet again with a number of persons before it departed from Myanmar, for instance, the business community (both local and international), the UN, the diplomatic community, and Daw Aung San Suu Kyi. While these meetings were more a matter of courtesy, Sir Ninian wanted to make it clear – in the same spirit of full transparency mentioned before – that meeting with Daw Aung San Suu Kyi could also greatly contribute to reassuring the international community that an ILO presence represented a true element of convergence in the ongoing dialogue.
10. In concluding, Sir Ninian indicated that, while the specific content of the HLT report was still to be determined, two things were certain. First, that its content would, through the ILO, be made available to the authorities of Myanmar. Second, that all the members of the HLT had faith in the capacity of this country and its inhabitants to achieve the place they deserved in the international community and to participate in the promotion of respect of fundamental human rights. Sir Ninian believed it was courageous for the country to have accepted this “intrusive” international scrutiny.

Appendix X

List of documents submitted to the HLT

(Some confidential documents provided to the HLT are not listed here)

Document	Date received	Received from
“Myanmar: a silent humanitarian crisis in the making” (joint letter from country representatives of UN agencies operating in Myanmar to the heads of various UN agencies)	17.09.01	United Nations Resident Coordinator a.i.
<i>Developments in Myanmar with respect to the implementation of ILO Convention No. 29</i> , Ministry of Labour, Yangon. September 2001.	18.09.01	Implementation Committee
<i>Political Situation of Myanmar and its Role in the Region</i> (27th edition), Office of Strategic Studies, Ministry of Defence, Yangon. May 2001.	18.09.01	Ministry of Defence representative
Folder containing two documents entitled “Myanmar: The reality” and “Understanding Myanmar: Issues in Brief”	18.09.01	Implementation Committee
Three booklets concerning Buddhism and Myanmar culture	18.09.01	Implementation Committee
Booklet in Burmese published by the General Administration Department of the Ministry of Home Affairs and reproducing Order 1/99, the Supplementing Order, and other relevant texts.	18.09.01	Ministry of Home Affairs
Document detailing allegations of forced labour	18.09.01	NLD
Document in Burmese detailing the dissemination of the Orders and allegations of forced labour in Chin State	18.09.01	NLD
Four booklets concerning Buddhism	19.09.01	Ministry of Social Welfare
“Feeling Good or Doing Good with Sanctions: Unilateral Economic Sanctions and the US National Interest” by Ernest H. Preeg, Center for Strategic and International Studies, Washington, DC. 1999.	19.09.01	UNDP
Booklet entitled “The Judicial System of The Union of Myanmar” Supreme Court, Yangon. September 2001	19.09.01	Supreme Court
Statistics on cases before the Supreme Court	19.09.01	Supreme Court
Booklet entitled “The role of the Office of the Attorney General” and a copy of “The Attorney General Law, 2001”	19.09.01	Office of the Attorney General

Document	Date received	Received from
Summary of two complaints made to the Myanmar National Committee for Women's Affairs concerning forced labour	19.09.01	Myanmar National Committee for Women's Affairs
Three brochures providing information about the Myanmar Maternal and Child Welfare Association	19.09.01	Myanmar Maternal and Child Welfare Association
Brochure entitled "The Union of Myanmar"	19.09.01	Myanmar National Committee for Women's Affairs
Letter dated 20 September 2001 from Ms. Suzanne Pun, Principal of Stamford-City Business Institute, Yangon, to the HLT	20.09.01	International business community
Document entitled "Action taken on cases for not abiding notification 1/99 and its supplementary order", Ministry of Home Affairs, General Administration Department.	21.09.01	Implementation Committee
Instruction dated 11 November 2000 issued by the Regional Commander to the military units under his command. (In Burmese)	23.09.01	Maj-Gen Aye Kyway, Coastal Region Commander
Follow-up action by the Regional Command Headquarters concerning violations of the Supplementary Order. (In Burmese)	23.09.01	Maj-Gen Aye Kyway, Coastal Region Commander
Action taken with regard to misappropriation of porter charges by members of one VPDC. (In Burmese)	23.09.01	Maj-Gen Aye Kyway, Coastal Region Commander
Note read by Khin Maung Yee during the meeting with the Regional Commander. (In English)	23.09.01	Maj-Gen Aye Kyway, Coastal Region Commander
A number of documents relating to one case of violation of the Orders. (In Burmese)	23.09.01	Maj-Gen Aye Kyway, Coastal Region Commander
Album containing photographs of meetings held in Dawei district to explain the content of the Orders. (Captions in Burmese)	23.09.01	Maj-Gen Aye Kyway, Coastal Region Commander
"Report of the Field Trip Group No. 3, Tanintharyi Division, 24.4.2001 to 4.5.2001", Department of Labour.	23.09.01	Maj-Gen Aye Kyway, Coastal Region Commander
Summary of cases of violation of the Orders by the military. (In Burmese)	23.09.01	Maj-Gen Aye Kyway, Coastal Region Commander
Documents concerning the activities of Bridge Asia Japan (BAJ) in Maungdaw	25.09.01	Bridge Asia Japan, Maungdaw
List of meetings to explain the content of the Orders attended by the Dawei District Commissioner. (In Burmese)	25.09.01	Dawei District Commissioner

Document	Date received	Received from
Album containing photographs of the military constructing roads using bulldozers and transporting supplies using mules.	26.09.01	Brig-Gen Myint Swe, Southeast Region Commander
Kayin State PDC file detailing the case of a VPDC Chairman who had been dismissed from service following a number of allegations. (In Burmese)	26.09.01	Kayin State Commissioner
Document produced by Kayin State General Administration Department, detailing the present situation regarding implementation of the Orders. (In Burmese)	26.09.01	Kayin State Commissioner
Copies of a number of legislative texts: The Penal Code; The Code of Criminal Procedure; The Evidence Act; The People's Police Force Maintenance of Discipline Law; The People's Militia Act; The Defence Services Act, 1959; The Defence Services Rules; The Police Act, 1945; "G" Circular No. 15 (1940).	28.09.01	Implementation Committee
Document entitled "Complaint of a non-cognizable case"	28.09.01	Implementation Committee
Document detailing military recruitment procedures	28.09.01	Implementation Committee
Copies of the files of cases where administrative measures were taken due to violations of the Orders.	28.09.01	Implementation Committee
Copy from the Myanmar Gazette of the Supplementing Order	28.09.01	Implementation Committee
Document entitled "List of retrenched and closed factories during the period 2000 to 2001"	28.09.01	Implementation Committee
Sample of receipts signed upon payment for labour rendered on public works, and details of labour expenditures of several State enterprises.	28.09.01	Implementation Committee
Document detailing the dissemination campaign for the Orders in Lashio. (In Burmese)	30.09.01	Brig-Gen Thiha Thura Tin Aung Myint Oo, Northeastern Region Commander
Document with photographs detailing meetings held in Lashio district (northern Shan State) concerning the Orders. (In Burmese)	30.09.01	Brig-Gen Thiha Thura Tin Aung Myint Oo, Northeastern Region Commander
Background information on northern Shan State. (In Burmese)	30.09.01	Brig-Gen Thiha Thura Tin Aung Myint Oo, Northeastern Region Commander
Summary of two cases of violations of the Orders by the military in the Northeastern Region. (In Burmese)	30.09.01	Brig-Gen Thiha Thura Tin Aung Myint Oo, Northeastern Region Commander

Document	Date received	Received from
Photos showing the dissemination campaign for the Orders in Hsipaw township	1.10.01	Hsipaw Township PDC Chairman
Document entitled “The true facts about Maung Maung, General Secretary of the Free Trade Union of Burma (FTUB)”	5.10.01	Implementation Committee
Document giving further details of the cases involving violation of the Orders. (Copies in Burmese and English)	6.10.01	General Administration Department
Document detailing allegations of forced labour	6.10.01	Daw Aung San Suu Kyi
Documents providing information on the work of the Burmese Border Consortium	7.10.01	Burmese Border Consortium
Documents containing recent interviews in Bangladesh with persons from Rakhine State concerning forced labour	7.10.01	Forum Asia representative
Email from the Shan Human Rights Foundation concerning seven villagers killed following a complaint about forced labour	7.10.01	Shan Human Rights Foundation
Maps of Myanmar prepared by Karen Human Rights Group	8.10.01	Karen Human Rights Group
<i>A Brief History of the National Democratic Movement of Ethnic Nationalities</i> , by Khaing Soe Naing Aung. 2000.	8.10.01	National Democratic Front
Document entitled “Human rights abuses in Karenni State, Jan.-Sept. 2001”	8.10.01	National Democratic Front
Originals of a large number of signed and stamped orders from military and paramilitary units to villages, many requisitioning forced labour	9.10.01	Persons interviewed by the HLT
Originals of a large number of signed and stamped orders from military and paramilitary units to villages, many requisitioning forced labour	10.10.01	persons interviewed by the HLT
Documents containing recent relevant information concerning forced labour	12.10.01	Shan Human Rights Foundation
Documents containing recent relevant information concerning forced labour, as well as other documents containing background information	12.10.01	EarthRights International

Appendix XI

(a) Communication dated 13 October 2001 from the HLT to Senior General Than Shwe

Excellency,

On behalf of the High-Level Team, I would like to express again our sincere gratitude for the opportunity which you provided just a week ago to have a frank and informative exchange of views on subjects relevant to the discharge of our mandate.

As I informed you on that occasion, the HLT, after leaving Yangon, had the opportunity to carry out further investigation through meetings and interviews across the Thai Border with people who claimed to have been subjected to various forms of forced labour during the period relevant to our mandate.

Among the many disturbing accounts which we heard about the continued existence of forced labour, there was one which appeared to be of particular significance for our report and which we felt we had a duty to you to bring to your attention, all the more so in light of the invitation from Secretary 1 to report on any case of violation the Team might come across.

As you can see from the attached extract, this allegation relates to what happened to villagers in the Shan State who decided to complain about forced labour practices by the military following the visit of Secretary 1 to the area when he publicly announced that such practices were illegal under the supplementary Orders and instructions. This allegation has been the subject of wide e-mail diffusion internationally through an NGO and indeed reached the HLT on the last day of its programme in Yangon. It was repeated almost in the same terms by a witness whom the HLT happened to interview yesterday. It would of course be very useful for the Team and for its report to have your comments on this case as soon as possible. Should they however reach us after the completion of our report they could still be produced separately for the Governing Body.

Subject to your comments, this case seems to provide a vivid illustration, among many others, of the urgent need which I referred to during our audience for a form of ILO presence in Myanmar, which among other possible forms of assistance could provide a systematic mechanism for assessing on a continuous basis and with sufficient credibility vis-à-vis the international community, the veracity of similar allegations.

Thanking you again for the assistance and hospitality extended to the HLT during its visit.

Yours sincerely,

(Signed) Sir Ninian Stephen,
Chairman, High-Level Team.

c.c.: Lieutenant General Khin Nyunt, SPDC, Yangon.

Seven villagers killed for complaining about forced labour in Murng-nai (SHRF Monthly Report, September 2001)

On 14 July 2001, seven villagers who had lodged a complaint with SPDC military authorities about increasing use of forced labour by SPDC troops were killed by SPDC troops from Kun-Hing-based IB246 and their bodies dumped into Nam Taeng river in Kaeng Tawng area, Murng-Nai township.

On 11 July 2001, the said seven villagers went to the visiting Commander of the SPDC Military Eastern Command, Maj. Gen. Maung Bo, from Taunggyi and filed a complaint with him about the continued use of civilian forced labour by SPDC troops in the area.

The villagers said to Maung Bo, "We have been told by Gen. Khin Nyunt on 25 May 2001 that starting from then the Burmese army would not use forced labour of the people; would not take chicken, pigs and other things from the people for free; and would not torture and kill the people any more. However, after Gen. Khin Nyunt left, the use of forced labour by the local military authorities has increased, requiring us to work for the military almost all the time. We have to provide free labour for the military in building military facilities, cultivating crops, sawing wood, repairing and building roads etc., leaving virtually no time for us to cultivate our subsistence crops. Many people have to start their rice cultivation late into the season, which will surely result in poor yields."

Maung Bo, however, consoled the villagers that he would return and report it to his superiors and let them hear good news in 7 days and changed the subject to talk about other things.

A few days after Maung Bo left and while the villagers were waiting for the expected "good news" from him, they were arrested for interrogation by a patrol of 20-25 SPDC troops from Co. No. 3 of Kun-Hing-based IB246, that was temporarily stationed in Kaeng Tawng under the command of Captain Mya Aung.

About ten days after Maung Bo had left Murng-Nai township for Taunggyi, villagers from Ho Kun village, Kun Long tract, who had gone fishing found the dead bodies of the said seven villagers stranded at "Taad Pha Pha" waterfall, about two miles east of Ho Kun village.

The seven victims were:

1. Zai Ti-Ya (m), aged 30, of Nam Tum Tai village, Nawng Hee tract, Murng-Nai township;
2. Lung Haeng Wi (m), aged 40, of Nawng Tao village, Kun Long tract, Murng-Nai township;
3. Zai Aw Lam (m), aged 28, of Pa Saa village, Nawng Hee tract, Murng-Nai township;
4. Zai In Ta (m), aged 24, of Nawng Ook village, Ton Hoong tract, Murng-Nai township;
5. Zai Ta Lam (m), aged 21, of Nawng Ook village, Ton Hoong tract, Murng-Nai township;
6. Zai Khan-Ti (m), aged 36, of Kun Hoong village, Nam-Zarng town, Nam-Zarng township;
7. Zai Saw-Ya (m), aged 31, of Kun Keng village, Nam-Zarng g town, Nam-Zarng township.

(b) Communication dated 26 October 2001 from Lieutenant-General Khin Nyunt to the HLT

Excellency,

I wish to refer to your letter dated 13 October 2001 addressed to our Chairman Senior General Than Shwe, a copy of which was also sent to me. In your letter, you mentioned about an incident in Shan State in July of this year. I thank you for inviting our comments on the matter. This is the first time that the case has come to my attention and I wish to assure you that we shall be making a thorough investigation of the matter. The results of the investigation will be informed in due course.

From the attachment to your letter, it can be seen that the allegation had originated from SHRF (Shan Human Rights Foundation). Allow me to take the opportunity to provide you with some information about this organization. Despite its high sounding title, the organization is nothing more than a front for anti-government insurgents that are operating from the US. The head of the SHRF is

one Khun Kya Oo, a former insurgent who is now residing in the US. It had been making all sorts of allegations against the Armed Forces over the years. To cite an example, the December 2000 Report of SHRF contained 15 allegations including 3 murder cases, 2 rape cases, 1 assault and battery case, 1 forced labour case, 3 extortion cases and 1 case of frightening a young girl. After thorough investigations, all the allegations were found to be spurious and without foundation since;

- (a) the accusations were against non-existent military officers;
- (b) the locations mentioned could not be found as there were no such villages;
- (c) the incidents themselves were complete fabrications;
- (d) no villagers bearing the names provided in the allegations could be found in the area mentioned; and
- (e) the actual events had been twisted to give a negative impression.

Therefore, I am confident you will understand that we have to verify very carefully all reports emanating from SHRF. As you are aware, we have fully cooperated with the HLT Team during its stay in Myanmar and I would like to assure you of our cooperation in the future as well.

Before I conclude, I wish to convey to you the warm regards and best wishes of our Chairman Senior General Than Shwe to you and the other members of the HLT team.

Yours sincerely,

(Signed) Lieutenant General Khin Nyunt,
Secretary-1,
State Peace and Development Council,
The Union of Myanmar.

Appendix XII

Structure of the Myanmar Court System



1. The Supreme Court	1
2. State or divisional courts	17
3. District courts	63
4. Township courts	323
5. Special courts	22
Total	426

(Source: Government of the Union of Myanmar, Supreme Court, "The Judicial System of the Union of Myanmar", Sept. 2001)

Appendix XIII

Relevant legislation and orders

(1) *The Village Act, 1908 (extracts)*

Section 8(1)

Every headman shall be bound to perform the following public duties, namely:

- (g) to collect and furnish, upon receipt of payment for the same at such rates as the Deputy Commissioner may fix, guides, messengers, porters, supplies of food, carriage and means of transport for any troops or police posted in or near or marching through the village-tract or for any servant of the Government travelling on duty: provided that no headman shall requisition for personal service any resident of such village-tract who is not of the labouring class and accustomed to do such work as may be required;

...

- (n) generally to assist all officers of the Government in the execution of their public duties; and
- (o) generally to adopt such measures and do such acts as the exigency of the village may require.

Section 11

Every person residing in the village-tract shall be bound to perform the following public duties, namely:

- (d) on the requisition of the headman or of a rural policeman, to assist him in the execution of his duties prescribed in sections 7 and 8 of the Act and the rules made under the Act.

Explanation – A requisition under clause (d) may be either general or addressed to an individual.

Section 12

If any person residing in a village-tract refuses or neglects to perform public duties imposed upon him by this Act or by any rule thereunder, he shall, in the absence of reasonable excuse, the burden of proving which shall lie upon him, be liable

- (i) by order of the headman, to fine ... or
- (ii) by order of the village committee, on the case being referred to it by the headman, to fine ..., or to confinement for a term not exceeding 48 hours in such place as the Deputy Commissioner may appoint in this behalf, or to both, or
- (iii) on conviction by a Magistrate, to fine ..., or to imprisonment for a term not exceeding one month, or to both.

(2) *The Towns Act, 1907 (extracts)*

Section 7(1)

The headman of a ward shall be bound to perform the following public duties, namely:

...

Provided that no headman shall requisition for personal service any resident of such ward who is not of the labouring class and accustomed to do such work as may be required; and

- (m) generally to assist all officers of the Government and municipal officers in the execution of their public duties.

Section 9

Persons residing in a ward shall be bound to perform the following public duties, namely:

...

- (b) on a general or individual requisition of the headman to assist him in the execution of his public duties.

Section 9A

If any person residing in a ward refuses/neglects to perform any of the public duties imposed upon him by this Act or any rule thereunder, he shall, in the absence of reasonable excuse, the burden of proving which shall lie upon him, be liable, on conviction by a magistrate, to a fine ...

(3) Order No. 1/99

Government of the Union of Myanmar,
The Ministry of Home Affairs.

Order No. 1/99

Yangon, the 15th Waning of Kason 1361, M.E.

(14th May 1999)

Order directing not to exercise powers under certain provisions of The Towns Act, 1907 and The Village Act, 1907

1. The Government of The Union of Myanmar, the Ministry of Home Affairs hereby issues this Order under the directive of the Memorandum dated 14-5-99, Letter No. 04/Na Ya Ka (U)/Ma Nya of the State Peace and Development Council.
2. Under Section 7 of the Towns Act, 1907, powers have been conferred on the Chairmen of the Ward Peace and Development Councils to enable them to execute their public duties. Among such powers, the right to requisition for personal service of the residents of the ward is provided in Sub-section (1)(l) and (m) of Section 7. It is provided in Section 9 that residents of the ward shall fulfil the duty assigned under the said power and it is provided in section 9A that on failing to fulfil such duty, action may be taken against them.
3. Similarly, under Section 8 of the Village Act, 1907 also, powers have been conferred on the Chairmen of the Village Tract Peace and Development Councils to enable them to execute their public duties. Among such powers, the right to requisition for personal service of the residents of the village tract is provided in Sub-section (1)(g), (n) and (o) of section 8. It is provided in section 11(d) that the residents of the village tract shall fulfil the duty assigned under the said power and it is provided in section 12 that on failing to fulfil such duty, action may be taken against them.
4. In order to make the Towns Act, 1907 and the Village Act, 1907 conform to the changing situation such as security, administrative, economic and social conditions within the internal domain of the State, the Ministry of Home Affairs has been scrutinizing and reviewing as to how the said Acts should be amended, inserted and deleted, in coordination with the relevant ministries, Government departments and organizations.
5. As such, this Order is hereby issued directing the Chairmen of the Ward and Village Tract Peace and Development Councils and the responsible persons of the Department of General Administration and the Myanmar Police Force not to exercise powers under these provisions relating to requisition for personal service prescribed in the above-mentioned Towns Act, 1907 and the Village Act, 1907, until and unless any further directive is issued, except for the following circumstances:
 - (a) requisition for personal service in work or service exacted in cases of emergency on the occurrence of disasters such as fire, flood, storm, earthquake, epidemic diseases that would endanger the existence or the well-being of the population;

- (b) requisition for personal service in work or service which is of important direct interest for the community and general public and is of present or imminent necessity, and for which it has been impossible to obtain voluntary labour by offer of usual rates of wages and which will not lay too heavy a burden upon the present population.
6. Any person who fails to abide by this Order shall have action taken against him under the existing law.

(Signed) Col. Tin Hlaing;
Minister,
Ministry of Home Affairs.

Circulation:

- (1) Office of the Chairman of the State Peace and Development Council;
- (2) Office of the State Peace and Development Council;
- (3) Office of the Government;
- (4) Supreme Court;
- (5) Office of the Attorney General;
- (6) Office of the Auditor General;
- (7) Public Services Selection and Training Board;
- (8) All Ministries;
- (9) Director General, Department of General Administration (Forwarded for information and for further circulation of the copy of this Order to the State, Divisional, District and Township Administrative Officers Subordinate to him);
- (10) Police Major General, Myanmar Police Force (Forwarded for information and for further circulation of the copy of this Order to the relevant departments and organizations subordinate to him);
- (11) Director General, Department of Special Investigation;
- (12) Director General, Prisons Department;
- (13) All State and Divisional Peace and Development Councils;
- (14) All District Peace and Development Councils;
- (15) All Township Peace and Development Councils (Forwarded for information and for further circulation of the copy of this Order to the Chairmen of the Ward and Village Tract Peace and Development Councils Subordinate to it);
- (16) Managing Director, Printing and Publishing Enterprise (with a request for publication in the Myanmar Gazette).

(4) Order Supplementing Order No. 1/99

The Government of the Union of Myanmar,
The Ministry of Home Affairs,
Yangon, 1st Waxing of Tazaungmon 1362, M.E.

(27 October 2000)

Order supplementing Order No. 1/99

The Ministry of Home Affairs of the Government of the Union of Myanmar, under the direction of the State Peace and Development Council, hereby directs that the following amendment

shall be made to Order No. 1/99 dated 14 May 1999 as requisition of forced labour is illegal and is an offence under the existing laws of the Union of Myanmar.

1. Clause 5 of the said Order 1/99 shall be substituted with the following:
 - (a) Responsible persons including members of the local authorities, members of the armed forces, members of the police force, and other public service personnel shall not requisition work or service notwithstanding anything contained in sections 7(1) and 9(b) of the Towns Act, 1907, and sections 8(1) and 11(d) of the Village Act, 1907.
 - (b) The above clause (a) shall not apply to the requisition of work or service when an emergency arises due to fire, flood, storm, earthquake, epidemic disease, war, famine and epizootic disease that poses an imminent danger to the general public and the community.
2. When the responsible persons have to requisition work or service for purposes mentioned in clause 1(b) of this Supplementary Order the following shall be complied:
 - (a) The work or service shall not lay too heavy a burden upon the present population of the region.
 - (b) The work or service shall not entail the removal of workers from their place of habitual residence.
 - (c) The work or service shall be important and of direct interest for the community. It shall not be for the benefit of private individuals, companies or associations.
 - (d) It shall be in circumstances where it is impossible to obtain labour by the offer of usual rates of wages. In such circumstances, the people of the area who are participating shall be paid rates of wages not less favourable than those prevailing in the area.
 - (e) Schoolteachers and pupils shall be exempted from requisition of work or service.
 - (f) In the case of adult able-bodied men who are the main supporters of the necessities of food, clothing and shelter for the family and indispensable for social life, requisition shall not be made except only in unavoidable circumstances.
 - (g) The work or service shall be carried out during the normal working hours. The hours worked in excess of the normal working hours shall be remunerated at prevailing overtime rates.
 - (h) In case of accident, sickness or disability arising at the place of work, benefits shall be granted in accordance with the Workmen's Compensation Act.
 - (i) The work or service shall not be used for work underground in mines.
3. When the responsible persons have to requisition work or service for purposes mentioned in clause 1(b) of this Supplementary Order, they shall do so only with the permission of the Deputy Commissioner of the General Administration Department who is also a member of the relevant District Peace and Development Council.
4. The State or Divisional Commissioner of the General Administration Department who is also a member of the relevant State or Divisional Peace and Development Council shall supervise the responsible persons to abide by the Order No. 1/99 and this Supplementary Order.
5. The phrase "Any person who fails to abide by this Order shall have action taken against him under the existing law" contained in clause 6 of the said Order No. 1/99 means that any person including local authorities, members of the armed forces, members of the police force and other public service personnel shall have action taken against him under section 374 of the Penal Code or any other existing law.

(Signed) Col. Tin Hlaing,
Minister,
Ministry of Home Affairs.

Letter No. Pa-Hta-Ya /2-3 (3140)/Oo3

Dated: 27 October 2000

Circulation:

- (1) Office of the Chairman of the State Peace and Development Council;
- (2) Office of the State Peace and Development Council (forwarded for the issuance of further directives to State, Divisional, District and Township Peace and Development Councils for supervision not to requisition forced labour);
- (3) Office of the Government;
- (4) Supreme Court;
- (5) Office of the Attorney-General;
- (6) Office of the Auditor-General;
- (7) Public Service Selection and Training Board;
- (8) Ministry of Defence (forwarded for the issuance of further directives to all units under its command for supervision not to requisition forced labour);
- (9) Ministry of Progress of Border Areas and National Races and Development Affairs (forwarded for the issuance of further directives to relevant departments and regional work committees stationed at border areas subordinate to it for supervision not to requisition forced labour);
- (10) All other Ministries;
- (11) Director-General, General Administration Department;) (forwarded for the issuance of
- (12) Police Major General, Myanmar Police Force) further directives to departments
- (13) Director-General, Bureau of Special Investigation;) and organizations subordinate to
- (14) Director-General, Prisons Department) him for supervision not to
- (15) All State/Divisional Peace and Development) requisition forced labour)
- (16) All District Peace and Development Councils;) (forwarded for the issuance of
- (17) All Township Peace and Development Councils (forwarded for the issuance of further) further directives to organizations
- (18) Managing Director, Printing and Publishing Enterprise (for publication in the Myanmar) subordinate to them for supervision
- (19)) not to requisition forced labour)

(5) Additional instruction to State and Divisional Peace and Development Councils

The Union of Myanmar,
The State Peace and Development Council.

Letter No. 04/Na Ya Ka (U)/Ma Nya

Dated: 1 November 2000

To: Chairman,
All State and Divisional Peace and Development Councils

Subject: Prohibiting requisition of forced labour

1. The Ministry of Home Affairs which administers the Towns Act, 1907, and the Village Act, 1907, issued, under the directive of the State Peace and Development Council, Order No. 1/99 on 14 May 1999. The Order directs responsible persons not to exercise powers under certain provisions of the said Acts relating to requisition of forced labour and stipulates actions that are to be taken against any violation. ...

2. After the issuance of Order No. 1/99, to be in conformity with the changing situations, the Ministry of Home Affairs under the direction of the State Peace and Development Council issued the Order Supplementing Order No. 1/99 on 27 October 2000. The Supplementing Order renders the requisition of forced labour illegal and stipulates that it is an offence under the existing laws of the Union of Myanmar. Responsible persons, including the local authorities, members of the armed forces, members of the police force and other public service personnel are also prohibited not to requisition forced labour and are instructed to supervise so that there shall be no forced labour. ...
3. Therefore, it is hereby directed that the state and divisional peace and development councils shall issue necessary instructions to the relevant district and township peace and development councils to strictly abide by the prohibitions contained in Order No. 1/99 and the Supplementing Order of the Ministry of Home Affairs and also to effectively supervise to ensure that there shall be no forced labour within their respective jurisdictions.
4. Responsible persons, including members of the local authorities, members of the armed forces, members of the police force and other public service personnel who fail to abide by the said Order No. 1/99 and the Supplementing Order shall be prosecuted under section 374 of the Penal Code or any other existing laws.

By order,

(Signed) Khin Nyunt,
Lieutenant-General,
Secretary (1),
The State Peace and Development Council.

Copies to:

- (1) Office of the Chairman of the State Peace and Development Council;
- (2) Office of the Government;
- (3) Supreme Court;
- (4) Office of the Attorney-General;
- (5) Office of the Auditor-General;
- (6) Public Services Selection and Training Board; and
- (7) All Ministries.

E. Minutes of the discussion in the Governing Body (at its 282nd Session) on developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)

(Governing Body document GB.282/PV)

SECOND SITTING

Wednesday, 14 November 2001, morning

The sitting opened at 10.45 a.m., with Mr. Tou in the Chair.

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)

Report of the High-Level Team

The Governing Body had before it the report of the High-Level Team (HLT),¹ established according to the “Understanding on an ILO Objective Assessment” concluded between the Director-General’s representatives and the Government of Myanmar with a view to carrying out an objective assessment with respect to the practical implementation and impact of the framework of legislative, executive and administrative measures adopted by the Government in October-November 2000 following a previous ILO Technical Cooperation Mission. The HLT visited Myanmar from 17 September to 6 October during which it held an extensive number of meetings and carried out field trips in various parts of the country.

The Chairperson commended the Director-General on the choice of the members of the HLT, whose balanced make-up and high quality provided every guarantee for an objective evaluation of the situation in Myanmar. During its mission in the country, the HLT had met high-level government representatives, leaders of the democratic opposition (including Ms. Aung San Suu Kyi), NGOs and many other people in different regions and fields of activity. The extraordinary diversity of its contacts gave particular weight to its analyses and suggestions. On behalf of the Governing Body, he expressed gratitude to the members of the Team for having agreed to undertake this difficult task.

Before opening the substantive debate on this report, which would take place the following day, he would give the floor to the representative of the Government of Myanmar and then enable any members of the Governing Body to ask questions.

The Ambassador of Myanmar considered that significant progress had been made in cooperation between his country and the ILO. After a certain hiatus in the relations between the ILO and Myanmar, his Government had taken the initiative in October 1999 of extending an invitation to the Director-General to send a Technical Cooperation Mission (TCM) to Myanmar. The first such mission took place in May 2000 and the second in October 2000. The second TCM recognized the comprehensive framework of legislative, administrative and executive measures taken by the Government and the implementation of the recommendations of the ILO since the ILO Conference in June 2000.

A further ILO special mission led by Mr. Maupain resulted in the signing of an Understanding between his Government and the ILO on the modalities of an ILO objective evaluation. The mission of the High-Level Team to Myanmar proved to be a significant event in the mutual relationship between the ILO and Myanmar. This was truly a high-

¹ GB.282/4.

level group in terms of its qualifications and the high esteem in which it was held by the international community. During its visit, the HLT was received by the Chairman of the State Peace and Development Council and met several ministers, members of the National Implementation Committee, representatives of UN agencies and diplomats in Yangon as well as many individuals. The HLT was given complete freedom of movement and access, the only constraint being their own security.

The speaker considered that the report of the HLT was fairly balanced. In particular, it acknowledged that the will to eradicate forced labour had been stated very explicitly at all levels, including the leadership of the State Peace and Development Council, and various independent observers and religious leaders had expressed their belief in the sincerity of this commitment. The authorities' readiness to accept a completely independent assessment and to honour their obligations in this respect was in itself evidence of a change of attitude on their part and could be seen as the concrete expression of their commitment to progress towards eradicating forced labour. In addition, the HLT reiterated that Order No. 1/99 and Supplementary Order No. 1/99 could provide a statutory basis for ensuring compliance with [Convention No. 29](#) if they were given effect *bona fide*. The HLT further acknowledged that there had been a positive evolution in the situation in Myanmar. On the whole, the report was forward-looking and constructive.

His Government was ready to carry this process of dialogue and cooperation forward, and it would continue to work together with the ILO in its efforts to resolve the issue of forced labour. As a first step, it was willing to receive visits by an ILO team, based either in Geneva or in Bangkok. Such a team would operate according to the same modalities as the HLT and would enjoy the same privileges and immunities. Myanmar was ready to cooperate fully with the ILO in this task except in respect of a permanent ILO presence which it was not in a position to accept for the time being, without completely ruling out some form of ILO representation. This was an extremely delicate and subtle issue, on which it was necessary to proceed step by step.

The speaker expressed the hope that the Governing Body would reciprocate those positive signals from his Government. In the light of the fruitful mission of the HLT, the full cooperation of the Myanmar Government and the effective measures taken by it, he called upon the Governing Body to recommend placing the question of Myanmar on the agenda of the 90th Session of the ILO in June 2002 for a review of the situation, with a view to removing the measures taken by the ILO on Myanmar.

The Worker Vice-Chairperson referred to recent news reports of road repairs using forced labour that had recommenced in Burma subsequent to the visit of the HLT. He asked whether the Office and the Government were aware of these allegations that forced labour had recommenced after the high-level visit. With reference to paragraph 28 and Appendix XI of the report, which listed seven villagers killed for complaining about forced labour in Murng-nai township, he asked whether the Governing Body had initiated or completed investigations into that event. In view of the precise data on the individuals, location and military units concerned, it should have been possible to investigate the matter rapidly, and it was therefore disappointing that almost four months later no substantive response had yet been provided.

The Employer Vice-Chairperson noted from the Ambassador's statement that his Government did not rule out the idea of an ILO presence in Myanmar, but that this was a delicate issue requiring a step-by-step approach. Did this actually mean that the Government was studying the possibility of an ILO representative in the country and, if so, what would be the parameters of this representation and the scope of the activities which it could undertake? As regards the gradual approach mentioned by the Ambassador, he asked what kind of time schedule the Government had in mind and how this kind of gradual

approach would dovetail with the timetable of the Governing Body, which was next due to meet in March 2002.

The representative of the Director-General stated, in reply to the Worker Vice-Chairperson's questions concerning allegations of new cases of forced labour in road repairs, that the Office had the same information as the Workers' group, i.e. information received from NGO sources. However, there was no means of verifying whether these allegations were accurate. In paragraph 55 of its report, the HLT had expressed some doubts about the sustainability over time of the progress noted; in other words, it was somewhat afraid that the decrease in the number of cases of forced labour was partly linked to its own visit and that, once the mission was over, matters would revert to their earlier state. As regards the case mentioned in paragraph 28 of the report, the Office had no further information beyond the statement of Secretary No. 1 of the State Peace and Development Council that an inquiry would be carried out.

The Ambassador of Myanmar indicated that the Chairperson of the HLT had written to the Chairman of the State Peace and Development Council (SPDC) drawing attention to incidents that were alleged to have occurred in Shan State. Secretary No. 1 of the SPDC had promptly responded to this communication. With regard to the first case raised, which was based on extremely vague allegations emanating from an NGO, the reply indicated that, after investigation, the allegations had been found to be spurious as the persons and locations named were non-existent. The second case was being examined but the investigation had not yet been completed all the more so as it involved a rather inaccessible border area in the eastern tip of Myanmar. As soon as the results were available, they would be communicated to the ILO.

The speaker confirmed that his Government did not completely rule out some form of ILO representation in Myanmar. However, this has to be achieved through a step-by-step approach, for which a precedent could be found in the relations between Myanmar and the International Committee of the Red Cross (ICRC). In 1995, the ICRC had had no representative in the country but had insisted on the need to open an office in Yangon. Subsequently, the Government had allowed the ICRC to send a team to Myanmar and following several successful visits by the team, the ICRC had signed a Memorandum of Understanding with the Government and had been able to establish an office in Yangon. As of now, his Government is willing to receive visits by an ILO team based in Geneva, Bangkok or elsewhere. The Myanmar authorities were very flexible and were ready to extend their full cooperation to such a team. The ILO Regional Office in Bangkok presented certain practical advantages as Bangkok was less than one-hour's flight from Yangon and it was more convenient to commute and operate from Bangkok. Even the HLT had visited areas on the Thai border and collected information from Bangkok. Such an ILO team would enjoy the same amenities as the HLT and would have complete independence and freedom of movement. All this demonstrated his Government's complete transparency on this issue and its sincere will to cooperate with the ILO in resolving the problem of forced labour. The ILO should therefore take advantage of his Government's offer and thus carry forward the process of dialogue and cooperation.

The Worker Vice-Chairperson remarked that, even if one accepted the Government's proposal for a series of visits, there would be no practical means of verifying whether the practice of forced labour resumed after those visits. He therefore considered that the only reliable means of verification, that would be of benefit not only for the eradication of forced labour but also for the Government's reputation, would be a permanent ILO presence.

The Ambassador of Myanmar stated that his Government had no knowledge of evidence about the resumption of forced labour. In fact, the report of the HLT acknowledged that the alleged use of forced labour in construction projects had decreased.

Progress had therefore been made and the Government was doing its best to try and ensure that there would be no forced labour in the future. With regard to possible ILO representation in Myanmar, it should be borne in mind that every country had its own special characteristics. While in some countries it might be possible to go straight ahead, in other countries a step-by-step approach was desirable. The precedent set by the ICRC was very constructive in this respect and had led to very fruitful and effective results.

* * *

FOURTH SITTING

Thursday, 15 November 2001, morning

The sitting opened at 10.50 a.m., with Mr. Tou in the Chair.

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):
EXAMINATION OF THE REPORT OF THE HIGH-LEVEL TEAM (*cont.*)

The Employer Vice-Chairperson considered that paragraph 86 of the report of the High-Level Team (HLT) – which stressed that the elimination of forced labour represented not only the discharge of a moral and legal obligation for Myanmar, but also offered a historic opportunity for the country to accomplish its modernization – provided a substantive basis for the present debate. This double obligation stemmed from the fact that fundamental human rights were at stake here. The establishment of the HLT represented a very positive development in this case. However, it was only a single step forward and did not constitute the whole journey towards achieving the desired goal. The Employers' group could not be fully satisfied with the results of the mission until it could be convincingly demonstrated that forced labour was completely abolished, both in law and in practice. His group would have welcomed an announcement by the Government representative of further steps, including the acceptance of a permanent ILO presence in the country and the appointment of a national ombudsman. Disappointingly, the Ambassador's statement had shown that the Government was not yet ready to move forward along these lines because this was a highly delicate issue. But it was precisely because it was a delicate issue that a permanent ILO presence and the establishment of appropriate judicial procedures would be useful. They were vital for ensuring that progress was indeed being made. The objectives to be attained required a clear agenda listing the steps which could be initiated immediately following the current session of the Governing Body. It was to be hoped that an agreement could be reached quickly on the process of establishing a permanent ILO presence, not in Bangkok but in Myanmar, and putting in place the necessary procedures to ensure the functioning at a post of ombudsman.

The Worker Vice-Chairperson emphasized that the final destination of the journey had to be a Myanmar/Burma without any forced labour. The danger with long journeys was that one might harbour an illusion of progress but, on reaching the next bend on the road, one found that the distance towards the goal was as remote as before. There had indeed been some change of attitude since the time of the ILO Commission of Inquiry when the Government had been totally unwilling to be part of that judicial review, to accept a visit by the Commission and to acknowledge the existence of any forced labour in Burma. However, despite a more conciliatory approach on the part of the Government, the factual situation remained extremely worrisome, as evidenced by the recent case of several villagers who, relying on official statements that forced labour was illegal, had made a complaint in good faith and had then been killed. The Workers urged the Government to investigate this case and to bring the perpetrators to justice as well as persons who had perpetrated forced labour over a number of years, as required in the findings at the Commission of Inquiry.

With regard to two subsidiary matters, the speaker felt that the HLT's report erred on the side of caution in recommending what should be done with the documentary evidence collected during the mission. In his view, it was perfectly legitimate for researchers to want

to consult all this material and to seek to identify the actors involved. The other point was that, as emerged clearly from the report, Order No. 1/99 had not been disseminated widely enough throughout the national territory and in the appropriate languages.

The speaker could agree with the Ambassador's views that the report of the HLT was fairly balanced. However, while the Government highlighted the passages in which the HLT recognized progress in some areas, paragraphs 55-57 of the report referred to considerable amounts of forced labour persisting, especially in villages located near military camps. While it could be acknowledged that the Government now appeared to be more open to the idea of an independent assessment than in the past, the question arose of what would be the most efficient way to carry out such an assessment, both in order to achieve the common goal of eradicating forced labour and to protect the Government against false accusations. Even if one accepted the Government's offer of periodic visits by an ILO team, there was no guarantee that cases of forced labour would not recur in between such visits. The only such guarantee could be supplied by a permanent ILO presence in the country. The ILO was not seeking to establish an office in Rangoon forever; it would only be permanent until the ILO could be satisfied that forced labour had ended and would not recommence. Such an ILO presence should be established at the earliest practical point, and this meant early enough to have a report to the Governing Body in March 2002 that would inspire confidence that complaints could be investigated and that the ILO could have its own view from Burma. This would be extremely helpful for enabling the Governing Body to measure progress, and also because the issue would come before the Conference in June 2002. It would be highly damaging if, on the eve of the Conference, the ILO was merely given a vague indication that a permanent presence was now acceptable.

What the report in fact showed was that not much had changed in Burma between 1998 and 2001. This meant that widespread forced labour had persisted over the past three years and that army personnel and other people had been imposing forced labour on their fellow citizens over a long time. It was the responsibility of the Government to bring those people before the courts of law. While it might be difficult to establish responsibilities for events that had occurred a decade previously, it would surely be much easier to identify the persons responsible for the killing of seven villagers on 14 July 2001 and to bring them to justice, especially as the location of the incident and the names of the victims and of the officer in command were clearly indicated. In the speaker's own country, such an event would have caused a public outcry and would have been investigated within a week. Even allowing for the difficulties of the terrain and communications in Burma, it was difficult to understand why no results were forthcoming 16 weeks later. It was only by bringing perpetrators to justice that the Government would restore confidence that it had the political will to eradicate forced labour. The idea of an ombudsman was a useful one, but such a person could only operate within a legal system that was robust and independent, and in which the population could have confidence. The report clearly showed that these circumstances did not yet exist.

All this reinforced the need for a permanent presence that would allow the ILO to fulfil its mandate. He had full confidence that the Office could negotiate and sign an agreement with the Government on the opening of an office on conditions that would allow it to carry out its task properly; in particular, any restriction of its activities to a 25-mile area around Rangoon would not be acceptable. The Workers stressed the need to move very quickly on this issue. If it was sincere in its political commitment, the Government would hopefully heed the views expressed by the Employers and Workers and numerous governments in the Governing Body and agree at this juncture to the establishment of a permanent ILO presence in the country.

A Government representative of Denmark, speaking on behalf of the Government members of the European Union and its associated States, recalled that the EU had long

been urging for the restoration of democracy, the pursuit of national reconciliation and the protection of human rights in Burma/Myanmar. It was cautiously encouraged by recent improvements in the political climate there and welcomed the resumption of contacts with the ILO. The EU stressed the importance of seeing a verifiable end to the practice of forced labour in line with the demands of the ILO Conference. It was therefore grateful to the HLT for its insightful report and for its recommendations which the EU supported. It also welcomed the assistance extended to the HLT by the Burmese Government and the latter's solemn commitment that no action of any kind would be taken against those who had provided evidence to the HLT.

The EU fully agreed with the HLT that the elimination of forced labour represented not only a moral and legal obligation for Burma but also offered a historic opportunity for the country to accomplish its modernization. It shared the view that the economic progress identified in the report as important to the eradication of forced labour was dependent on the Government's political will to move the national reconciliation process forward.

The EU noted from the report's Conclusions that very modest progress had been made in decreasing the imposition of forced labour. The HLT noted that widespread instances of forced labour had continued to occur but no prosecutions had been initiated. The EU therefore stressed the need for substantial further work and a long-term commitment by the Government to address the ILO's concerns.

In welcoming the statement by the Ambassador of Myanmar that his Government did not rule out a permanent ILO presence in Burma, the EU would request the Government to agree to the establishment of the proposed long-term ILO presence in Rangoon and to start early talks with the Office on the necessary arrangements. This would greatly help in reinforcing the Government's commitment to the permanent elimination of all forms of forced labour.

The EU likewise urged the authorities to implement other key recommendations in the report, namely: more frequent and rigorous prosecution of cases of forced labour; systematic publication, including through the national media, of the orders prohibiting forced labour in the main ethnic languages; and the possible appointment of an independent ombudsman to whom complaints relating to forced labour could be submitted.

The EU would carefully examine the Director-General's report to the Governing Body in March 2002 on progress made in implementing all the recommendations made by the HLT including the establishment of a long-term ILO presence in Rangoon.

A Government representative of New Zealand, speaking also for the Government of Australia, expressed appreciation for the high level of cooperation extended by the Government of Myanmar to the HLT during its visit. While welcoming the modest improvements since 1998 noted by the team, New Zealand and Australia remained concerned about the widespread continuation in Myanmar of the practice of forced labour, as well as the allegations concerning the killing of seven villagers who had lodged a complaint about the use of forced labour. They welcomed the Government's commitment to investigate these accusations and looked forward to the results of these investigations. They called upon the Government to continue to extend full cooperation to the ILO in helping Myanmar to work towards eradicating forced labour. In particular, they encouraged Myanmar to give favourable consideration to a permanent ILO presence in the country and the establishment of an ombudsman.

A Government representative of Canada also expressed concern at the continuing use of forced labour, due in part to the limited dissemination and the widespread lack of implementation, especially at the local level, of the directives issued to all competent authorities not to requisition labour or services, notwithstanding the provisions of the

Village Act and the Towns Act. In his view, the issuing of orders was not sufficient in itself but must be backed by a genuine political commitment to adopt effective measures to deal with the unacceptable practice of forced labour, including bringing perpetrators to justice. Canada also strongly supported the recommendations in Part VI of the HLT for the appointment of an independent ombudsman and the establishment of an ILO permanent presence in Burma, which would greatly assist the Government in complying with its international obligations in relation to forced labour, and therefore urged the Director-General to begin exploring arrangements with the Government towards this end.

A Government representative of Malaysia, speaking on behalf of the Government members from the ASEAN countries as well as the Governments of China, Pakistan, Saudi Arabia, Sudan and the United Arab Emirates, considered the visit of the HLT to Myanmar to have been a highly positive development in the process of dialogue and cooperation between the Government of Myanmar and the ILO. The ASEAN governments believed that the HLT's excellent report would contribute to the attainment of the objective desired by all. Noting that the Myanmar Government fully respected the modalities of the objective assessment agreed upon with the ILO and extended all facilities to the HLT, they recognized the strong political will of the Government to take the necessary steps to resolve the issue and welcomed the Government's willingness to receive future visits by ILO teams based either in Bangkok or in Geneva.

The HLT had made a number of pertinent recommendations concerning the elements that were necessary to assist Myanmar to resolve the issue of forced labour, including the modernization of its economy, consistent political will and the engagement of the international community. While the political will was the sole responsibility of the Myanmar Government, an economic modernization programme and the engagement of the international community would necessarily require the international community to remove barriers such as economic sanctions or other measures taken against Myanmar. The international community should therefore reciprocate the commitments made by Myanmar to work towards the elimination of forced labour by taking steps to enable Myanmar and its people to occupy their deserved place in the international community. The ASEAN governments therefore called upon the Governing Body to place on the agenda of the 90th Session of the Conference the question of Myanmar for the purpose of reviewing the situation and removing the previous measures taken against Myanmar.

A Government representative of South Africa noted with appreciation the HLT's report and was encouraged by the fact that the HLT had enjoyed freedom of access to the places it wished to visit during its mission. However, some passages of its report revealed certain disquieting aspects such as the heavily restricted freedom of some of the respondents to the HLT's interviews and the reluctance even of established institutions to complain against alleged atrocities for fear of reprisals, all of which cast some doubts on the reliability of the evidence and on the ability to measure the real impact of the new legislative orders on the ground. The complexity of the situation was evident from the uneven conclusions of the report. In particular, the doubts expressed by the HLT concerning the sustainability of the modest progress achieved so far and its conclusions reflecting the prevalence of forced labour in villages near military camps were disturbing. It was high time that the Government recognize that transgressors who had been identified within the armed forces were clearly compromising all Myanmar's efforts to comply with its obligations under [Convention No. 29](#).

There should be no room for any ambiguity in the resolve to eradicate forced labour in Myanmar. He therefore supported the call for a permanent ILO presence in the country, in the belief that the ILO had an opportunity in this case of setting a precedent that would ensure that no worker anywhere in the world be exposed to inhuman conditions. While arguing for the retention of current sanctions against the Myanmar Government, he urged the ILO to intensify its technical cooperation efforts to end forced labour in Myanmar.

A Government representative of Namibia emphasized that Namibia could not tolerate any form of forced labour, as its own people had until recently been victims of forced labour under the apartheid regime. While he welcomed the positive elements which resulted from the HLT's work in the present case, there were still some critical areas that were not receiving adequate attention. The scant progress made in the development of more effective legislation against forced labour and the poor implementation of the orders currently in force were particularly disappointing. The situation with regard to forced labour had thus not changed significantly on the ground. He therefore called upon the Office to strengthen its technical cooperation to bring about concrete changes on the ground and to improve the legislative framework, and urged the Government to consider seriously an ILO presence in the country, which could speed up a solution to these pressing problems. In his opinion, such measures should remain in place until such time as concrete results were seen to be achieved.

A Government representative of the United States remained sceptical about the practical ability of an ILO presence in Burma to assure that forced labour was effectively eliminated. However, he endorsed the concept of a long-term ILO mission in the country. The visit of the HLT showed that the Government of Burma could cooperate with the ILO when it so wished. The result of this mission was, in his view, an assessment of the situation that was balanced and accurate, and gave credit to the Government where credit was due. At the same time, it made it clear that the process of eliminating forced labour had barely started and pointed to some of the obstacles still standing in the way of further progress. The report suggested specific ways in which the Government could demonstrate its commitment and the Government should be asked to respond to these suggestions before the next session of the Governing Body.

He welcomed the commitment given by the Ambassador to the Chairperson of the HLT on 7 September that no action of any kind would be taken against persons and their families or organizations which directly or indirectly provided information to the Team. The allegation reported in Appendix XI concerning the killing of seven villagers in Shan State, who had complained about forced labour, was therefore a matter of great concern. The HLT pointed out that this was only one of many disturbing accounts it had heard about the continued existence of forced labour. The Government's promise to investigate this matter thoroughly and to inform the ILO of the results was nevertheless a welcome indication that the Government was prepared to tackle the apparent impunity with which military authorities continued to exact forced labour despite the Government's orders to the contrary.

The HLT's report was a milestone for the ILO as it sought to bring both the influence of its supervisory machinery and the weight of its technical expertise to bear on one of the most intractable human rights' problems of the modern age. In sharing the Team's appreciation to the Government of Burma for its cooperation, he trusted that this cooperation would continue, as there was still a long way to go before reaching the final goal of a definitive and verifiable end to forced labour in Burma. If progress did not become meaningful, other options would have to be envisaged in the near future.

A Government representative of Japan commended the HLT for its dedicated efforts in carrying out its mission objectively and in a positive spirit and the Government for sharing its political commitment to this process and cooperating fully with the Team. The report pointed to improvements in many areas, although the situation in other areas, particularly border zones, remained serious. On the whole, however, the Government was responding seriously to the concerns of the international community, and this in the face of Myanmar's difficult political security, economic and social situation. The Government should be encouraged to make further policy efforts, and the international community should acknowledge these efforts with the utmost patience. Japan had always advocated resolving this issue through dialogue and cooperation between the ILO and the Myanmar

Government, and he therefore supported the idea of requesting the Office to continue examining, with the Myanmar authorities, the various recommendations made by the HLT and to report back to the Governing Body in March 2002.

At the last session of the Conference in June 2001, the Japanese Government representative had tried to read optimism in the decision taken by the Conference and the HLT report demonstrated that this optimism had not been unfounded. The ILO should now encourage Myanmar to proceed boldly despite the tremendously difficult problems it faced in its nation-building process. It was to be hoped that the Director-General and Myanmar would interact productively and report positive developments by the next session. The international community and Myanmar should not allow this positive momentum to falter.

A Government representative of Lithuania fully supported the statement made on behalf of the European Union and was convinced that major progress could only be achieved on the condition of a long-term ILO presence in Myanmar.

A Government representative of China reiterated his Government's consistent view that, in dealing with international affairs, all the parties concerned should solve problems and differences through dialogue and consultation. It was opposed to the exertion of pressure and resort to political or economic confrontation. It noted that, by implementing the relevant laws it had promulgated last year and pursuing its cooperation with the ILO, the Myanmar Government had demonstrated good political will. This political will should be commended and encouraged, and should also be reciprocated by the parties concerned, including the ILO. While being strongly opposed to all forms of forced labour, the Government of China considered that the phenomenon of forced labour was the result of many complex factors, including economic, social and legal factors and educational and development levels, and it was therefore important to help countries in tackling these root causes. Myanmar was a relatively poor developing country. In order to eradicate forced labour, the international community should take into consideration the specific conditions of each country, and it was only through promoting dialogue and providing assistance and training that it would help the country to resolve the problem. He therefore fully supported the ASEAN governments' call for a review of the situation and for removing at an early date the mandatory measures taken against the Government of Myanmar.

A Government representative of the Republic of Korea, while commending the Government of Myanmar on its full cooperation with the HLT and its efforts so far to improve the situation, considered that it should persist in these efforts and should favourably consider the HLT's suggestions to appoint an ombudsman and/or establish a permanent ILO presence in the country. He also urged the Director-General to continue with his efforts to improve the situation by continuing to provide technical assistance.

A Government representative of India said that his Government had always supported a promotional approach by the ILO in regard to matters falling within its mandate and was therefore opposed to a punitive approach to further the ILO's aims. He welcomed the HLT's visit to Myanmar as a step in the right direction and stressed the need for the Director-General and the Government of Myanmar to continue their cooperation to resolve any outstanding issues.

A Government representative of the Islamic Republic of Iran, while firmly opposed to forced labour which was prohibited by his country's Constitution, welcomed the new developments in this case, resulting from the mission of the HLT. His Government believed that the only effective way of implementing the ILO's standards including [Convention No. 29](#), was through ILO technical cooperation and constructive dialogue and hoped that this would be borne in mind as an essential factor for the successful implementation of the ILO's Conventions. For the same reason, his Government believed that punitive measures and sanctions were counterproductive.

A Government representative of Chad stated that, coming from a country which had experienced two decades of war with all the consequences, this entailed for the observance of human rights, he was in a good position to appreciate sensitive issues of this kind. However, it was precisely because the problem was sensitive that dialogue and support from the international community and the ILO were essential. The HLT mission and its report were highly positive developments. However, it was saddening that the unacceptable practice of forced labour still lived on in the twenty-first century, and there were still decisive steps that should be taken by the Government of Myanmar to eliminate this practice. He therefore hoped that the Government would accept a permanent ILO presence and exhorted it to implement the recommendations of the HLT.

The Ambassador of Myanmar pointed out that the HLT report clearly showed that there had been a positive evolution of the situation in Myanmar; for example, in contrast to the situation in 1998, the HLT had found no indication of any current use of forced labour in civilian infrastructure projects. With regard to the alleged incident in Shan State, investigations were under way and it was only fair to await their results. The members of the Governing Body should therefore refrain from prejudging this case.

An understanding of some of the specific characteristics of Myanmar was necessary for appreciating the true situation in the country. Firstly, Myanmar was a fairly big country of which two-thirds was mountainous and rugged terrain and half the territory was covered by forest. Despite recent improvements in national infrastructures, communications remained difficult especially in frontier areas. Secondly, Myanmar was a multiracial society with 135 ethnic groups. Thirdly, the problem of insurgency had bedevilled the country since independence in 1948. Until recently, armed groups had been engaged in armed conflict with the Government. After the advent of the State Peace and Development Council, 70 armed groups had returned to the legal fold, but others still remained outside the fold.

In addition, at various points of its history, the territorial integrity and unity of the country had been in jeopardy. This had been the case at the time of the disturbances and anarchy in 1988. The armed forces had saved the country. Hence, the SPDC had laid down three national causes: non-disintegration of the Union, non-disintegration of national solidarity, and consolidation of national unity. To use a medical analogy, Myanmar was in the intensive care unit in September 1998 and had since then made a steady recovery, but still had to measure its efforts carefully. All this explained why Myanmar had to take a step-by-step approach with regard to ILO representation in the country.

The Worker Vice-Chairperson noted unanimity in the Governing Body on the value of the HLT report as a balanced and objective document. There should therefore be little room for disagreement on what should be done to give effect to its findings. A number of speakers, especially those representing the ASEAN governments, had welcomed the Government of Burma's cooperation with the HLT and its stated political will to eliminate forced labour. However, this policy still needed to be tested against concrete and verifiable criteria. The first concerned effective measures to prosecute and punish perpetrators of forced labour. The Burmese authorities, including the military, must be held accountable for the orders they had themselves issued, and any breaches of these orders should be promptly investigated and judged, thus putting an end to the prevailing immunity enjoyed by perpetrators. A second test of the credibility of the Government's willingness to cooperate fully with the ILO in eradicating forced labour would be met by agreeing to a long-term ILO representation in the country, rather than just accepting periodic visits.

The speaker refuted the argument that forced labour was somehow linked to a low level of economic development. There were countries that were even poorer than Burma and yet where forced labour was not prevalent. The Ambassador had singled out paragraph 56 of the report which found that forced labour was no longer used in civilian projects, but

the report made it clear that forced labour now seemed to be practised exclusively in areas under military control. This was another feature which distinguished Burma from other countries. Even in countries where other practices akin to forced labour – such as bonded labour – existed, it was not carried out by persons directly employed by the Government. The Government of Burma would fail its credibility test if it could not effectively control the actions of its own military personnel and prosecute them when they violated its own orders. The argument that forced labour might be due to a low educational level was also unconvincing, as the army officers who were alleged to have imposed such labour presumably had more than just a rudimentary level of education.

It was therefore difficult to take the Government's assurances at their face value. While sharing other speakers' belief in the value of dialogue in solving this problem, he pointed out that there was no genuine possibility of tripartite dialogue in a country such as Burma where trade unions were not allowed to exist. For all these reasons, he deemed it premature to reconsider the earlier decisions of the Governing Body and the Conference in this case, but he would be glad to support the immediate lifting of any sanctions against Burma as soon as the Government was able to show convincingly that the required conditions had been met.

The Employer Vice-Chairperson agreed that the stage had not yet been reached at which one could discuss the elimination of sanctions. There was still a lot of progress that needed to be made. The Ambassador of Myanmar had outlined the specific concerns of his country which obviously differed from those of many other countries. However, no priority relating to the consolidation of the national territory could justify resorting to forced labour. The right to life and other fundamental human rights must prevail over the national causes which the Ambassador had identified.

The Employers' group therefore called upon the Governing Body to endorse the HLT's report and suggested that, as soon as possible, a clear and detailed plan be formulated that would provide for a permanent ILO presence in Myanmar, the creation of a post of ombudsman, the necessary dissemination of legislation and directives prohibiting forced labour, and the investigation and prosecution of cases of violation. It was essential that the cessation of forced labour be concretely verifiable, and this was not yet the case today.

The Chairperson suspended the discussion temporarily to allow for the preparation of draft conclusions that would be submitted to the Governing Body.

The Employer Vice-Chairperson took over the Chair.

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Fourth item on the agenda

CONCLUSIONS CONCERNING THE QUESTION OF THE OBSERVANCE BY THE GOVERNMENT OF MYANMAR OF THE FORCED LABOUR CONVENTION, 1930 (No. 29): ADOPTED AFTER EXAMINATION OF THE REPORT OF THE HIGH-LEVEL TEAM (*concl.*)

The Chairperson read out the following text of proposed conclusions under this item:

1. The Governing Body notes with great interest the report of the High-Level Team and extends its gratitude to the Team and to its Chairperson, Sir Ninian Stephen, for having accepted this important and difficult task, as well as its congratulations on the quality of its work.

2. The Governing Body acknowledges that the Myanmar authorities have fulfilled their commitments under the Understanding of 19 May 2001, but intends to remain vigilant with regard to the parallel commitment made by these authorities to refrain from taking any action against persons or organizations who may have directly or indirectly contributed information to the Team.

3. It also recognizes the efforts made by the authorities to disseminate the Orders among the population, although it considers that these efforts should be strengthened and extended to include all the media and the use of the appropriate languages, in accordance with paragraph 42 of the report.

4. Profound concern has been expressed, however, regarding the very limited impact of this new legislation to date and, in particular, the persistent impunity with regard to criminal prosecution of persons who have committed violations, despite the provisions of this legislation.

5. Consequently, urgent efforts should be undertaken by the Myanmar authorities to rectify this situation and provide more convincing evidence of their willingness to achieve this by the next session of the Governing Body.

6. To this end, the Governing Body requests the Director-General to pursue the dialogue with the authorities in order to define the modalities and parameters of continued and effective ILO representation in Myanmar, which should be put in place as soon as possible.

7. The Director-General should also continue to provide assistance to the authorities with a view to giving effect to the other concrete suggestions put forward in the report, including with regard to establishing a form of ombudsman.

8. The Director-General is invited to report to the next session of the Governing Body. Depending on the progress or lack of progress achieved on the different points under consideration, including criminal proceedings concerning the allegations mentioned in paragraph 28 of the report if they are founded, it will be for the Governing Body to draw appropriate conclusions, both regarding action within its remit and that which it should refer to the Conference.

The Governing Body adopted this text by consensus.

The Ambassador of Myanmar reiterated his Government's position on the sensitive issue of the ILO representation in his country. As a first step, it was willing to receive visits by an ILO team, based either in Geneva or in Bangkok or elsewhere, which could last for one or two weeks or even longer and would enjoy the same facilities as the High-Level Team. While not completely ruling out some kind of ILO representation in the country, it considered that this could only be achieved through a step-by-step approach. The speaker also reserved his Government's position on the text just adopted by the Governing Body.

The sitting closed at 1.20 p.m.



**F. Report of the ILO technical cooperation
mission to Myanmar (19-25 February 2002)**

I. Origin of the mission

1. As part of its conclusions adopted after examination of the report of the High-Level Team in November 2001, the Governing Body: (1) requested the Director-General to “pursue the dialogue with the authorities in order to define the modalities and parameters of continued and effective ILO representation in Myanmar, which should be put in place as soon as possible”; (2) indicated that the Director-General should “continue to provide assistance to the authorities with a view to giving effect to the other concrete suggestions put forward in the report, including with regard to establishing a form of ombudsperson”; and (3) invited the Director-General to report to its next session on the different points under consideration, “including criminal proceedings concerning the allegations mentioned in paragraph 28 of the report [of the High-Level Team] if they are founded”.¹
2. Accordingly, on 23 November 2001, the Director-General sent a letter to Senior General Than Shwe, Chairman of the State Peace and Development Council, extending to the Myanmar authorities, at the earliest mutually convenient time, the assistance required to reach the objectives agreed upon by the Governing Body. This letter is reproduced in Appendix I.
3. In a communication to the Director-General dated 11 February 2002, the Permanent Mission of Myanmar indicated that the Myanmar authorities were ready for an ILO team to visit Myanmar to discuss the conclusions adopted by the Governing Body. In reply, the Office sent a note verbale stating that it was understood, as on previous occasions, that the ILO team would have “full freedom to establish such contacts as may be appropriate”.
4. During a meeting in Geneva on 12 February the Permanent Representative of Myanmar in Geneva, Ambassador Mya Than, confirmed that the authorities were prepared to discuss all outstanding issues. It was pointed out to the Ambassador that it was important for the ILO team to have full freedom of contacts, as on previous occasions. In particular, a meeting with Daw Aung San Suu Kyi was essential.
5. The technical cooperation mission (TCM) departed from Geneva on 16 February 2002.² Two members of the TCM stopped off in Kuala Lumpur for a meeting with the United Nations Secretary-General’s Special Envoy for Myanmar, Ambassador Tan Sri Razali Ismail, before proceeding to Yangon along with the other two members of the mission on 19 February. The detailed programme of meetings is given in Appendix X.
6. As on previous occasions, the TCM was fortunate to benefit from the assistance of its “facilitator” in Yangon, Mr. Léon de Riedmatten of the Centre for Humanitarian Dialogue.

¹ See [GB.282/4/2](#).

² The members of the TCM were as follows: Mr. Francis Maupain, Special Adviser to the Director-General; Mr. Dominick Devlin, former ILO Legal Adviser; Mr. Muneto Ozaki, Director of Research and Policy Development, InFocus Programme on Strengthening Social Dialogue; and Mr. Richard Horsey, Secretary.

II. Discussion at the political level on the general approach to the issues relevant to the mandate

7. Before entering into discussions of the specific issues covered in the Governing Body's conclusions, the TCM had expressed the wish to have a broader discussion with the Minister for Labour who had the central responsibility for the present discussions. This was granted on the first day, and the next day the TCM also had the same opportunity with the Deputy Minister for Foreign Affairs.

Meeting with the Minister for Labour (Tuesday, 19 February, afternoon)

8. During this meeting, the TCM pointed out that this mission in particular was a critical one. Contrary to previous occasions the object of the mission was not limited to one subject but covered three main issues resulting from the mandate given to the Director-General in the conclusions of the Governing Body. Each of these issues was very sensitive and difficult.
9. Because of the diversity and sensitivity of these issues there might be a strong temptation to adopt, as in previous cases, a step-by-step approach. The fact was, however, that it might be easier to make progress on each of these issues if they were dealt with jointly, rather than by trying to make progress only on one of them before dealing with the others. This was because there was some natural complementarity or interdependence between them and in particular between the first two: willingness to envisage the establishment of an institution like the Ombudsperson would alleviate the burden/demands on the ILO representation. Furthermore, as pointed out by Sir Ninian, the existence of an Ombudsperson or the ILO presence could provide an answer to the question of how conflicting allegations and refutations could be dealt with in the future. However, in the case of the specific allegation referred to in paragraph 28 of the HLT's report, it might be considered preferable to find an ad hoc solution should the authorities be willing to seek an independent confirmation of the conclusions of the investigation.
10. Such a global approach to the various issues would also have the advantage of conveying a strong message to the international community. The TCM pointed out that the HLT had opened a new perspective by referring to the need to address the root causes of forced labour in addition to the need to find a way to overcome the obstacles to the effective enforcement of the legislation, designed to give effect to Myanmar's obligations under [Convention No. 29](#). This made it possible to widen the range of cooperation activities that could be considered for the elimination of forced labour. However, these activities could be channelled only through an effective ILO presence in the country. This is why it was essential to discuss the parameters of such a presence.
11. From the comments made by the Minister for Labour, several important points emerged: as regards the ILO presence, the Minister indicated that ILO technical cooperation was acceptable, but if the ILO received complaints, travelled around the country and carried out "monitoring", this would be less acceptable as it would impinge on the country's sovereignty. Confidence had to be progressively built up, which could help to develop cooperation from an initially modest start, as had happened in the case of the ICRC. The TCM pointed out that in view of the findings of the HLT, any meaningful technical cooperation would have to cover the various parts of the country and therefore would itself imply freedom of movement and contacts. As for the element of "monitoring" (which was not the word used by the HLT), it was obvious that in any case the issue would largely

become moot if the “ownership” of an effective implementation process could be vested in a national institution such as a form of Ombudsperson.

12. As regards the issue of the Ombudsperson, the Minister pointed out that this had been discussed with the Attorney-General (although not yet with the Chief Justice, as he was unwell) and it was noted that this institution was neither familiar nor popular in the region; only Thailand had provision for such a possibility in the Constitution. He understood that for the ILO the Ombudsperson would need to have national and international credibility. The Government did not, however, close the door to further discussion on the issue.
13. Finally, as regards the issue of the allegations, the Minister referred to the information given by the TCM, according to which the report from Lt.-Gen. Khin Nyunt, together with Sir Ninian’s reply, would be submitted to the Governing Body. The Minister felt that the authorities had done what they had to do and would wait for the Governing Body’s reactions.

Meeting with the Deputy Minister for Foreign Affairs

14. The visit the next morning to the Deputy Minister for Foreign Affairs, U Khin Maung Win, was also an occasion to discuss the general approach, i.e. how to tackle the three issues in a coherent way that might make solutions easier to find for each of them, rather than to pre-empt a more thorough discussion of each of them at the technical level.
15. The Minister emphasized in particular that if there were sceptics in the Governing Body who considered that the authorities were always acting under pressure at the last moment and only with incremental moves, there was also scepticism within the Government of Myanmar about the ILO, as it always seemed that whatever the authorities were trying to achieve there would be some quarters, perhaps inspired by a political agenda, who would consider that it was not enough and who were deliberately confronting Myanmar with unreasonable demands. If decisions took time, it was because the Government had its own processes, and if the situation was difficult in the Governing Body, it was not easy on the domestic front either. However, good working relations had been established because both sides were working towards the same goal, and the Government had realized that by working with the ILO it could reach this goal faster.
16. As regards the issue of ILO representation, the Minister recalled that without rejecting the concept outright, the authorities had been thinking of different modalities in the form of regular visits from Bangkok or Geneva. They knew that this might not be considered suitable and were willing to discuss further the issue of the ILO presence.
17. As regards the Ombudsperson, the Minister pointed out that this was a new idea and the authorities were not completely clear as to what it meant and what relationship was envisaged with the ILO representation. Again, the TCM indicated it would be willing to provide clarification on this issue in due course.
18. As regards the allegations, the Minister emphasized that investigations had been conducted by the highest investigative bodies in the country. The issue was all the more sensitive because the response had been given by Lt.-Gen. Khin Nyunt himself. The TCM replied that it was very well aware of the sensitivity of the subject, but again pointed out that the purpose was not to cast doubt on the thoroughness of the investigations; its purpose was to assist the authorities in obtaining confirmation that allegations which were made against them should not necessarily be taken at face value. But as noted by Sir Ninian, this implied recourse to an independent and objective third party.

19. The Minister also underlined, from a more general point of view, that the authorities were ready to discuss the various issues “not just for appearance’s sake”. The very fact that the TCM was in Yangon and the authorities were willing to discuss the issues was in itself a sign of flexibility and accommodation. The authorities were well aware of the importance and consequences of the mission. If, as pointed out by the TCM, things could go either way in the Governing Body, the same was true on the Myanmar side. The TCM expressed its strong conviction that in view of all the efforts made and what had been accomplished in less than two years, the positive trend had reached a point of no return.

III. Discussions at the technical level

20. Since the Myanmar side had indicated that they needed to consult among themselves on Wednesday afternoon, on the basis of these preliminary discussions, the substantive discussions at the technical level on the three main issues covered in the mandate given to the Director-General could only start the following day. (As will be seen from the programme, the Wednesday afternoon was thus used for contacts and briefings arranged by the United Nations Resident Coordinator with various diplomatic missions and representatives of United Nations agencies.)
21. The TCM’s interlocutors in the technical discussions were the Directors-General of the Ministerial Departments mainly concerned with the issue (Labour, Foreign Affairs, the Attorney-General’s Office, the Supreme Court, and the Department of General Administration).
22. On opening the discussions, the Director-General of the Department of Labour recalled that the HLT’s report had been positive; one important aspect was that it had pointed out the need for economic development. This had to be kept in mind. Recently 20,000 workers had lost their jobs as a result of trade or investment measures. He stressed also that there were no preconditions or rigidities concerning the discussions.
23. The TCM replied that a very positive momentum had been created and should be maintained. The HLT report had indeed provided new perspectives as regards the nature and scope of future technical cooperation by referring to the need to address, in addition to the institutional causes for the lack of enforcement action, the developmental factors relevant to forced labour.
24. At the invitation of their counterparts, the TCM then proceeded to give some clarifications on the possible actions that could be envisaged on the three main issues.

ILO representation in Myanmar

25. The TCM recalled that the idea of what had been initially called a “permanent presence” in fact meant simply that the ILO should have representation in Myanmar for as long as it may prove useful for the achievement of the objective it was designed to serve, i.e. to assist the authorities in fulfilling their commitment to the eradication of forced labour.
26. The functions and status of the ILO presence should therefore derive very closely from this fundamental objective rather than being tailored to more standard types of functions entrusted to traditional ILO country or area offices. These should thus enable the ILO to:
(i) give efficient assistance, information and advice with regard to the implementation of the supplementary orders, with a view to ensuring compliance with Convention 29; (ii) develop technical cooperation projects to help the authorities to address the root causes of

forced labour and assist in mobilizing resources for that purpose; and (iii) keep the ILO competent bodies regularly informed of progress towards the objective.

27. As regards status and facilities, the ILO would not be claiming anything out of the ordinary. What was important to emphasize, however, was the need to grant the staff of the Office of the ILO Representative the same freedom of movement and of contacts, in order to clearly fulfil the objective of presence, as had been granted and scrupulously respected in the case of the HLT.
28. Following this presentation, the Myanmar side acknowledged that the original idea of occasional visits from Geneva or Bangkok might not be adequate. They were thus now prepared to agree to an ILO presence in the form of a Liaison Officer. This could then be developed subsequently following the successful pattern established with the ICRC.
29. The TCM underlined that the original suggestion had not been acceptable because it would not match the objectives of a representation as previously sketched out, i.e. to provide effective assistance of different kinds for the effective eradication of forced labour. Effective cooperation of the magnitude required did call for a continued meaningful presence.
30. The same considerations seemed to apply to what was called a “Liaison Officer”, depending on what was really meant by this term. In this respect, it was first necessary to obtain some clarification as regards certain questions: did it imply just one person? In reply, the Myanmar side said that it could be one or perhaps two persons, but it could then build on the basis of the experience and confidence gained.
31. A second question was then whether the Myanmar side was prepared to accept the establishment of a legal framework that would formally recognize the objectives, functions and status of such an “establishment”. Contrary to the ICRC, which was not an intergovernmental organization and fulfilled very specific functions on a confidential basis, the ILO could not start on an experimental basis without an appropriate and transparent framework defining the relevant and necessary parameters accepted by its representative organs. The TCM reminded its interlocutors that it would have been inconceivable to have the visit of the HLT without a clear understanding on its objectives and status.
32. In short, the “Liaison Officer” could be considered as a very positive step if it was taken with reference to clearly stated objectives and functions to be progressively implemented. From that perspective the concept of the Liaison Officer and the idea of a progressive development mentioned by the Myanmar side could be reconciled with that of a “meaningful” presence if the appointment of the “Liaison Officer” was recognized as an interim measure towards the establishment of such a meaningful presence for the purpose of achieving shared objectives. The Myanmar side recognized that the idea could indeed be an interesting one, and the TCM volunteered to draft a text that would illustrate it more concretely.
33. This draft text was presented the next day (Friday morning) and is reproduced in Appendix IV. Following an adjournment to allow the Myanmar side to examine it, the latter presented a much shorter counter-proposal (Appendix V). While using much of the TCM’s draft preambular paragraph, the operative paragraphs merely provided for: (i) the appointment of an ILO Liaison Officer; and (ii) the details of the Understanding to be worked out subsequently between the ILO and the Ministry of Labour. It was explained that this short version should not be disheartening, but was on the contrary intended to enable a successful conclusion to be reached. The Myanmar side pointed out, in particular, that the details of status, privileges and immunities as contained in the TCM’s text would take too much time to work out and would require ministerial approval. The last sentence

allowed for these further details to be worked out. The Myanmar side added that, as regards the other issues, any ideas the TCM might have would come in useful.

34. After an adjournment to allow it to consider the draft, the TCM, in an effort to reach a compromise, presented a short text based on the Myanmar draft. Instead of a “Liaison Officer”, the text could provide for the establishment of an “ILO representation in Myanmar” in the first operative paragraph; and in the second operative paragraph it could specify that the modalities for the implementation of the Understanding would need to be subsequently worked out between the Ministry for Labour and the ILO, and the latter would have to take due account of the parameters provided by the TCM in its first draft (Appendix IV) which made reference to the appointment of a “Liaison Officer” as an interim measure.
35. The TCM explained that the term “liaison”, and even more so the concept of “Liaison Officer”, conveyed a very specific and restrictive meaning in ILO practice. If left as it stood, it would not be in accordance with the mandate given by the Governing Body to pursue the dialogue with a view to establishing an “effective representation in Myanmar” to achieve the objectives sketched out in the HLT’s report and endorsed in the Governing Body’s conclusions. The TCM had, however, done its utmost to try to reconcile this strict mandate with Myanmar’s concern to leave room for progressive development. In order to limit the scope of the amendments, it had refrained from adding a very important consideration that would, however, have to be reflected in the report, i.e. that the modalities should be worked out as soon as possible, taking into account the fact that the matter would be before the International Labour Conference at its next session in June.
36. During subsequent discussions, further efforts were made to reach a mutually acceptable draft that could be acceptable *ad referendum* by both sides. The TCM was thus willing to make reference to a “representation/liaison” and even to a “liaison/representation” rather than “representation” alone. It was also willing to envisage adding a reference to the views expressed by the government side on the parameters during the discussion on the second operative paragraph to make it more balanced. On this basis, the text could be initialled by the TCM, but any departure from it would have to be submitted to the Director-General.
37. When it became clear that these efforts were not enough to reach agreement, the TCM made it clear that the last (short) version they had submitted, including the amendments discussed in paragraph 36 above, was in their view the limit of what could be reasonably considered compatible with the Director-General’s mandate. Obviously there was no obligation for either of the two sides to initial an understanding with which they would not feel reasonably comfortable. Thus, if the Myanmar side could not move from their proposal, that proposal would simply be reported to the Governing Body which in any case had the final say.
38. The Myanmar side then agreed at this point that the text presented by the TCM, with the two amendments referred to in paragraph 36 above, would be submitted by both sides to their respective authorities (this text is reproduced in Appendix VI).
39. When discussions resumed (the next day – Saturday morning, 23 February), the Myanmar side indicated that they were under strict instructions to keep the original operative paragraphs. This would not, however, preclude further cooperation with the ILO. The TCM indicated that after consultation with Geneva, it would have been possible to initial the compromise version which the two sides had accepted to refer to their authorities, it being understood that the need to work out the modalities as soon as possible, taking into account the forthcoming discussion in the ILC, was well understood and would be reflected in the report. However, the discussions now seemed far from that point. All that could be done in the circumstances was to record the acceptance by Myanmar of the

appointment of a Liaison Officer as per their draft. The TCM at the same time insisted that it would be important that the TCM itself should have an opportunity to apprise the authorities at the highest level of the consequences that could result from a lack of progress even on this key issue, in particular in terms of loss of momentum and the goodwill that had accumulated over nearly two years.

40. The Myanmar side said that the offer of the appointment of a “Liaison Officer” paved the way for future cooperation, and that goodwill should not be lost, although the offer would not necessarily be maintained indefinitely. They noted that the speed with which things had been moving as regards ILO matters was literally unprecedented with any other organization; it was also stressed that no international organization, tourist, company or any other person had ever been given the freedom that the HLT had enjoyed during its visit.
41. An adjournment was then agreed to give an additional opportunity to the Myanmar side to have further consultations with their authorities, who were all involved in an important ceremony. A final meeting took place on Saturday evening, where the instructions on the Myanmar side were confirmed (the final text, which they submitted at this time, is reproduced in Appendix VII).
42. The TCM pointed out that the difference between the two sides was not merely a question of semantics. It concerned the commitment to accept the principle of a meaningful representation beyond the appointment of a “Liaison Officer”, which was lacking in their text. A step-by-step approach was fine as long as the existence of a staircase and the will to climb it were recognized. This objective boiled down to two very simple ideas that should find their way into the operative paragraphs, leaving aside the complications to which “negotiated drafting” inevitably led, these operative paragraphs could thus recall: (i) that the Government of Myanmar was ready to accept the immediate appointment of a Liaison Officer in Myanmar to start working towards the objectives referred to in the preambular paragraphs common to all versions; and (ii) that the Government agreed to work out the modalities for the establishment of a meaningful representation of the ILO as soon as possible, due account being taken of the parameters provided by the TCM and the Government’s views thereon, referred to in the most recent draft.
43. The ILO did not formally submit a draft along these lines, in order not to make matters more complicated at this late stage, but gave its assurances that should the Myanmar side be interested in working out a text on this basis, an agreement could still be reached before the end of the mission, especially as the return of two members of the TCM had had to be postponed to allow for a rescheduled appointment with Daw Aung San Suu Kyi on Monday afternoon.
44. As will be seen in the section below, this appointment did not actually take place. As they were about to leave for the airport, the two remaining members of the TCM were instead informed that the Minister for Labour was ready to see them, and had cancelled other appointments for that purpose.

Ombudsperson/allegations

45. The TCM also had occasion to give some further clarifications on the remaining two issues during the first meeting at the technical level. As regards the Ombudsperson, it was underlined that the term, which has certain broad connotations, should not be misleading. The proposal resulted from the finding by the HLT that victims of forced labour were afraid to use the channels which were open to them to seek remedy. The idea of the HLT to establish “a form of ombudsperson” was not at all intended to graft on a foreign institution

but on the contrary to develop national “ownership” of the process of eradicating forced labour with the necessary credibility. Any other name such as “independent commissioner” or “mediator” could be used. What was important was the intention.

46. The Myanmar side considered that there were some interesting aspects in the proposal but further details would have to be worked out, for instance who the person would be and how he/she would build up domestic confidence. The TCM pointed out that the question was not so much who should be Ombudsperson (normally it would be a national, but it was perfectly conceivable to appoint a non-national), but rather how he/she would be appointed and what would be the appropriate legal framework to enable him/her to credibly discharge his/her responsibilities.
47. A certain number of parameters seemed essential in this regard: he/she should have a mandate of a fixed duration which could not normally be extended and could not be interrupted except in case of dereliction of duty. The Ombudsperson would not have power to take any decisions or corrective action, but would propose ways to remedy the situation to the appropriate authorities. The Ombudsperson should have sufficient administrative support to carry out his/her responsibilities in the various regions of the country. As it was clear that this could represent a heavy financial burden, provision should be made for the Ombudsperson to accept funds under conditions that would safeguard the complete independence of the institution. The TCM was quite prepared to provide some elements for consideration in that respect. More generally, the ILO could assist the authorities in finding the right person although it was entirely up to the authorities to make that choice.
48. The Myanmar side again noted that the idea was very unusual in the region and expressed concern that this institution might overlap with the police and judicial authorities. The TCM replied that the intervention of the Ombudsperson would not prejudge the right of a victim to use the normal judicial channels. There would thus be complementarity rather than overlap.
49. Finally, as regards the allegations, the TCM recalled that Sir Ninian had transmitted to the ILO the letter which he had received from Lt.-Gen. Khin Nyunt on 24 January 2002 (Appendix II), together with his reply dated 31 January 2002 (Appendix III).³ It was indicated that these documents would, of course, be submitted to the Governing Body, together with the report of the TCM. As such, the reply would be available to the public and it was to be expected that NGOs and, in particular, the one which had filed the allegation would not readily accept the refutation. This is why Sir Ninian had rightly pointed out in his reply the need to have an objective device to settle this kind of situation. In this specific case, an ad hoc solution might be more appropriate than the possible Ombudsperson or ILO representation referred to in his letter. The ILO would certainly be ready to assist in finding such an ad hoc solution. The Myanmar side commented that this was an extremely sensitive question and that authorities had done their utmost to investigate and clarify the matter. They had the feeling of being confronted once more by the ILO with a never-ending process whereby any effort on their part would inevitably result in further demands.

³ On 27 October 2001 when it was in Geneva for the approval of its report, the HLT had written a further letter to Lt.-Gen. Khin Nyunt concerning an allegation from an NGO that one person interviewed by the team in South Maungdaw had been arrested together with four other people. Lt.-Gen. Khin Nyunt replied on 3 November that after inquiry it appeared that there was nobody under the name indicated living in that area, nor detained. Subsequently, the ILO was told by the same NGO that the person in question had been released.

Implementation Committee

50. The TCM had expressed the wish to have a meeting with the Implementation Committee established pursuant to the supplementary order, in order to follow up on certain other questions raised in the HLT's report. As this meeting could not be organized before its departure, the TCM submitted a reminder (Appendix VIII) of the outstanding questions.⁴

IV. Wrap-up meeting with the Minister for Labour (Monday, 25 February, 5.15 p.m.)

51. The TCM expressed appreciation for this appointment which offered the possibility to convey important messages from the Director-General, even though in the meantime some unfortunate developments had taken place which also called for some clarification. The meeting was important not because the ILO called into question the decisions the authorities considered appropriate in the exercise of their sovereignty, but because the TCM felt that the authorities should be in a position at the highest level to make such decisions in full knowledge of the likely ramifications.
52. This was the fifth mission of the ILO to Myanmar, and it should have been an auspicious one. A lot had been accomplished in less than two years, and there was even more to gain in the coming weeks. The report of the HLT had opened the way to broader cooperation which would have to address not only the implementation of the supplementary Order, but also the root causes of forced labour. This cooperation, however, could only be channelled through an effective presence of the ILO in Myanmar.
53. The TCM stressed again that it was a matter of record that it had always tried to assist in finding solutions that could prove acceptable to both sides; it also always tried to place emphasis on the positive advantages that the authorities could derive from further cooperation; however, the authorities should also be fully aware of what they stood to lose if no progress was made. The TCM had not stressed this point up to now, because the positive argument seemed to be overwhelming. The Director-General had specifically requested, however, that attention be drawn to the fact that the goodwill that had been built up during that period could be lost. But it was also important to recall that the Governing Body's conclusions clearly indicated that the consequences that it would be called upon to draw at its March session could go either way depending on the progress or lack thereof. If, on the other hand, an ILO presence could be agreed upon, this would send a very positive message to the international community, business and consumers.
54. The TCM then stressed that, specifically regarding the issue of the ILO presence, some progress seemed to have been made towards a solution that was more or less acceptable *ad referendum* to both sides. However, the discussions had reached an impasse because of "strict instructions" that came from higher authorities and which severely limited the scope of discussions on modalities for the ILO representation to just the question of a "Liaison Officer". These strict instructions did not seem incompatible with the very mandate of pursuing a meaningful "dialogue" given by the Governing Body; the Director-General, when he was informed of the situation, asked the TCM to convey his feeling that, had he known this limitation earlier, he would not have fielded the present mission.

⁴ It should be noted in this regard that at the meeting with the Minister for Labour on the first day, Burmese and English language versions of an edition of *The Myanmar Times* newspaper dated 24 December 2001-6 January 2002, Vol. 5, Nos. 95 and 96 were provided to the TCM. An article in this newspaper cited the full text of the Order supplementing Order 1/99.

55. This position could only have arisen out of a misunderstanding; it was not at all the ILO's intention to impose an ILO presence against the Government's will or their sovereign rights. The TCM was just trying to assist the authorities in fulfilling their own stated commitment to eradicate forced labour in the interests of their people. The ILO understood very well that this could not be done overnight, that it was a complex problem with historical roots, and that the ILO representation should accordingly be developed on a progressive basis provided the objective was clear.
56. The situation was similar as regards the second subject referred to in the Governing Body's conclusions, the possible establishment of a form of Ombudsperson. During discussions at the technical level, the TCM had heard certain misgivings expressed on the Myanmar side: that the transplanting of a foreign institution to the region for a very specific situation would be inappropriate. However, it should be stressed that the HLT's suggestion had a completely different intention. It was indeed designed to create a national institution and as had been explained at the working level, through it to develop "national ownership" on the eradication of forced labour. In the hope that this sort of misunderstanding could be dispelled, the TCM had informed its counterparts that it would try to put on paper the main parameters for such an institution and it was now pleased to hand over to the Minister a two-page note to that effect (reproduced in Appendix IX).
57. Finally, as regards the issue of the "allegations", the TCM fully realized how sensitive this issue was. Again, it was not the ILO's intention to call into question the seriousness of the efforts which had been made by the authorities at the highest level in carrying out the investigation. The question was how these efforts could be given due recognition and weight in the Governing Body. If the Government of Myanmar wanted to show that this type of allegation should not always be taken at face value, they had an excellent opportunity to do so, but they could not do it alone since they would be judge and party. They had to find independent, reliable confirmation, as implied in Sir Ninian's letter to Secretary-1. The ILO was quite prepared to assist in finding an independent person to carry out this task, who would be completely acceptable to the authorities and would have the required international credibility.
58. To conclude these remarks, however, the TCM noted that although the results of this visit were disappointing and sad because the improvement in the lot of the people concerned could be delayed for many months, if not years, there were still three weeks to go before the Governing Body and it was still the hope of the TCM that this time could be put to good use.
59. The Minister explained that, as regards the first subject, he understood that the TCM had accepted the idea of a "Liaison Officer" and could hardly see the difference between the respective final texts. The Myanmar proposal was indeed a very significant step forward and had to be seen in the light of similar experiences conducted with the ICRC and the UNHCR. The TCM observed that, without repeating the arguments which had previously been exchanged at the technical level, two points had to be emphasized. The first was that the problem was not one of semantics and the TCM had indeed been ready to accommodate the concept of a "liaison officer" provided the objectives and framework were clear. The second was that there was a fundamental difference between the two texts precisely to the extent that the second operative paragraph in the Myanmar proposal failed to make a clear commitment to the objective of a meaningful (i.e. effective) representation which could be progressively achieved; it thus limited the scope of the discussion to the modalities of the "Liaison Officer" rather than to those of an effective representation.
60. As regards the Ombudsperson question, the Minister observed that this seemed to be a good idea, but the present Government was a transitional government and was careful about taking steps which would commit the future of the country or create embarrassment

with others. The TCM observed that this situation should not prevent the authorities from at least paving the way for such a possible reform to be adopted in the future. The Minister, in any case, noted that he would examine the TCM's ideas in the text which it had submitted.

61. Finally, the TCM referred to the incident which had occurred that afternoon near Daw Aung San Suu Kyi's residence. The TCM reminded its interlocutors that two of its members had postponed their return to Geneva in order to make it possible to have the appointment with Daw Aung San Suu Kyi, which had been rescheduled from Saturday to Monday at her request. The TCM could not understand the reasons for the incident, but it was particularly unfortunate since the Governing Body attached a lot of importance to such TCMs meeting with Daw Aung San Suu Kyi and the incident would have to be reported. The Minister expressed surprise, as he had not been informed of any such difficulties.
62. To conclude the meeting, the Minister recalled Sir Ninian's comment at the meeting with Senior General Than Shwe. Sir Ninian had acknowledged the courage of the Government of Myanmar in accepting the HLT's visit and the facilities granted to it which not all countries, including his own, would be ready to do. The TCM noted that indeed the appreciation for the courage shown by the Government of Myanmar in accepting the HLT had been reflected in its report. However, the current situation also required a courageous decision and it was also clear from the experience of the HLT that courage did pay off with the Governing Body.

V. Other contacts/discussions

63. Shortly after its arrival in Yangon, the mission had the opportunity to have a discussion with Professor Pinheiro, Special Rapporteur on the situation of Human Rights in Myanmar, who was just completing a visit to the country and who was scheduled to have a meeting with the Minister for Labour that same afternoon.
64. As on previous occasions, the TCM tried, to the extent possible within its schedule of discussions, to meet with Ambassadors or representatives of the diplomatic community present in Yangon. Two such meetings were kindly organized by the United Nations Resident Coordinator, Mr. Coeur-Bizot, on the second day of the visit. These two meetings were followed by a discussion with representatives of a number of United Nations agencies.
65. As indicated above, the TCM also planned to pay a visit to Daw Aung San Suu Kyi, General Secretary of the National League for Democracy. The appointment, which had been arranged in the same manner as on previous occasions, had to be rescheduled from Saturday, 23 February to Monday, 25 February at 3.30 p.m. Unfortunately, however, access to Daw Aung San Suu Kyi's residence was prevented. A note verbale concerning this incident was sent by the Office to the Permanent Mission of Myanmar on the TCM's return to Geneva ([Appendix X](#)).

Geneva, 6 March 2002.

Appendix I

Communication dated 23 November 2001 from the Director-General to Senior General Than Shwe

Excellency,

Your willingness to receive the ILO High-Level Team, and to explain to them the views of the Myanmar authorities, has been an important element in assessing the situation and the prospects for an effective eradication of forced labour in the country. It was thus carefully reflected in the report they submitted to the Governing Body of the ILO and which was discussed at the end of last week.

I considered it would be in keeping with this spirit of dialogue to send you personally the conclusions which were adopted by the Governing Body at the end of a dignified discussion to which your representative had the opportunity to contribute. I am confident that, in view of the personal interest you have shown in the matter, you may wish to give these conclusions the careful and positive consideration they deserve. It is at the same time my duty to emphasize two points. The first is that time is of the essence. As indicated in paragraph 8, the Governing Body will have to review progress made on the various relevant issues – or lack thereof – and draw the consequences next March. The second is that, as in the past, and as I am now specifically requested in paragraphs 6 and 7 of the conclusions, I stand ready to extend to the Myanmar authorities, at the earliest mutually convenient time, the assistance required to reach the objectives unanimously agreed upon by the Governing Body.

Yours sincerely,

(Signed) Juan Somavia

Appendix II

Communication dated 24 January 2002 from Lieutenant-General Khin Nyunt to Sir Ninian Stephen

Excellency,

I wish to refer to my letter of 26 October 2001 in which I informed you that in response to the matter raised in your letter of 13 October, a thorough investigation would be conducted regarding the alleged incident in the Shan State and that the results of the investigation would be made known to you.

I personally regard the matter as extremely serious and I have taken it upon myself to form a team of investigators from my headquarters with strict instructions to thoroughly investigate the matter, not to leave any clues left unchecked and to bear in mind the importance of seeking the truth and nothing but the truth.

At this juncture when we are building our nation, national unity is of utmost importance. We consider that any unfair and unlawful action against the national races would only have an adverse affect upon the Union that we seek to establish. We are determined to take legal action against anyone who transgresses the law, whosoever the individual may be.

The investigators from my headquarters have conducted a full-scale investigation and have submitted their findings to me. Village elders and villagers of the region concerned were systematically interviewed. Administrative officials and police officials of Mong Nai Township and relevant military officials were also interviewed. Altogether 41 persons were interviewed.

The investigators devoted time and energy to fathom the truth. I have studied their report and made further enquires till I was completely satisfied with the findings.

In the alleged episode mentioned in your letter, I was supposed to have told the villagers that starting from that day onwards there would not be any use of forced labour. The fact of the matter is that I have never visited that area. On the date mentioned, I was in Yangon attending a meeting of the Union Solidarity and Development Association. It is obvious that the account was fabricated from the very outset.

It is alleged that seven villagers went to see Maj. Gen. Maung Bo, the visiting Eastern Command Commander, on 11 July 2001 and filed a complaint with him regarding the continued use of forced labour by military units in the area.

The investigators found that while Maj. Gen. Maung Bo visited the area five times in the year 2001, on 18 February, 19 April, 13 May, 17 July and 23 October, he was not in the area on 11 July 2001 as alleged. Village elders and villagers testified that although the Commander met the villagers on two occasions, no complaint whatsoever was raised by the villagers regarding forced labour or mistreatment by the military.

The Commander had always been on friendly terms with the villagers and he tried to fulfil the various requests made by them. In the past the Keng Tawng area was not peaceful. Villagers lived in fear of armed insurgents who roamed the area, pillaging and murdering innocent men, women and children. Today the area has become peaceful and is generally safe. Yet armed insurgents attempt to attack the villagers from time to time.

It has been alleged that seven villagers who filed a complaint with the Commander were detained and killed by one Captain Mya Aung of Kunn Hing-based Infantry Battalion 246 and that their bodies were dumped in the Nam Taeng Creek in Keng Tawng area. It also alleges that the villagers from Ho Kun Village, Kun Long tract found the bodies at "Taad Pha Pha" waterfall, about two miles east of Ho Kun Village. In fact there is no such waterfall in the Ho Kun Village area. The nearest waterfall is in the Nam Taeng Creek, 17 miles south of Ton Hong Village. The drop is so immense and the swirling currents among the huge boulders and rocks at the foot of the fall so fierce that it would be impossible for dead bodies to be found there as alleged. The villagers had not found any dead body at the waterfall, it was learnt.

Of the seven persons named in the alleged account, the following four are non-existent:

1. Sai Khan-Ti, aged 36, Kun Hoong village. (There is no village named Kun Hoong in Nan Sang Township.)
2. Sai Saw-Ya, aged 31, Kun Keng village. (There is no village named Kun Keng in Nan Sang Township.)
3. Sal In-Ta, aged 24, Nawng Ook village. (Villagers abandoned Nawng Ook village 15 years ago and nobody lives there today. There is no one named Sai In-Ta in the region.)
4. Sai Ta Lam, aged 21, Nawng Ook village. (Villagers abandoned Nawng Ook village 15 years ago and nobody lives there today. There is no one named Sal Ta Lam in the region.)

One of the seven mentioned, Sai Aw Lam, aged 28 of Pa Saa Village is actually alive. He is safe and sound together with his family in his village. Pa Saa Village is a small village of 32 households and there are no other individuals by the name of Sai Aw Lam. He himself has no knowledge of the alleged account and has confirmed that he has never been harassed and detained by military units at any time.

It has been ascertained that one of the alleged victims, Lung Haeng Wi, aged 40 of Nawng Tao Village crossed the border into Thailand to work there since a year ago.

The remaining person Sai Ti-Ya, aged 30 of Nam Tum Tai Village appears to be at the centre of the allegations emanating from the SURA insurgent group. The name of the village is Taung Nam Tung not Nam Tum Tai. All the villagers of the area know him well to be a former insurgent and an agent of the SURA who extorts money from the villagers. Brigade 759 of the SURA had been active in Keng Tawng area with small bands exacting taxes from the people and committing atrocities. During March 2001, SURA insurgents mercilessly murdered U Paw San Sa, aged 52, Chairman of Village Peace and Development Council from Ho Ta Village near Kun Mon Village cemetery. During the same period, SURA murdered U Khin Maung Ni (alias) Ko Ta because he refused to render tax to them. In June 2001, their tax collector Win Maung was killed because he attempted to flee without submitting the money he collected. One Maung Htwe, an opium addict from the village, was also killed by SURA on the assumption that he had contacts with military units. The SURA insurgents committed crimes in collaboration with Sai Ti Ya.

According to witness Daw Htay Htay Hlaing, a 46 year old widow from Ton Hong Village, SURA insurgents raided her sawmill on 18 July 2001 and took seven workers captive. About four or five days later, Sai Ti Ya sent his man, Aik Ta and demanded 1 million kyats ransom money. Daw Htay Htay Hlaing was unable to pay the ransom and later learnt that the workers had been brutally killed and their bodies dumped in the Nam Taeng Creek. The bodies have not been found. The seven sawmill workers were:

1. Tun Aung (alias) Lao Li, aged 52 (son of) U Nyunt Sein, Nandawun Quarter, Section (4), Nyaungshwe.
2. Aye Lwin, aged 24 (son of) U Tun Shwe, Nandawun Quarter, Aung Chan Tha Section (6), Nyaungshwe.
3. Nyi Nyi Lwin (alias) U Phyu, aged 22 (son of) U Ba Yi, Nandawun Quarter, Section (4), Nyaungshwe.
4. Ko Pyone, aged 42 (son of) U Ba Yi, Nandawun Quarter, Section (4), Nyaungshwe.
5. Khin Maung Aye, aged 31 (son of) U Htay, Zone (3), Shwe Bontha Quarter, Shwenyaung.
6. Aung Yin, aged 43 (son of) U Kyi Thaug, Zone (3), Shwe Bontha, Shwenyaung.
7. Khin Maung Shwe, aged 49 (son of) U Htay, Zone (3), Shwe Bontha, Shwenyaung

Many village elders had heard of the murder of the seven sawmill workers by SURA insurgents. Apart from that incident they were not aware of any other incidents of missing people.

Witness Daw Khin Htwe, aged 52 from Naung Kyawt Quarter, Mong Nai, testified that she recruited seven workers to be employed at Daw Htay Htay Hlaing's sawmill on 7 July 2001. She said that the SURA insurgents torched the sawmill and took away seven workers on 18 July 2001.

According to the witnesses, Sai Ti Ya was a notorious individual who was involved in criminal activities. He fled from the village and was assumed to be with the SURA insurgents based in Thailand.

The investigation team also conducted an inquiry at the Infantry Battalion No. 246 but found that there was never an officer by the name of Captain Mya Aung posted at the battalion. The battalion had five officers with the rank of captain, but no one by the name of Mya Aung. Moreover there is no one by the name of Mya Aung in the ranks from Second Lieutenant to Lieutenant.

The 246 Battalion was based in Kunn Hing and the only time the battalion had entered the Keng Tawng area was in September 1998 when it stayed for about two weeks. Even then, it entered Keng Tawng Village only once and only for a few hours.

The investigators also made enquiries about the activities of other battalions in the area and found that there were only few villages in the area and there had never been a need to requisition labour.

All battalions had no one by the name of Mya Aung in their officer corps.

The villagers and elders interviewed testified to the fact that the SURA insurgents once dominated the area, and that they lived in fear. The presence of army units had transformed conditions in the area. The villages had become more populated and living conditions had improved considerably.

It is evident from the above the entire episode had been fabricated by the anti-Myanmar groups to tarnish the image of Myanmar and to promote their own selfish ends. It can be concluded from the findings of the investigation that the SURA insurgents who had murdered the seven innocent sawmill workers are trying to divert attention away from themselves by accusing the government military units of carrying out a fictitious act.

As I have mentioned in my letter of 26 October, there is a need to carefully scrutinize reports emanating from such anti-government groups as the Shan Human Rights Foundation since they have resorted to such fabrications in the past.

It is my ardent hope that you will appreciate our commitment to ensure the just outcome of the inquiry.

I avail myself of this opportunity to assure you of my Government's readiness to work with you to achieve our common goal.

Yours sincerely,

(Signed) Lieutenant General Khin Nyunt,
Secretary-1,
State Peace and Development Council,
The Union of Myanmar.

Appendix III

Communication dated 31 January 2002 from Sir Ninian Stephen to Lieutenant-General Khin Nyunt

Dear Lieutenant-General Khin Nyunt,

Thank you for the detailed account which you have sent me regarding the allegations made concerning the Keng Tawng area.

I much appreciate the investigation which you have instituted and which is described in your letter of 24 January, according to which there is no truth to those allegations, which have been very widely circulated.

As you are aware, this matter is now in the hands of the ILO Governing Body and was referred to in the conclusions adopted at its November session on the basis of our report of 29 October, 2001. I will thus make sure that your reply is communicated to the Governing Body and will refrain from pre-empting in any way the assessment this body may wish to make of the situation. I think that I can safely say, however, that this case does serve to emphasize the great need for the existence of a wholly impartial body able to report on allegations made by groups hostile to your Government in the future. This is, of course, something to which we have already specifically adverted in paragraph 81 of our report of 29 October, 2001.

Again, may I personally thank you for initiating the detailed investigation of this matter.

Sincerely,

(Signed) Ninian Stephen

Appendix IV

Elements for a possible Understanding on an ILO representation, provided to the authorities by the technical cooperation mission (TCM)

Understanding between the Government of Myanmar and the International Labour Office on the parameters for the establishment of a continued and effective ILO representation in Myanmar and the appointment of an interim Liaison Officer

Considering, on the basis of the report of the ILO High-Level Team (HLT) and the subsequent discussion of this report by the Governing Body of the ILO, that the establishment of continued and effective ILO representation in the country is essential to assist the authorities in their efforts to ensure the prompt and effective elimination of forced labour which is illegal and a criminal offence in that country;

Recognizing the desirability of maintaining momentum and opening a new phase in relations as soon as possible and therefore the need to provide for an interim Liaison Officer pending the full finalization of the Understanding as set out below;

Noting paragraph 6 of the conclusions of the Governing Body on the said report under which the Director-General of the ILO is requested to pursue the dialogue with the authorities of Myanmar in order to define the modalities and parameters of the ILO representation;

The Government of the Union of Myanmar and the International Labour Office have agreed on the following:

I. Purposes of the ILO representation

In accordance with the consideration set out in the preamble, the purposes of the ILO representation will be:

- (i) to provide information, advice, training and assistance, as regards their rights and obligations, as appropriate, to all those concerned by forced labour in the general population and the authorities with a view to ensuring full compliance with [Convention No. 29](#) to which Myanmar has reaffirmed its commitment;
- (ii) to develop technical cooperation projects to help the authorities in addressing the root causes of the forced labour situation as identified in the HLT report (especially in the field of training) and assist in mobilizing adequate funding for their implementation from all relevant national and international sources taking into account the nature and dimensions of the problem;
- (iii) to keep the ILO's competent bodies regularly informed of progress in the implementation and enforcement of the relevant legislation as well as the concrete impact in the various regions of the country of practical measures taken by the authorities to eradicate forced labour; and
- (iv) subject to relevant decisions of the International Labour Conference, to provide within the framework of the ILO Regional Office in Bangkok, any other assistance with respect to needs falling within the ILO's competence, in line with the achievement of the decent work strategy in the region.

II. Status, facilities, privileges and immunities

1. Upon finalization of the present Understanding as provided for in section III below, an ILO representative shall be appointed by the Director-General of the ILO, after appropriate consultations with the authorities and other interested parties.
2. The ILO representative and other ILO officials assigned to the Office as he/she may designate for that purpose shall enjoy all the facilities and freedom of movement and contacts necessary to carry out their functions under this Understanding on the same basis and in the same manner as were granted to the HLT.
3. The Government undertakes to grant to the ILO and to its officials (including members of their families forming part of their households) and experts performing functions under this Understanding, as well as to the ILO's property, funds and assets, the same privileges, immunities and facilities as those enjoyed by the United Nations and its officials and experts under the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946 and under specific agreements and understandings concluded between the Government and the United Nations.

III. Finalization of the Understanding and transitional arrangements

The present Understanding will be complemented as soon as possible by a comprehensive agreement concerning the establishment of continued and effective ILO representation in Myanmar. Pending finalization and ratification or approval as appropriate of such agreement, the Director-General of the ILO will appoint, after consultation with the authorities and other interested parties, a Liaison Officer whose function shall be to immediately start substantive work in accordance with section I above. The Liaison Officer as well as any other ILO officials who may be assigned to assist him/her shall enjoy, *mutatis mutandis*, the facilities, privileges and immunities set out in section II.

Appendix V

Proposal by the authorities for an Understanding on the appointment of an ILO Liaison Officer in Myanmar

Understanding between the Government of Myanmar and the International Labour Office concerning the appointment of an ILO Liaison Officer in Myanmar

Considering, on the basis of the report of the ILO High-Level Team (HLT) and the subsequent discussion of this report by the Governing Body of the ILO, that the establishment of continued and effective ILO representation in the country is essential to assist the authorities in their efforts to ensure the prompt and effective elimination of forced labour in that country;

Noting paragraph 6 of the conclusions of the Governing Body on the said report under which the Director-General of the ILO is requested to pursue the dialogue with the authorities of Myanmar in order to define the modalities and parameters of the ILO representation;

Recognizing the desirability of maintaining momentum and opening a new face in relations as soon as possible and therefore the need to provide for a Liaison Officer;

The Government of the Union of Myanmar has agreed to the appointment of an ILO Liaison Officer in Myanmar.

The details of the aforementioned Understanding shall be worked out between the ILO and the Ministry of Labour.

Appendix VI

Suggested text (revised) of an Understanding on an ILO representation, provided to the authorities by the technical cooperation mission (TCM)

Understanding between the Government of Myanmar and the International Labour Office concerning the appointment of an ILO liaison/representation in Myanmar

Considering, on the basis of the report of the ILO High-Level Team (HLT) and the subsequent discussion of this report by the Governing Body of the ILO, that the establishment of continued and effective ILO representation in the country is essential to assist the authorities in their efforts to ensure the prompt and effective elimination of forced labour in that country;

Noting paragraph 6 of the conclusions of the Governing Body on the said report under which the Director-General of the ILO is requested to pursue the dialogue with the authorities of Myanmar in order to define the modalities and parameters of the ILO representation;

Recognizing the desirability of maintaining momentum and opening a new phase in relations as soon as possible;

The Government of the Union of Myanmar has agreed to the appointment of an ILO representation [/representative]⁵ in Myanmar.

The necessary modalities for the implementation of the present Understanding shall be worked out between the ILO and the Ministry of Labour taking due account of the parameters provided to the Government⁶ by the Team during the discussion of this question.

⁵ Subsequently amended to representation/liaison or liaison/representation.

⁶ Subsequently amended with the adjunction “and of the views expressed thereon by the Government side”.

Appendix VII

Revised proposal by the authorities for the appointment of an ILO Liaison Officer in Myanmar

Understanding between the Government of Myanmar and the International Labour Office concerning the appointment of an ILO Liaison Officer in Myanmar

Considering, on the basis of the report of the ILO High-Level Team (HLT) and the subsequent discussion of this report by the Governing Body of the ILO, that the establishment of continued and effective ILO representation in the country is essential to assist the authorities in their efforts to ensure the prompt and effective elimination of forced labour in that country;

Noting paragraph 6 of the conclusions of the Governing Body on the said report under which the Director-General of the ILO is requested to pursue the dialogue with the authorities of Myanmar in order to define the modalities and parameters of the ILO representation;

Recognizing the desirability of maintaining momentum and opening a new phase in relations as soon as possible and therefore the need to provide for a Liaison Officer;

The Government of the Union of Myanmar has agreed to the appointment of an ILO Liaison Officer in Myanmar representing the ILO to assist the Myanmar Government in matters related to paragraph 1.

The necessary modalities for the implementation of the present Understanding shall be worked out between the ILO and the Ministry of Labour taking into due account the parameters provided by the ILO Team and the views expressed thereon by the Government side during the discussion of this question.

Appendix VIII

Reminders of questions to be raised with the Implementation Committee

1. New or additional cases.
2. Prosecutions, particularly 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.
5. Texts of any additional instructions issued to the military or other authorities containing specifications both of the kinds of tasks for which the requisition of labour is prohibited, as well as the manner in which the same tasks are henceforth to be performed.

Appendix IX

Letter dated 25 February 2002 handed over to the Minister for Labour by the technical cooperation mission on its departure from Yangon

Dear Mr. Minister,

The discussions that the ILO technical cooperation mission has had with its Myanmar counterparts suggest that a certain number of misunderstandings may still exist as regards the subject of the “Ombudsperson”. This may be due to the fact that the concept, which has a broad scope in certain national systems, would be transplanted to a very specific situation, and for narrow and specific purposes.

This is why the suggestion contained in the report of the High-Level Team referred, as you know, to “a form of Ombudsperson”. My colleagues and I considered – as was conveyed to our counterparts – that it might be useful, in order to assist you in any further thinking you and your colleagues may wish to give to the idea in the coming weeks, to provide you with some elements that would illustrate succinctly what in our view the High-Level Team’s suggestion, which received the support of the Governing Body, may concretely imply. I am therefore pleased to attach a document containing “Parameters to be considered for the establishment of an Office of the Ombudsperson in Myanmar”.

Even though it is now too late for you and your colleagues to give them before the mission departs, your reactions to this document will certainly be welcome. There are still a few weeks before a critical session of the Governing Body and I do sincerely hope that they can be used to make further progress.

I wish in any case to take this opportunity to once again express our thanks to you for the facilities and hospitality extended to the Team.

Yours sincerely,

(Signed) Francis Maupain

Parameters to be considered for the establishment of an Office of the Ombudsperson in Myanmar

Selection/qualifications

An Office of the Ombudsperson would be created by an Order of the Chairman of the SPDC or any appropriate way to perform the functions set out below.

The Ombudsperson shall be chosen exclusively on the basis of her/his proven ability to discharge the functions and responsibilities defined in the Order in full independence and impartiality and with the required credibility within and outside the country. Appropriate consultations shall take place for that purpose before the appointment. She/he may be a non-national.

Her/his term of office shall be years and can(not) be extended. She/he shall not be removed from Office except at her/his request or under the following conditions: in case of alleged incapacity or dereliction of duty, an independent audit shall be conducted at the Government's request by a person/body selected by the Government from a list of three established by [the Director-General of the ILO]/[the President of the International Court of Justice]/[the President of the Administrative Tribunal of the Asian Development Bank]. In the event that the audit concludes that the allegations are founded, the Ombudsperson may be removed from office.

Functions

The Ombudsperson shall be responsible for investigating and reporting on any individual or collective allegations from persons or groups claiming to have been subjected to forced labour.

She/he will not have the power to take any decision or corrective action but may, in cases where allegations are found to be well founded, propose to the appropriate authorities action to remedy the situation as well as appropriate compensation where necessary, or refer the case to the relevant judicial authorities.

The Ombudsperson's action shall not prejudice the right of the alleged victim to institute criminal proceedings under the relevant provisions and within the relevant time limits set out in the Code of Criminal Procedure.

The Ombudsperson may also carry out investigations on her/his own initiative into situations where she/he has reason to believe that forced labour may be involved.

Procedure

To be receivable, allegations should: (i) relate to facts subsequent to the entry into force of the Order; and (ii) be submitted to the Ombudsperson within one year from the date when the said facts are alleged to have occurred.

Allegations may be submitted by the victims directly or by their representative, or through appropriate channels. Allegations may also be submitted by representative bodies. Provisions shall be made to ensure easy and confidential access of complainants to the Ombudsperson (through heads of wards/villages or otherwise) in the various states and divisions.

The Ombudsperson shall establish a strictly confidential report on each case. In cases where she/he considers the complaint well founded, the Ombudsperson shall require a response by the person(s) under investigation and shall then make appropriate recommendations to the authorities concerned to take immediate corrective action and, as appropriate, to provide for compensation/indemnity. She/he shall report to the complainant and the complainant's representative the results of her/his investigations and, as the case may be, her/his recommendations.

She/he shall establish appropriate procedures to ensure that no action is taken against the authors of the allegations or their representatives.

The Ombudsperson shall provide to the authorities with an annual report on her/his activities, the obstacles she/he may have encountered in the discharge of her/his functions and the evolution of the situation of forced labour and any possible reprisal action she/he may have noticed. This report shall be made available to the public.⁷

Administrative and financial guarantees

The Ombudsperson shall carry out her/his functions in full independence and shall be immune from prosecution for acts performed in carrying out her/his official duties. The public/police/authorities shall provide her/him with any assistance she/he may request.

The Ombudsperson shall be assisted by such staff as may be necessary to effectively discharge her/his responsibilities throughout the country. She/he will have full freedom and responsibility to select these staff, who shall report exclusively to her/him and be independent of any external interference. She/he shall establish the rules applicable to them.

Appropriate budgetary allocations shall be made in the national budget for the Ombudsperson to immediately start discharging her/his activities. The Ombudsperson shall subsequently be entitled to accept subsidies, contributions, grants and legacies from private or public sources from within or outside the country provided that such acceptance shall not directly or indirectly affect the total independence of his/her Office. She/he shall establish rules for that purpose which shall provide in particular that donations from appropriate private non-commercial sources may be allowed provided that: (i) no conflict of interest arises; (ii) they cannot be used to promote private commercial or other sectoral interests; and (iii) an annual statement of amounts received, their sources, and their use shall be made and annexed to the annual report referred to above.

⁷ It is of course understood that this report will constitute an important element of the reports that the Government will submit to the Director-General of the ILO under article 22 of the ILO Constitution.

Appendix X

List of meetings held

The team met with Ambassador Razali in Kuala Lumpur, and then held 13 meetings in Yangon over seven days. It met with the Minister for Labour twice, with the Deputy Minister for Foreign Affairs, senior officials from three ministries (Labour, Foreign Affairs, and Home Affairs) and from the Attorney-General's Office and the Supreme Court, eight ambassadors, representatives of four United Nations agencies and a representative of the Geneva-based Centre for Humanitarian Dialogue.

Monday, 18 February 2002

0830–0930, Nikko Hotel, Kuala Lumpur

Ambassador Tan Sri Razali Ismail	United Nations Special Envoy for Myanmar
Damon Bristow	Special Assistant to Ambassador Razali

Tuesday, 19 February 2002

1200, Arrival in Yangon

1245–1330, Pansea Hotel

Prof. Paulo Sérgio Pinheiro	Special Rapporteur on the Situation of Human Rights in Myanmar
Léon de Riedmatten	Centre for Humanitarian Dialogue
Patrice Coeur-Bizot	United Nations Resident Coordinator

1400–1500, Ministry of Culture

U Tin Winn	Minister for Labour
Brig.-Gen. Win Sein	Deputy Minister for Labour
U Soe Nyunt	Director-General, Department of Labour

1620–1650, Office of the Centre for Humanitarian Dialogue

Léon de Riedmatten	Centre for Humanitarian Dialogue
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Wednesday, 20 February 2002

0830–0915 Ministry of Foreign Affairs

U Khin Maung Win	Deputy Minister for Foreign Affairs
U Win Mra	Director-General, International Organizations and Economic Department

1430–1510, UNDP Office

Dr. John Jenkins	British Ambassador
Bernard du Chaffaut	French Ambassador
Dr. Marius Haas	German Ambassador
Patrice Coeur-Bizot	United Nations Resident Coordinator

1530–1630, UNDP Office

Nim Chantara	Cambodian Ambassador
Nassaruddin Koro	Indonesian Ambassador
Ly Bounkham	Lao Ambassador
Phoebe A. Gomez	Philippine Ambassador
Simon de Cruz	Singapore Ambassador
Patrice Coeur-Bizot	United Nations Resident Coordinator

1630–1700, UNDP Office

Patrice Coeur-Bizot	United Nations Resident Coordinator
Bhaskar Barua	FAO
Minako Nakatani	UNDP
Shannon Kahnert	UNHCR
Dr. Agostino Borra	WHO

Thursday, 21 February 2002

0930–1200, Ministry of Culture

Soe Nyunt (Chair)	Director-General, Department of Labour
Win Mra	Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs
Dr. Tun Shin	Director-General, Attorney-General's Office
Aung Thein	Director-General, Department of General Administration, Ministry of Home Affairs
Tin Aye	Director-General, Supreme Court

1530–1630, Ministry of Culture

Soe Nyunt (Chair)	Director-General, Department of Labour
Win Mra	Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs
Dr. Tun Shin	Director-General, Attorney-General's Office
Aung Thein	Director-General, Department of General Administration, Ministry of Home Affairs
Tin Aye	Director-General, Supreme Court

Friday, 22 February 2002

1000–1200 Ministry of Culture

Soe Nyunt (Chair)	Director-General, Department of Labour
Win Mra	Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs
Dr. Tun Shin	Director-General, Attorney-General's Office
Aung Thein	Director-General, Department of General Administration, Ministry of Home Affairs
Tin Aye	Director-General, Supreme Court

1550–1745, Ministry of Culture

Soe Nyunt (Chair)

Win Mra

Dr. Tun Shin

Aung Thein

Tin Aye

Director-General, Department of Labour

Director-General, International Organizations and
Economic Department, Ministry of Foreign Affairs

Director-General, Attorney-General's Office

Director-General, Department of General
Administration, Ministry of Home Affairs

Director-General, Supreme Court

Saturday, 23 February 2002

1000–1200, Ministry of Culture

Soe Nyunt (Chair)

Win Mra

Dr. Tun Shin

Aung Thein

Tin Aye

Director-General, Department of Labour

Director-General, International Organizations and
Economic Department, Ministry of Foreign Affairs

Director-General, Attorney-General's Office

Director-General, Department of General
Administration, Ministry of Home Affairs

Director-General, Supreme Court

Monday, 25 February 2002

1710–1740, People's Assembly

U Tin Winn

U Soe Nyunt

Minister for Labour

Director-General, Department of Labour

Officials from the Prime Minister's Office

Appendix XI

Note verbale dated 26 February 2002 from the ILO to the Permanent Mission of the Union of Myanmar

The International Labour Office presents its compliments to the Permanent Mission of the Union of Myanmar and wishes to express its grave concern and its strong protest at the fact that the technical cooperation mission (TCM) which was due to meet Daw Aung San Suu Kyi in Yangon yesterday, 25 February at 3.30 p.m., was prevented from doing so at the checkpoint near her house, with the explanation that they had not received the appropriate instructions.

The Permanent Mission will recall that the freedom to establish contacts for the purpose of such visits has been one of the *sine qua non* for all of the TCM visits since the first in May 2000. The Permanent Mission will also recall that the intention of this last TCM to meet Daw Aung San Suu Kyi on the occasion of its visit was made clear even before it left for Yangon. Furthermore, on several occasions during the mission, the authorities were made aware that arrangements had been made for an appointment, and when the initial appointment had to be postponed, they were expressly told that the TCM was delaying its return accordingly.

The International Labour Office considers that this situation constitutes a breach of the commitments and understandings under which such missions have been fielded. The International Labour Office therefore urges the Permanent Mission to kindly provide appropriate explanations about this unfortunate incident as soon as possible.

The International Labour Office avails itself of this opportunity to renew to the Permanent Mission of the Union of Myanmar the assurances of its highest consideration.



G. Further developments following the return of the ILO technical cooperation mission

1. Following the return of the ILO technical cooperation mission (TCM) from Yangon and the hope it expressed to the Myanmar Minister for Labour that good use could be made of the three weeks still remaining before the Governing Body, the Office was informed that the Government of Myanmar was willing to have further discussions on the outstanding issues and that a delegation would be coming to Geneva for this purpose.
2. The Myanmar delegation was composed of: H.E. Dr. Kyaw Win, Ambassador of Myanmar to the United Kingdom; U Thaung Tun, Director-General, Ministry of Foreign Affairs; and Dr. Tun Shin, Director-General, Attorney-General's Office.
3. The Office held discussions with the Myanmar delegation and the Permanent Representative of Myanmar in Geneva, Ambassador Mya Than, from Wednesday, 13 March to Tuesday, 19 March 2002, including over the weekend. After extended and sometimes difficult negotiations, an Understanding on the appointment of an ILO Liaison Officer in Myanmar was reached. The text of this Understanding is reproduced in the appendix to this document. Two important aspects of the Understanding should be pointed out: (1) the appointment of the Liaison Officer is seen as a first step towards the objective of an effective representation which should continue to be pursued; (2) the Understanding provides for this appointment to be made by June 2002¹ and contains essential parameters – in particular, that the functions of the Liaison Officer shall cover all activities relevant to the objective of ensuring the prompt and effective elimination of forced labour in Myanmar – that make this appointment possible, while leaving open the possibility to work out further details if needed.

Geneva, 20 March 2002.

¹ It will be recalled that under the terms of the resolution adopted by the International Labour Conference at its 88th Session (June 2000), the Committee on the Application of Standards will be discussing further developments at the 90th Session of the International Labour Conference in June 2002.

Appendix

Understanding between the Government of the Union of Myanmar and the International Labour Office concerning the appointment of an ILO Liaison Officer in Myanmar

Considering, on the basis of the report of the ILO High Level Team (HLT) and the subsequent discussion of this report by the Governing Body of the ILO, that the establishment of continued and effective ILO representation in the country is essential to assist the Myanmar Government in its efforts to ensure the prompt and effective elimination of forced labour in that country;

Noting paragraph 6 of the conclusions of the Governing Body on the said report under which the Director-General of the ILO is requested to pursue the dialogue with the Myanmar Government in order to define the modalities and parameters of the ILO representation;

Recognizing the desirability of maintaining momentum and opening a new phase in relations as soon as possible;

The Government of the Union of Myanmar has agreed to the appointment of an ILO Liaison Officer in Myanmar by the Director-General of the ILO not later than June 2002, pending the establishment of an ILO presence capable of contributing effectively towards the objective defined in the first preambular above. The functions of the Liaison Officer shall be on the basis of the following principles:

- (i) The functions of the Liaison Officer shall cover all activities relevant to the objective spelt out in the first preambular paragraph of the Understanding.
- (ii) The facilities and support extended to the Liaison Officer shall enable him/her to effectively assist in carrying out all the activities referred to above, and his/her status and privileges shall be the same as accorded to the officials of comparable ranks of the United Nations in accordance with the specific agreements and understandings concluded between the Government and the United Nations.

Detailed modalities concerning the appointment of the Liaison Officer may be worked out between the two sides.

(Signed)

Kari Tapiola
Executive Director
International Labour Office

(Signed)

Mya Than
Permanent Representative
Permanent Mission of the Union of Myanmar

Geneva, 19 March 2002.