



PART THREE

OBSERVATIONS AND INFORMATION CONCERNING PARTICULAR COUNTRIES

Special sitting to examine developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)

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A. RECORD OF THE DISCUSSION IN THE COMMITTEE ON THE APPLICATION OF STANDARDS

The Chairperson, in addition to the documentation before the Committee, referred to another recent event that had been notified by the ILO Liaison Officer a.i. The latter had met the Minister of Labour of Myanmar and had recommended: suspending the current policy of prosecuting those who lodged complaints; closing the trials and setting free persons who had lodged complaints; and fulfilling the commitments made to the ILO to establish a credible mechanism to deal with complaints. The Minister had undertaken to submit these recommendations to the highest authorities, but had indicated that he was not in a position to say when any response might come.

A Government representative of Myanmar indicated that he wished to confine his Government's statement to the report of the Committee of Experts, which had identified four areas in which the Myanmar Government should take action to address the issue at hand, namely: issuing specific and concrete instructions to the civilian and military authorities; ensuring that the prohibition of forced labour was given wide publicity; providing for the budgeting of adequate means for the replacement of forced or unpaid labour; and ensuring the enforcement of the prohibition of forced labour.

With regard to the issuance of instructions to the civilian and military authorities, he stated that the Committee of Experts had acknowledged that such instructions had indeed been issued by the civilian and military authorities. As far as possible, English translations of the texts of these instructions had been supplied to the Committee of Experts. With regard to the instructions and correspondence issued by the Ministry of Defence, he emphasized that not all of these were made available to other ministries and departments of the Government as a matter of principle as they involved the national security interests of the country. Therefore, it was impossible to provide copies or English translations of such correspondence or instructions to a body of an international organization.

Turning to the question of ensuring wide publicity on the prohibition of forced labour, he referred to the fact that in the past the ILO Liaison Officer a.i. had been allowed to attend a workshop in Myeik Township in Tanintharyi Division and another in Kawhmu Township in Yangon Division. His Government would try its best to accommodate the attendance of the ILO Liaison Officer a.i. at any future events if and when they were held.

With regard to providing an adequate budget for the replacement of forced or unpaid labour, he informed the Committee that the allocation of adequate funds had been made in the state budget. The Government would provide the Committee of Experts in due course with the relevant information on the allocation of this budget.

In relation to possible options for a forced labour monitoring mechanism, he recalled that in pursuance of the conclusions of the 294th Session of the Governing Body, his Government had invited an ILO mission to further explore such options. This mission had had extensive discussions with the Government, which had indicated that it was willing to consider Option-I, which was based on the existing framework of the Office of the Liaison Officer a.i. in Yangon. During the mission, the Government had also explained why Option-II as suggested by the ILO was unacceptable to Myanmar. He emphasized once again that his Government was willing to pursue Option-I and that detailed discussions with the Office would follow.

He added that there were still two issues that had to be resolved in a manner acceptable to both sides following the ILO mission to Myanmar. The first was the mandate given by the Governing Body to provide protection to complainants or their representatives. The second was to find an acceptable mechanism to address the allegations of forced labour and further explore modalities for resolving forced labour problems in the country. With regard to the first issue, he indicated that while

his Government was willing to accommodate the repeated requests from the ILO not to take action against complainants, the situation on the ground made this difficult. There had been a proliferation of false complaints with ulterior political motives and most of the complaints that had been received so far had the political purpose of tarnishing the image of the Government. Therefore, deterrence was needed to cease the proliferation of false complaints and the Government could not condone such unfounded accusations.

Notwithstanding this, he was pleased to inform the Committee that Myanmar had reconsidered its position on this issue and that there had been positive developments in this respect. He indicated in this regard, that the Minister of Labour had received the ILO Liaison Officer a.i. in Yangon on 26 May 2006, who had requested the Minister to reconsider Myanmar's position on the issue of the prosecution of "false" complainants. He was therefore pleased to announce that the Myanmar authorities would put a moratorium of six months on the prosecution of such complainants on an experimental basis. During this period, as an interim measure, the complaints would be handled by the Director-General of the Labour Department, together with the ILO Liaison Officer a.i. In the meantime, both the ILO and the Government would continue to work out the modalities and the legal framework of Option-I so that a mutually acceptable mechanism could be established. He indicated that this arrangement once again reflected Myanmar's willingness to cooperate with the ILO.

He then reiterated his Government's strong objection to the presence and participation in the deliberations of Maung Maung in this Committee. His Government had already sent a written correspondence in this regard. He wished to take the opportunity to draw the attention of the ILO to the involvement of Maung Maung in terrorist activities in recent years. The Ministry of Home Affairs, in its Notification No. 3/2005 issued on 28 August 2005, had declared the Free Trade Union of Burma (FTUB) an unlawful association under section 15(2) of the Unlawful Associations Act. Maung Maung was the Secretary-General of the FTUB. Moreover, the Ministry of Home Affairs had issued Declaration No. 1/2006 on 12 April 2006, which had declared Maung Maung, Hla Oo and the FTUB to be terrorists based on concrete evidence.

Turning to developments since March 2006, he added that in document D.5, the ILO Liaison Officer a.i. had mentioned that he had heard that one of the three persons in the Aunglan case, namely Aung Than Tun, had been sentenced to two years' imprisonment on 19 May 2006 by the Township Court. However, to the knowledge of his Government, nobody had been sentenced and in the absence of witnesses the court had postponed the hearing of the case until 20 June 2006.

He concluded that, although certain quarters had again brought the Myanmar case under the spotlight and had threatened to take action if the Government did not meet its obligations, his Government would try to do the utmost taking into consideration the reality of the situation in the country and the constraints it was facing. The issue could only be resolved through cooperation and engagement, and not through threats and confrontation.

The Worker members deplored the fact that once again the Conference Committee had to address this extremely serious case, which was all the more serious because it had been going on for over 30 years. In 1997, the Commission of Inquiry had noted that Convention No. 29 was being violated in a generalized and systematic manner, both in law and in practice. It had therefore made the following recommendations: that the legislative texts, particularly the Village Act and Towns Act, be brought into conformity with the Convention; that the authorities, and in particular the military, cease to impose forced or compulsory labour in practice; and that the sanctions provided

for imposing forced or compulsory labour be strictly applied. To ensure the implementation of these recommendations, the Committee of Experts had identified four areas in which the Government needed to take concrete steps to bring an end to the imposition of forced labour in the country. Nevertheless, five years later, in June 2005, the Conference Committee had had to note the persistence of flagrant violations of Convention No. 29 and the systematic failure to give effect to the recommendations. The Committee had therefore asked the Governing Body to once again examine the case, which it had since done on two occasions.

Despite all the measures taken by the ILO, the imposition of forced labour persisted in the country. Consequently, the Committee of Experts had once again had to examine the questions on which it was awaiting a response from the Government. With regard to the amendment of legislative texts, the Government claimed that it had issued several orders declaring the requisition of forced labour illegal. However, the Committee of Experts had still not been able to verify the content of these orders, particularly regarding the types of practices considered to be forced labour. Moreover, the Government had been called upon to ensure that the prohibition of forced labour was widely publicized. Although it had referred to the organization of a number of briefings and workshops, it had not indicated their content. In relation to the provision of adequate resources to replace forced and unpaid labour, the Committee of Experts had reaffirmed that it had no detailed information on the allocation of any budgetary resources. Finally, with regard to the measures to be taken to ensure compliance with the prohibition of forced labour, the Committee of Experts had made several observations. Firstly, the field observation teams and the focal point established by the Office of the Commander-in-Chief of the army lacked independence and credibility. Secondly, of the 46 cases submitted to the Convention No. 29 Implementation Committee in 2004, only five had been identified as really constituting forced labour, none of which involved the army. Thirdly, those who lodged complaints were now being prosecuted, rather than those who imposed forced labour, which had led the ILO Liaison Officer a.i. to cease submitting cases of forced labour to the competent authorities. Finally, the ILO Liaison Officer a.i. had been the victim of threats. The persecution of complainants constituted a flagrant violation of Articles 23 and 25 of Convention No. 29 and was contrary to the obligation to eradicate all forms of forced or compulsory labour set forth in the ILO Declaration of 1998.

The Worker members continued by emphasizing that a civilized world demanded a commitment to shared human values. The members of the United Nations family had been charged with the responsibility for laying down a set of human rights, including labour rights that defined, encouraged and protected that shared human values. When human beings were maltreating and enslaving each other, that was a violation against humanity and was amongst the worst crimes. When that violation was systemic in a context where perpetrators showed no remorse and demonstrated no willingness to change their behaviour, then the world had to act. That was the case of Burma. The Worker members drew attention to the huge body of evidence of new and ongoing cases of forced labour in the country. They wished to update the Committee on the reports received of the use of forced labour in recent months, witnessing some of the most appalling treatment of human beings in this century. They reminded the Committee that it was dealing with human lives affected by the continuing, extensive and widespread practice of forced labour.

They referred to the Committee of Experts' report, which had noted the communication by the ICFTU of August 2005, which included some 1,100 pages of documents from many sources providing evidence of the persistent use of forced labour in nearly every state and division of the country. The Committee of Experts had requested a response from the Government. However, today's statement by the Government representative was absolutely inadequate and suggested a political and public relations response that did not inspire any confi-

dence. The Worker members detailed examples of recent cases of forced or compulsory labour, highlighting that over the last few months army commanders and units had inflicted forced labour on the local people, particularly in the Kayin, Mon and Arakan States. In the Arakan State, examples included: (1) the use of forced labour, extortion and land confiscation for rice paddy cultivation in military and local NaSaKa fields during the rainy season and its impact on the farmers who also had to deal with the cultivation of their own fields; (2) the widespread and constant exaction of forced labour for activities such as brick-making, repairs and the expansion of military camps, road works, bridge building and the construction of model villages in the context of so-called development projects; (3) the construction of new major road links and bridges between military bases or between villages and army camps in Buthidaung and Maungdaw townships, where villages had been forced to contribute materials and labour, and children had been seen crushing stones; (4) reports by villagers that the construction and production of construction materials, both used in construction projects and for sale for the purpose of generating income for the benefit of the military and other authorities, often required more time than compulsory work in brick yards; and (5) the use of forced labour all year round to maintain and repair military camps as well as the prevalence of sentry duty and camp labour. With regard to the use of forced labour in the Kayin (Karen) and Mon States, they mentioned the serious humanitarian concerns related to increased military activity that had resulted in forced portering of military and food supplies, and in forced mine clearances. The Government had expanded its road network in these states, which had been accompanied by the establishment of new army camps and new forced labour for the local villagers. The increase in forced labour had been a direct result of the current military offensive in Karen areas and 14,000 civilians had been internally displaced in the last four months, including members of the local education, health and agricultural unions. The Worker members added that the situation of refugees and internally displaced people was serious and worsening and that, since October 2005, 540,000 people had been displaced in the east of the country alone. One of the root causes for such displacement was people fleeing the trauma of forced labour.

Turning to the accusation against the ICFTU and the FTUB, they indicated that these accusations caused the Worker members much distress. They denounced once again the outrageous accusations levelled against the ICFTU by leaders of the regime at a press conference earlier this year, claiming that its recognition of and support for the FTUB meant that it supported a terrorist organization. Representing workers in Burma and seeking to protect and promote their most fundamental rights was a matter of great importance and they took exception to the accusations that those who engaged in valid and important work of representing workers were involved in terrorist acts. They emphasized that their brothers and sisters in the country were not terrorists and that they took great pride in defending workers' rights. Maung Maung was not a terrorist but an activist in the cause of freedom. The same applied to his deputy, who was present in the Committee. They urged the Government to respect and uphold the principles of democracy in the ILO.

They concluded by reiterating that forced and compulsory labour in the country was systemic and widespread. This Committee had called upon the Government to undertake serious actions to eradicate forced labour and the Worker members had offered assistance to see the recommendations of the Commission of Inquiry implemented. However, it was clear that the Government had no intention of doing so and this should be recognized in the conclusions on this case. They hoped that the Government representative would understand that the Worker members somewhat distrusted the offer made in his statement. They wished to see more details on the action taken so as to ensure that these promises would not be broken, as so many others had been in the past. The ILO was for many enslaved workers the only spark of hope. The Conference Committee

should adopt strong conclusions, as should the Selection Committee. They were also looking to the forthcoming meeting of the Economic and Social Council to examine these very serious problems.

The Employer members thanked the Government representative of Myanmar for the information provided. However, they could not fail to notice that he had not been in the room while the Worker members had made their statement, which reflected the lack of seriousness shown by the Government towards the case. The Conference Committee had been examining the present case for several years on the basis of the resolution adopted by the Conference in 2000, and the case would also be discussed by the Selection Committee in a few days' time. What was at issue before the Conference Committee was the implementation by the Government of Convention No. 29 and of the recommendations of the Commission of Inquiry. It had to be noted that there had been a fundamental lack of action by the Government to give effect to the Convention since its ratification by the country in 1955. There was also a fundamental lack of transparency, honesty and effort to adopt new and appropriate legislation. In many respects, the 2006 observation of the Committee of Experts was founded on a myth that the Government had perpetuated for over 50 years. For over half a century, it had misled the world that it would implement Convention No. 29. It was time for this deception to end.

In its 2006 observation, the Committee of Experts had highlighted that the Government, at the 2005 International Labour Conference and at the November 2005 Session of the Governing Body, had expressed its determination and willingness to cooperate with the ILO. The world was tired of waiting. The Employer members concurred with the Committee of Experts that the Government's announcements had to be followed by concrete action to be credible. This would be demonstrated if the Government effectively implemented the Commission of Inquiry's recommendations. This year's findings of the Committee of Experts made it clear that this was still nowhere near being the case and that the small steps taken by the Government were in effect mirages. In terms of bringing the legislative texts into line with the Convention, not much appeared to have changed. The Village and Towns Acts, which conferred broad authority for local authorities to requisition labour, remained unamended. The "instructions" that had been issued by the Government directing public authorities not to exercise their powers under certain provisions of the Acts had been limited in their effect. The legal situation remained unclear and confusing as to whether the "instructions" had the quality of law and thus the same quality as the Acts in the legal hierarchy. It was thus not clear to the authorities whether they should follow the Acts or the "instructions". In addition, the legal situation remained unstable, as the "instructions" could be withdrawn at any time, in which case only the Village and Towns Acts, which contradicted the Convention, were left. Finally, no convincing reasons had been given as to why the provisions of the Village and Towns Acts themselves could not be amended. It was thus essential that the Government as soon as possible revised the Village and Towns Acts in order to bring them into conformity with Convention No. 29.

With regard to the need to give wide publicity to the prohibition of forced labour, the Committee of Experts had received information from the Government about the respective action taken, such as letters sent, briefings and workshops. However, there had not been any information on the contents of these briefings and workshops, which raised the question of the effectiveness of the action taken. Moreover, according to the information that had been provided by the Government, hardly more than 1 per cent of the population had been informed about the prohibition of forced labour. Such small-scale action could hardly be seen as equivalent to "wide publicity". The Employer members considered that the Government could have made use of mass media, such as newspapers and broadcasting.

The Employer members agreed with the Committee of Experts' finding that the information provided by the Government in response to the recommendation of the Commission

of Inquiry on the budgeting of adequate means for the replacement of forced labour had not been meaningful.

In relation to the enforcement of the prohibition of forced labour through a monitoring mechanism, the Employer members noted that the Committee of Experts had taken note of the information that had been sent by the Government and the ILO Liaison Officer a.i. in this regard. It appeared from this information that the existing monitoring mechanisms were "not well suited" or lacked independence and credibility. Moreover, the victims of forced labour who complained to the ILO seemed to be systematically prosecuted for allegedly false complaints. The Committee of Experts had rightly called upon the Government to cease this practice. The Government needed to prosecute the perpetrators of forced labour and develop credible, fair and more effective procedures for investigating allegations of forced labour. The Committee of Experts had also requested the Government to work more closely on this with the ILO Liaison Officer a.i. and it had emphasized the need for a facilitator as a credible channel for the treatment of the complaints. The Employer members reaffirmed the need for the ILO supervisory bodies to have at their disposal meaningful, verifiable and reliable information on the action taken by the Government. The Government had to provide such information on its own initiative and without having to be constantly reminded by the ILO supervisory bodies.

The Employer members concluded by emphasizing the key role that the ILO Liaison Officer a.i. played in the country in facilitating contacts and cooperation between the ILO supervisory bodies and the authorities. The Government should not only allow him to deliver his tasks, it should proactively support him and seek his involvement in its own efforts. Instead, there had been various forms of pressure and intimidation, completely contradicting the commitment to cooperation that the Government had pledged on many occasions. There had simply not been any progress. The Employer members deplored the situation and were deeply concerned at the lack of tangible improvement in this extremely serious and worrisome case. An overall appraisal of the case suggested that appropriate actions should be considered under article 33 of the ILO Constitution. It was now time for concrete action. Anything else was a travesty of international justice and the rights of forced labourers in Myanmar. The Government just had to do the right thing: eliminate forced labour.

The Government member of Austria, speaking on behalf of the Government members of the Member States of the European Union, and of Albania, Bosnia and Herzegovina, Bulgaria, Croatia, The former Yugoslav Republic of Macedonia, Iceland, Norway, Romania and Turkey, as well as of the Republic of Moldova, Switzerland and Ukraine, which aligned themselves with his statement, recalled that the extremely serious case of Myanmar had been on the agenda of the Committee of Experts for more than 30 years, and had been criticized and condemned by the Conference Committee, Governing Body and the Conference. This had culminated in the unprecedented and unique application of article 33 of the ILO Constitution by the Governing Body, and had led to the resolution adopted by the Conference in 2000. It was therefore no surprise that the report of the Committee of Experts on Myanmar was comprehensive and detailed, containing a number of strong and clear expectations addressed to the authorities of the country.

He expressed the deep regret of the European Union at the decision by the Burmese Government to extend the house arrest of Aung San Suu Kyi, and deplored the fact that the international appeals, including that of the European Union on 26 May 2006, had gone unheard. This was a further sign that the Government was unwilling to compromise and move towards an all-inclusive democracy. It was in that context that the European Union had reiterated its call on the Government to release Aung San Suu Kyi and all other political prisoners, as well as to engage all ethnic and political forces in the country in genuine dialogue so as to achieve national reconciliation and democracy. In this regard, he highlighted the European Union's most recent declaration on Burma/Myanmar of 26 May, in which

it indicated its readiness to help the country so as to achieve democracy and true reconciliation.

He welcomed the recent visit made by the United Nations Under-Secretary-General to Myanmar, during which he had met the most senior leaders of the State Peace and Development Council (SPDC), addressing a wide range of outstanding issues of interest to both the United Nations family and the international community. He reiterated his call on the authorities to cooperate with the United Nations, especially the ILO, and urged them to cease the harassment of politicians and human rights defenders and to lift restrictions on freedom of assembly and speech, including the right to lodge complaints regarding forced labour without fear of retaliation and prosecution. He expressed the view that the debate on Burma/Myanmar was not yet complete. He therefore reiterated the European Union's full support for the ILO Liaison Officer a.i. in fulfilling his duties in an extremely delicate environment, and looked forward to further discussion of the issue in the Selection Committee later in the month so as to decide on possible further action to be taken by the ILO in order to secure compliance by Myanmar with the recommendations of the Commission of Inquiry, and to ensure that no repressive action could be taken against complainants and their representatives.

The Government member of Australia cautiously acknowledged the announcement by the Government representative of a moratorium on the prosecution of complainants, but emphasized that this should be a permanent measure. He hoped to be provided with more information on its operation in practice. He expressed his Government's continued concern about the situation in Myanmar. The prospects for change remained bleak, with no movement by the Myanmar regime to address the need for genuine political reform, to respect human rights or to arrest the continued economic decline. He also expressed concern regarding the continued detention of all political prisoners. He strongly urged the Government to promptly address the issue of forced labour by complying with the recommendations of the ILO Commission of Inquiry, and looked forward to further discussion of the two options for further action in the Selection Committee later in the month.

The Government member of China stated that forced labour was a violation of fundamental human rights and therefore had to be eradicated, which was the objective of Convention No. 29, adopted by the ILO in 1930. The experiences of the ILO since the adoption of the Convention showed that a global alliance needed to be forged to eradicate forced labour, as reported the previous year in the Director-General's Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. He stated that the ILO had been assisting the Government of Myanmar to eradicate forced labour, based on the spirit of dialogue and cooperation. The Government had made progress, although the speed of that progress might not be sufficient from the viewpoint of the international community. He expressed his Government's view that the Government of Myanmar was in general terms moving in the right direction. He regretted that the previous year's conclusion of the Conference Committee had had a negative impact on cooperation between the ILO and the Government, and he therefore hoped that cooperation would be strengthened.

He said that Myanmar was suffering from armed conflicts among ethnic groups in its border areas, declining national economic development and a legislative system that was incomplete, which were the major reasons for forced labour. The international community had to help on these matters. He said that currently Myanmar was moving towards national development and was in the process of formulating a new Constitution, with a view to promoting peace and democracy. He expressed the opinion that the international community should encourage and assist the country, rather than condemning or sanctioning it, which would generate better results. He expressed the hope that the Committee and the Government would engage in sincere dialogue, which would bring them onto the path of cooperation. It was only through dialogue and cooperation, and by taking into account the views of all concerned, that the in-

ternational community would be able to achieve progress in the case of Myanmar.

The Government member of the United States noted the remarks and proposals made by the Government representative and awaited confirmation of the progress that had been announced. She said that it was with great sadness and profound frustration that it had to be noted once again that there had been no improvement in the Burmese regime's effort to address the issue of forced labour. The Government was not meeting its international commitments, and in the year that had passed since the last special sitting of the Committee, the pattern of non-compliance had continued.

The Committee of Experts, in its most recent observation, noted that it had been commenting on this extremely serious case for over 30 years. In addition, since the early 1990s, the ILO had examined the issue of forced labour in Burma in every other supervisory mechanism available to the Organization: an article 24 representation examined by the Governing Body; an article 26 complaint resulting in a Commission of Inquiry; and, most recently, unprecedented measures under article 33 of the Constitution. The conclusions at every step of the supervisory process had been consistent. There was no doubt that forced labour existed in Burma and that the Government had failed to take meaningful steps to address the problem. In its latest observation, the Committee of Experts had laid out with absolute clarity what the regime had to do to implement the recommendations of the Commission of Inquiry and to comply with its obligations under Convention No. 29. First, bring all of the relevant legislative texts, especially the Village Act and the Towns Act, into line with the Convention. This had long been promised and still not achieved. Second, ensure that the prohibition of forced labour was given wide publicity. As the Committee had noted, this was not a difficult exercise and could be done immediately. Third, provide funds so that paid labour could replace forced or unpaid labour. This was a step that would show a genuine commitment to ending forced labour. And, fourth, ensure that forced labour monitoring machinery was enforced. It was absolutely necessary that, in the words of the Committee of Experts, the Government develop "credible, fair and more effective procedures for investigating allegations of forced labour, in particular those cases involving the army".

She emphasized that the ILO had laid out a clear set of directions for rectifying the problem of forced labour in the country, but that the Government had failed to address concretely any of the ILO's recommendations. The ILO had urged the Government to prosecute the perpetrators of forced labour, instead of which the complainants and the victims of forced labour were being prosecuted. The ILO had offered to assist and work with the Government in a supportive manner so that the problems could be addressed systematically and cooperatively, but the offer had never been taken up. The Government had sometimes expressed a commitment to eliminate forced labour and to cooperate with the ILO. It had sometimes denied the existence of forced labour. And at other times it had threatened to withdraw from the ILO. But at all times, the practice of forced labour had continued unabated and with impunity. Equally troubling was the fact that the regime had yet to recognize the results of the 1990 legislative elections, overwhelmingly won by the National League for Democracy and other opposition parties. And Aung San Suu Kyi's detention had recently been extended. Notwithstanding the positive indications of the Government representative, in the absence of concrete and verifiable steps to address this long-standing and deplorable situation, there was no choice but to consider other means in the ILO, in other international organizations and with other actors to bring about, once and for all, an end to forced labour in the country and ensure its full compliance with Convention No. 29.

The Government member of New Zealand expressed her thanks and appreciation to the International Labour Office for its update on the forced labour situation in Myanmar, and for the Office's continued efforts to achieve progress on that issue. She emphasized the importance attached by her Government to the operation of an ILO office in Myanmar and the need for

dialogue between the ILO and the Government of Myanmar. The situation in Myanmar was not new to the Conference. For many decades the ILO had been calling on Myanmar to eliminate the practice of forced labour, but had seen no response from the Government to that call, nor had it implemented the recommendations of the ILO Commission of Inquiry. It was for these reasons that she supported the placing of the above issue on the agenda of the Conference so as to achieve a more effective application of the measures contained in the resolution on Myanmar adopted by the Conference in 2000.

She expressed great disappointment at the current situation in Myanmar, in which the efforts of the ILO to engage in dialogue in good faith had been met with intransigence, despite the expressions of commitment by the Government. Myanmar's refusal to accept the principle that people who lodged complaints should not be subjected to legal or other retributive action was directly inconsistent with Myanmar's legal obligations under Convention No. 29. This principle was fundamental for future cooperation with the ILO. She urged the Government to adhere to its international obligations and strongly supported the call made by the ILO that the Government cease prosecuting victims of forced labour or their representatives, and instead take action to prosecute the perpetrators of forced labour. She once again called on the Government to respect international human rights, engage in effective dialogue with the ILO and the international community and comply with its obligations under Convention No. 29, so as to ensure that the people of Myanmar no longer suffered the injustice of forced labour.

The Government member of Canada said that his country had made clear its position on Burma over the past years. It continued to be deeply disappointed by the absence of any significant improvements with regard to forced labour, and in particular the Government's failure to implement the measures recommended by the Commission of Inquiry and the High-Level Team. His country had watched with growing unease the unfavourable developments that had been unfolding in relation to forced labour. These were part and parcel of a long-standing and comprehensive policy of the authorities, which undermined the basic principles of human rights. Nobel Laureate Aung San Suu Kyi had once again had her house arrest extended. She stood for and with the many unfortunate and nameless Burmese citizens, including those pressed into forced labour. He was also distressed by the army's military offensive in the east of the country, which had caused such loss of life, suffering and dislocation among innocent civilians, as well as a great increase in forced labour, as reported by the Worker members.

He called on the Government: to release Aung San Suu Kyi and other imprisoned leaders of the democratic movement immediately and unconditionally, and to cease armed hostilities against innocent civilians; to take immediate and effective measures to eliminate forced labour in accordance with the ILO's recommendations; to prosecute those who exacted forced labour; to cease prosecuting persons who reported cases of forced labour or had contact with the ILO Liaison Officer a.i.; to demonstrate sincerity in the dialogue with the ILO and take advantage, for example, of the informal mediation services offered by the representative of the Centre for Humanitarian Dialogue; and to implement the Joint Plan of Action, as agreed upon in May 2003 by the ILO and the Government. Finally, he thanked the ILO Liaison Officer a.i. for his valuable work in a difficult and delicate situation.

The Government member of the Russian Federation reaffirmed his country's position that forced labour was unacceptable and the importance of eradicating forced labour in Myanmar as rapidly and completely as possible. He therefore welcomed the consensus within the ILO on the issue as well as the commitment to this aim confirmed by the Government. He commended the Office on the considerable efforts which had been made since the previous Conference to resolve the problem. He paid tribute to the volume of work undertaken by the Office which, although working in rather difficult circumstances, had maintained the necessary level of assistance. He agreed with the point of view expressed in the Office docu-

ments that progress could only be achieved through the cooperation of the authorities. He therefore supported the proposal to strengthen dialogue. The proposals made by the Government representative merited very careful consideration, as they might give fresh impetus to the dialogue. He called upon the Government to take further steps in cooperation with the ILO with a view to eradicating forced labour and hoped that a mutually acceptable mechanism would be established with a view to resolving the problem.

The Government member of Japan stated that the case of Myanmar was at an important and critical stage. There had been hope ten days before the session of the Conference Committee when the Government of Myanmar had received on 18 May the visit of the Under-Secretary-General of the United Nations for Political Affairs. This optimism, however, had been shattered when the Government had announced the extension of the house arrest of Aung San Suu Kyi. While recognizing that this house arrest did not fall within the mandate of the ILO, his Government considered it unacceptable. The situation was therefore changing rapidly. He welcomed the statement by the Government representative that the Government was ready to consider Option-I, i.e. keeping the existing office of the ILO Liaison Officer in Myanmar, as well as the proposal to place a moratorium for six months on the prosecution of those who submitted complaints of forced labour. His Government appreciated these developments as a positive sign of concrete action.

He suggested that the Government should inform the people of the country of the information and opinions expressed by the members of the Committee. He also proposed two types of action for the Government. First, concrete action should be initiated by announcing the proposals made by the Government representative. Second, the Government should consider maximizing and expanding the measures proposed by the Government representative. He expressed the hope that Myanmar would understand that the opinions expressed were not only those of the International Labour Office, but of the majority of the international community. Although sympathetic words might sound nice, his Government had chosen these straightforward expressions and suggestions as a sign of its true friendship with Myanmar.

The Worker member of Germany said that, as the Worker spokesperson on the Committee on Freedom of Association, she wished to comment on the alarming case of forced labour in Burma and express her great concern at the manner in which human rights were flouted and freedom of association violated. She recalled that the country had ratified Convention No. 87. In this context, the unscrupulous violations in the country of the freedom of workers and of human rights were all the more alarming in view of the country's obligation to comply with the right to organize and collective bargaining. The blatant violations of the right to organize and freedom of association in the country were very clearly linked to the existence of forced labour and the pressure placed by the Government on trade unions. A large section of the population feared to exercise their rights. The Committee on Freedom of Association was currently examining cases brought by the ICFTU involving serious violations of the right of freedom of association, as the military and state authorities denied the fundamental freedoms of the population.

She emphasized that there was not a single legally registered workers' organization in the country. The FTUB could not work openly and its Secretary-General was harassed by criminal prosecution. Trade union leaders were subjected to threats, torture and imprisonment. Seafarers who denounced their working conditions were subject to sanctions, which included the loss of their jobs and being placed on blacklists. In this context, she deplored the still unexplained death of Saw Mya Than, of the FTUB and the Catholic Education Workers Union, and the fact that Myo Auney Than had not yet been released from his sentence to 20 years' imprisonment. The sanctions that were imposed on workers' leaders were so severe as to greatly restrict trade union activities. The history of general violations of workers' and human rights had been going on for a

very long time, despite the severe pressure exerted by the international community, including the ILO. Despite the claims of the Government representative, there was no clear will to eradicate forced labour in the country. Moreover, she totally refuted the accusation that Maung Maung was a terrorist and said that he was wrongly subjected to criminal prosecution. She added that Maung Maung was not personally present in the Committee, but was represented by his deputy.

She concluded that, for as long as the military regime tolerated and actively encouraged violations of fundamental workers' and human rights, the ILO and the international community would have to maintain its pressure on the country. She therefore called on the regime to finally take effective action and she urged employers in all member States of the ILO to impose the necessary effective sanctions to bring an end to forced labour in Myanmar.

The Worker member of the United States emphasized that trade unions could and did play a positive role in bringing economic, trade and other pressure to bear on the military regime in Burma, in accordance with the ILO resolution. In this respect, trade unions continued to push hard for sanctions where they did not already exist and for their continuation where they were already in place. They pushed for the prohibition of imports and a curb on investment in the country, which was a critical initiative to foster the meaningful development of the country and improve the lives of its workers through, among other measures, the elimination of forced labour. The role of his own and other governments was essential to the success of these efforts. Trade unions also continued to call on governments to pressurize the military regime through the WTO by calling for a ban on imports from and exports to the country under article 20 of the GATT, which provided for a viable and proper means for exerting pressure and should be pursued with urgency and rigour. Finally, trade unions continued to pressurize their governments and the members of the UN Security Council to place the issue of Burma on the agenda of the Security Council. The ICFTU had requested its affiliate organizations, particularly those in countries that were members of the UN Security Council, to pursue this action and he gave thanks to those affiliated organizations which had done so, particularly in Argentina, Brazil, Italy, the Russian Federation and the United States. Some of their efforts had achieved positive results.

The Worker member of Japan said that the ILO had made great efforts to eliminate forced labour in Burma, including the organization of a High-Level Team, the establishment of the Liaison Office and the setting up of a Convention No. 29 Implementation Committee. He therefore expressed deep concern that there had been no progress or improvement in the situation of forced labour in the country despite the ILC resolution of 2000. He was also particularly concerned that the Government refused to enter into dialogue with the international community. As he had indicated previously on several occasions, a few countries and certain multinational companies had increased their direct investment in the energy sector in the country, which helped the military regime to maintain the forced labour. According to the Economist Intelligence Unit in 2005, the amount of foreign direct investment in the country's oil and gas sector had increased threefold in one year. The main source of investment in the country was China, which accounted for some 89 per cent of total FDI in those sectors, amounting to a tenfold increase between 2003 and 2005. The next biggest investor was Thailand, which had recently increased its role as an investor in the country and exerted a pervasive influence on the military regime. The previous year, Thailand had signed a project for the construction of four large dams, for which technical assistance and feasibility studies had been conducted in advance by certain Japanese power companies. The dams were located in a region populated by three of the largest ethnic groups in the country, mainly the Karen, Karenni and Shan, which had greatly suffered in the past during the construction of infrastructure projects. There was great concern that they would do so again on this occasion. The military regime had

been waging war for many years against the ethnic peoples living in those areas, resulting in massive refugee flows, hundreds of thousands of internally displaced persons and countless cases of torture, rape and murder. Such infrastructure development always appeared to go hand-in-hand with the massive use of forced labour.

Referring to the call made in the 2000 resolution for ILO member States to review their relations with the Government and not to do anything that might contribute to the continuation of forced labour practices, he emphasized that the resolution should be respected by all ILO member States and international financial institutions, such as the Asian Development Bank (ADB), which was giving technical assistance for the Greater Meekong Sub-region project. While FDI which fully respected workers' rights could help open societies to promote development, this was not so in the present case. The profits from FDI were not redistributed among workers, but served to support the Government and its arrogant attitude towards its people and international institutions. In such an unchanged situation, investment and technical assistance, including feasibility studies, which might indirectly encourage forced labour should be ceased immediately. He therefore urged the Government to resume dialogue with the international community and create credible mechanisms to put a stop to forced labour.

The Worker member of the Republic of Korea expressed her concern about the issue of forced labour in Myanmar. Korean trade unions were very much concerned about the situation of Burma because two Korean corporations were involved in gas development projects in Burma. Daewoo International was the main operator of the Shwe gas project. According to EarthRights International, in Burma the major development projects were directed by the ruling junta and overseen by the military. The Shwe gas project would very likely involve environmental degradation, as well as human rights violations such as land confiscation, forced labour on project infrastructure, and forced portering for the military. In order to address the importance of the situation, the Federation of Korean Trade Unions (FKTU) together with NGOs staged a protest rally in front of Daewoo International last year and issued joint statements twice. In addition to that, the FKTU sent an official letter to the Ministry of Labour as well as the Ministry of Foreign Affairs and Trade. In the statements and in the protest letter, the FKTU demanded that Daewoo International and KOGAS immediately take measures to prevent potential violations of human rights, particularly labour rights. FKTU also called upon the Government of the Republic of Korea to reconsider its relations with the Burmese Government and to take all necessary measures to comply with the 2000 resolution of the ILO regarding Myanmar. In addition, FKTU has demanded that the Government of the Republic of Korea and the two Korean corporations release all the relevant information about the gas project and comply with the principles and standards of the international community.

The Worker member of Italy pointed out that previous Worker members stressed that the situation after the last Conference and the November and March Governing Body meetings had worsened. In November 2005, the Governing Body had requested the Government to take advantage of the time available before March 2006 to resume effective dialogue with the Office. Unfortunately, this appeal was not heard. The deteriorating political, social and economic situation and the continuous use of forced labour in Myanmar was taken in due consideration after the 2005 session of that Conference, as well as by other international bodies which underlined in various statements the lack of willingness by the Government to initiate a serious democratization process to bring to an end the use of forced labour and the violations of fundamental human and workers' rights in the country. She made the following points: in August 2005 the Global Fund, under HIV/AIDS, was obliged to terminate grants to Myanmar due to government restrictions that made implementation impossible. Other organizations had to take the same decision, and mentioned the important report and the call launched in September 2005 by Nobel Peace Prize

winner, Desmond Tutu, and by the former President of the Czech Republic, Vaclav Havel, requesting an urgent and new diplomatic initiative at the United Nations Security Council. These were determining factors for the Security Council to put Myanmar on its agenda. Among them were forced relocations, forced labour and forced recruitment of child soldiers in a number much higher than in any other country. The Tutu report clearly stated that Myanmar's internal situation was a threat to the stability of the entire region and to the international community, which left open the possibility for the intervention of the Security Council under Chapter VII of the United Nations Charter.

The ECOSOC had decided, after a request from the ILO Director-General, to reactivate its consideration of the item concerning forced labour and to discuss this matter during its session on 26 July 2006. On 16 December 2005, the United Nations Security Council had held a briefing on the situation in Myanmar, which included the situation on forced labour. A second discussion had taken place just a few days before the present session of the Conference. The last report of the United Nations Special Rapporteur on Human Rights underlined the widespread and systematic forced labour practices and forced recruitment by state actors, including allegations of child labour. The report concluded that despite indications from the Government that it was willing to address these problems, the Special Rapporteur was not authorized to visit the country, and regretted that all such willingness appeared to have disappeared and that recommendations from the United Nations Secretary-General had not been implemented. The Special Rapporteur had issued a statement on the situation of human rights in Myanmar focusing on political prisoners and their treatment, which revealed much about the human rights situation and lack of progress towards democracy. He declared that it was time for the international community to urge the establishment of an independent inquiry into the rapidly escalating number of deaths of political prisoners, that should lead to accountability to those responsible.

In March 2006, the International Committee of the Red Cross (ICRC) decided to drastically reduce its activities due to lack of willingness of the Government to cooperate. The ICRC was no longer able to visit any political prisoners including those detained for complaining about forced labour or for trade union activities. From 18 to 20 May 2006, the United Nations Under-Secretary-General visited the country under the General-Secretary's mandate to seek a fruitful dialogue with the Government. The speaker expressed deep concern for the lack of success of such high-level talks. In fact, despite the United Nations representative's meeting with Aung San Suu Kyi, the Government confirmed her house arrest for another year. But even the release of the NLD leader, if not accompanied by concrete reforms and actions such as the halting of prosecutions against forced labour complainants and the possibility for trade unions and NLD to operate, would be just another way to avoid international action. On 26 May 2006, the Presidency of the European Union expressed deep concern for the Government stepping up pressure on ethnic groups. In a further statement, Austria, on behalf of the EU, condemned the decision by the SPDC to extend Ms. Aung San Suu Kyi house arrest.

Considering the constant unwillingness of the Government to go beyond promises and declarations to adopt relevant measures to eliminate forced labour, and also considering the attitude of many governments and multinationals, despite the Director-General's appeal, to revise relations with Burma, she urged governments, regional financial organizations and institutions, such as the EU, to address in a wider and consistent way the issue of foreign direct investment. The proliferation of EPZs now reached 19 in Myanmar, with 8,000 private industries, with a new zone being created to absorb the inflow of FDI. She said that the Committee's conclusions should reiterate the request to the Director-General to call on governments, employers and international organizations to revise their behaviour, including FDI, thus avoiding doing business with state- or military-owned enterprises, urging at national levels that

monitoring and customs control systems should be set up with ILO constituents' participation. This would enable governments to take the initiative towards those companies which continued to violate the decisions taken at the ILO. She reiterated her request that the Conference mandate the Officers of the Governing Body to address the next ECOSOC session. In light of the lack of consistent and concrete commitment from the Government to eliminate forced labour, it was time for the ILO to refer the matter formally to the UN Security Council and the International Court of Justice for an urgent advisory opinion. She repeated that the use of forced labour, as underlined by the Commission of Inquiry, if committed in a widespread or systematic manner, was also to be considered as a crime against humanity and should be treated consequently.

An observer representing the International Confederation of Free Trade Unions (ICFTU), member of the Federation of Trade Unions, Burma (FTUB), recalled that the FTUB has been presenting, through the ICFTU, during many years, a huge number of cases of forced labour and recently a further 96 cases of forced labour committed by the regime in the past year (47 cases in the Chin ethnic area, 44 cases in the Rakhine ethnic area and five cases in lower Burma). These cases were quite similar to those presented every other year since the regime issued the Order No. 1/99 of 14 May 1999. In many cases there had been forced labour in the Rakhine and Chin States. While the Government promised the international community that they had committed to stopping the forced labour, in reality they continued to create a state of fear for the people, particularly for those who provided information on forced labour to the ILO. Further, a harsh repression continued against the workers connected to the FTUB and its leaders, such as U Myo Aung Thant. He was arrested in June 1989 and sentenced to life imprisonment and was now in jail since 17 years. When arrested, U Myo Aung Thant was subjected to torture during interrogation and he had no access to any independent counsel or to due process. Currently, he was held in solitary confinement in dark cells in Myikyinar prison.

In a press conference held on 28 August 2005, the regime indicated that they had arrested ten people because of contact with FTUB. Some of them were allegedly sentenced to between seven and 27 years' imprisonment in November 2005. Among them were: U Thein Lwin Oo, U Win Myint (a) U Kyaw Aung, U Myint Lwin, U Hla Myint Than, U Wai Lin, U Yae Myint, U Aung Myint Thein, Daw Yin Kyi, Daw Aye Chan and Daw Aye Thi Khain. U Aye Myint, a lawyer, who had been previously sentenced to death for high treason on the basis of alleged contacts with the ILO, but released from jail in January 2005, was re-arrested in August 2005 and sentenced to seven years' imprisonment. U Zaw Htay, U Thein Zan and U Aung Than Tun were arrested on the basis of the charges related to the death of a villager in 2004 which allegedly occurred during forced labour. These three individuals assisted the family of the deceased to report the matter to the ILO. In April 2006 the regime made further accusations against FTUB and its General-Secretary, Mr. Maung Maung. As a result, any person in Burma who would like to contact the FTUB would be severely punished. If there was a strong commitment by the regime to stop forced labour, it should allow the people to freely give information regarding forced labour to the ILO. As a matter of common sense and experience, the effective elimination of forced labour in Burma could not be achieved without the cooperation of the authorities. However, the regime was not truly committed. At the same time the ILO had always been consistent in its willingness to cooperate. A recent briefing at the United Nations Security Council suggested that it was now time to act. Nonetheless, the regime refused to cooperate and the options which would be presented to the Selection Committee needed to be adopted and vigorously pushed forward. It was hoped that the Worker, Employer and Government representatives would continue to work together with a view to ending these most flagrant and continuing violations, for which the people of Myanmar would be grateful to the ILO.

An observer representing the World Organization against Torture (OMCT) recalled that forced labour was, in itself, always cruel, inhuman and degrading treatment and could be considered as an act of torture per se. As the reports before the Committee attested, in Burma, forced labour was almost always also accompanied by other acts of torture and ill-treatment. Forced displacement, rape and sexual exploitation, denial of food and medical attention and the exploitation of child labour were all part of the situation in Burma today. Resistance to forced labour led to an increase in ill-treatment, detentions and extrajudicial executions. The OMCT was particularly concerned about the numerous reports of abuse of women and children and the forced exile of men, leaving women and children to fend for themselves in a very hostile environment. Forced labour in Burma was increasing. The Government's decision to force farmers to plant physic nuts from which a substitute for diesel fuel was extracted had already caused new hardships to the population forced to work in connection with these projects. Further, the increase in construction activities had resulted in a growth in the use of forced labour in brick-making, road and bridge construction, construction at military facilities and on other projects. This took place alongside the usual forced labour of sentry duty, forced transport of goods and the forced supply of rice and other foodstuffs.

Forced labour was not confined to Burma itself. Poverty and the attending violence too often spread to involve ever wider spheres. In Burma, one could witness a serious increase in the vulnerability of the poor. Increased forced labour, demands to supply food and building materials without payment and food shortages were resulting in cross-border movements to Bangladesh which might be faced with the need to cope with a significant number of starving refugees this year. According to the UNHCR, the current offensive against the Karen had already led to the influx of more than 2,000 refugees to Thailand. This could lead to tension in Bangladesh and Thailand and destabilization to the border region. Forced labour, and the other many violations of human rights in Burma, had been on the international agenda for far too long. Last year the United Nations Security Council had taken a welcomed step forward, but much more needed to be done. There were many good recommendations contained in the reports before the Committee. These were addressed to governments, trade unions, employers, the United Nations Security Council, the Burmese authorities, NGOs and international organizations. The speaker urged this Committee to add its voice to the call for action to end forced labour in Burma by deciding on concrete action.

The Government member of Cuba noted the announcement made by the Government of Myanmar on their projected moratorium and other concrete measures that would permit collaboration between the Government and the ILO to continue. He hoped that after the adoption of these measures it would be possible to renew this cooperation and move forward towards an improved dialogue and understanding. He called upon all parties concerned to make the necessary efforts not to move away from the application of international labour standards.

The Government representative indicated that his delegation noted the statements made during the discussion. Many of the issues raised went beyond the mandate of the Committee, which was not the appropriate forum to deal with these matters. The Government of Myanmar had expressed itself already on these issues and would do so again if the need arose at the appropriate forum. The Government representative assured the Committee that his Government would cooperate to the full extent possible with the Committee on issues under its purview. He recalled the statements of the Government members of Australia and Japan and others and indicated that the Government of Myanmar would give due consideration to their goodwill.

The Employer members stated that the discussion and the facts of this case were a devastating indictment of the Government's failure to meet its obligations and to abolish forced labour. After half a century, the Government was still unable to indicate to the Committee a sustainable strategy for the elimination of forced labour. Further, the Government continued to

believe that a few small steps would be sufficient to produce progress. However, it was clear that there was no political will nor commitment to eliminate forced labour. It was difficult to understand why the Government was driving the international community to consider stronger and extraordinary measures that would further marginalize the country. The Government failed to understand that the well-being of its citizens and economy depended on the rest of the world. The Employer members renewed their plea to the Government to eliminate forced labour and to fully comply with the ILO's recommendations.

The Worker members found it difficult to reconcile the Government of Myanmar's declared desire for dialogue with the ostentatious departure of the Government representative from the room at the very moment when the Worker members began their interventions. As to the facts, the Worker members noted that the Committee of Experts had established that recourse to forced labour, principally by the army, was still a widespread phenomenon and that those who reported this situation were systematically prosecuted. The Worker members most of all noted that the four main recommendations of the Commission of Inquiry had still to be implemented, and they appealed to the Government to: demonstrate without further delay its willingness to put an end to forced labour; stop prosecuting those who made complaints about forced labour; free those who had been imprisoned for this reason; end the house arrest of Aung San Suu Kyi; and agree with the ILO on an effective procedure to halt the use of forced labour, including by the army. The Worker members declared that if, by 13 June 2006, the Government had not demonstrated by tangible and concrete actions its sincere intent to put an end to the practice of forced labour in Myanmar, they would request the Committee to apply the Conference proposals in order to introduce at international level the measures foreseen regarding the abovementioned suspension of all imports, exports, loans, credits, joint ventures and other international projects relating to Myanmar. The Workers members requested that the conclusions of the present Committee be brought to the attention of other international bodies according to the usual procedure and that the ILO submit the issue to ECOSOC at that body's next session.

The Committee had before it the observation of the Committee of Experts and a report from the Office on the latest developments as reported by the ILO's Acting Liaison Officer, whose action and dedication received full support. It also listened to the statement of the Government representative, Ambassador Nyunt Maung Shein. It was noted, however, that he was absent from the room during the comments of the Worker spokesperson.

As regards the observation of the Committee of Experts, the Committee noted its profound concern that the recommendations of the Commission of Inquiry had still not been implemented, and deplored the fact that forced labour continued to be widespread, particularly by the army. This was underlined by current reports of extensive forced labour being used in the context of increased military activity leading to significant internal displacement in Kayin (Karen) State. The situation in the Northern Rakhine (Arakan) State remained very serious.

The Committee recalled that, as a result of concerns expressed both in the Governing Body and in the present Committee, the matter was, for the first time since 2000, on the agenda of the Conference as such. The Committee concluded that the inclusion of such an agenda item was more than justified. There would thus be an opportunity for the Conference to fully consider what steps the ILO should now take. The Committee's conclusions would therefore address the question of Myanmar's compliance with its obligations.

The Committee underlined that it was now eight years since the Commission of Inquiry had issued its report and recommendations. While a few interventions claimed that Myanmar was making some moves in the right direction, however slowly, none of these recommendations had so far been implemented by Myanmar. Indeed, instead of pro-

gress in the elimination of forced labour and action against those responsible, people were liable to be prosecuted and imprisoned for complaining about forced labour, with the result that victims were being doubly victimized. The policy of prosecuting complainants was incompatible with Articles 23 and 25 of Convention No. 29, and Myanmar could not claim to be committed to the elimination of forced labour or to cooperation with the ILO while it continued to pursue such a policy.

In this context, the Committee noted the comments of the Ambassador of Myanmar that his Government was willing to consider Option-I but rejected Option-II. He stated that the Myanmar authorities were ready to put a six-month moratorium on prosecutions of complainants. The Committee underlined, however, that although this may sound positive, it was late and limited. Words had to be urgently confirmed and completed by deeds in all relevant matters, in particular the acquittal and release of persons who had

already been prosecuted (in particular, Su Su Nwe and Aye Myint) and the cessation of prosecutions currently under way. Such action was particularly important as the Conference was to discuss further action to be taken by the ILO, and other organizations including ECOSOC, and that the decisions of the Conference should be based on credible information and commitments confirmed at the highest levels as to the Government's intentions. The authorities now need to immediately enter into discussions with the ILO, with a view to establishing as soon as possible a credible mechanism for dealing with complaints of forced labour.

It would be very important that all the deliberations of the Conference on this matter would be brought to the attention of ECOSOC and other organizations concerned as soon as possible. The Government of Myanmar was also requested to provide a full report to the Committee of Experts on the Application of Conventions and Recommendations in time for its session later this year.

B. OBSERVATION OF THE COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS ON THE OBSERVANCE OF THE FORCED LABOUR CONVENTION, 1930 (NO. 29) BY MYANMAR

Myanmar (ratification: 1955)

I. Historical background

1. The Committee has been commenting on this extremely serious case since its first observation over 30 years ago. The grave situation in Myanmar has also been the subject of overwhelming criticism and condemnation in the Conference Committee on the Application of Standards of the International Labour Conference on nine occasions between 1992 and 2005, in the International Labour Conference at its 88th Session in June 2000, and in the Governing Body, by governments and social partners alike. The history is set out in detail in the previous observations of this Committee in more recent years, particularly since 1999.

2. The major focus of the criticisms by each of the ILO bodies relates to the outcome of a Commission of Inquiry appointed by the Governing Body in March 1997 following a complaint submitted in June 1996 under article 26 of the Constitution. The Commission of Inquiry concluded that the Convention was violated in national law and in practice in a widespread and systematic manner, and it made the following recommendations:

- (1) that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Convention;
- (2) that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military; and
- (3) that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced.

The Commission of Inquiry emphasized that, besides amending the legislation, concrete action needed to be taken immediately to bring to an end to the exaction of forced labour in practice, in particular by the military.

3. In its previous observations in 2002 to 2005, the Committee of Experts identified four areas in which measures should be taken by the Government to achieve this outcome:

- issuing specific and concrete instructions to the civilian and military authorities;
- ensuring that the prohibition of forced labour is given wide publicity;
- providing for the budgeting of adequate means for the replacement of forced or unpaid labour; and
- ensuring the enforcement of the prohibition of forced labour.

4. The flagrant continuing breaches of the Convention by the Government and the failure to comply with the recommendations of the Commission of Inquiry and the observations of the Committee of Experts and other matters arising from the discussion in the other bodies of the ILO, led to the unprecedented exercise of article 33 of the Constitution by the Governing Body at its 277th Session in March 2000, followed by the adoption of a resolution by the Conference at its June 2000 session.

II. Developments since the Committee's last observation

5. The Committee notes the documents submitted to the Governing Body at its 292nd and 294th Sessions (March and November 2005) on developments concerning the question of the observance by the Government of Myanmar of Convention No. 29, as well as the discussions and conclusions of the Govern-

ing Body during these sessions and of the Conference Committee on the Application of Standards in June 2005.

6. In addition, the Committee notes the Government's report, received in a series of communications on 9 June, 19 August, 22 August and 2 September 2005, and the comments by the International Confederation of Free Trade Unions (ICFTU) contained in a communication dated 31 August 2005 received on 12 September 2005, which was accompanied by some 1,100 pages of documents from many sources, reporting on the persistence in 2005 of the use of forced labour in Myanmar. The material forwarded purports to be "from nearly every State and Division of the country on several hundreds of cases" of forced labour, including forced portering, repair and maintenance of army camps and villages for displaced people, cultivation of paddy and other fields, road construction, clearing of jungle areas, "human minesweeping", patrolling and sentry duty. A synopsis of the communication from the ICFTU was forwarded to the Government by letter dated 3 October 2005 together with the indication that, in accordance with established practice, the communication of the ICFTU would be brought to the attention of the Committee together with any comments that the Government would wish to make in response. **No response has yet been received from the Government to this very concerning information, but the Committee acknowledges that there has been inadequate time for the Government to respond to the detailed communication, which it requests the Government to do in its next report.**

7. Before addressing its particular concerns, the Committee notes that the Government has, in various documents, interventions before the ILO bodies and meetings with various High-Level Teams, expressly indicated its commitment to the elimination of forced labour in its country. More recently this has been stated publicly in the Conference Committee on the Application of Standards when the report of the proceedings recorded that the Government representative indicated that, in their determination to eliminate forced labour and to continue Myanmar's cooperation with the ILO, the authorities in his country had taken significant actions in response to the conclusions and the aide-mémoire of the very High-Level Team (vHLT) which had visited Myanmar in February 2005.

8. At the Governing Body session in November 2005, the Ambassador of Myanmar, on behalf of the Government, also expressed willingness to cooperate with the ILO. In turn, the Governing Body indicated that the Government should take the opportunity before the next session of the Governing Body in March 2006, to resume an effective dialogue with the Office about the issues of forced labour and that pending such dialogue, the Government should "cease prosecuting victims of forced labour or their representatives and instead take action against the perpetrators".

9. The Committee assumes and expects these positive expressions by the Government to have been made in good faith. As with other ILO bodies, it is concerned that the words should be followed by action and that the credibility and commitment of the Government is best demonstrated by taking the action which has previously been specified by the Commission of Inquiry and this Committee and more recently the Governing Body.

III. Addressing the recommendations of the Commission of Inquiry

10. In view of the extent of the comments which have taken place in each of the ILO bodies since the Commission of Inquiry, the Committee considers it important to set out with absolute clarity the matters that the Government needs to address as a consequence of the Commission of Inquiry.

(1) *That the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Convention*

11. In its observation of 2001, the Committee noted that the Village Act and the Towns Act still needed to be amended, and this remains the position of the Committee. At the same time, the Committee accepted that an “Order directing not to exercise powers under certain provisions of the Towns Act, 1907, and the Village Act, 1908”, Order No. 1/99, as modified by an “Order Supplementing Order No. 1/99”, dated 27 October 2000, could provide a statutory basis for ensuring compliance with the Convention in practice. However, the Committee required that bona fide effect be given to the Orders by the local authorities and by civilian and military officers empowered to requisition or assist with requisition under the Acts.

12. As referred to above, the Committee indicated that this required two things:

- issuing specific and concrete instructions to the civilian and military authorities;
- ensuring that the prohibition of forced labour is given wide publicity.

Issuing specific and concrete instructions to the civilian and military authorities

13. On this topic the Committee notes the following information supplied by the Government:

- The translated text of an instruction issued by the Myanmar police force of the Ministry of Home Affairs, No. 1002(23)/202/Oo 4, dated 26 May 2005, which refers to Order No. 1/99 and to its Supplementing Order. The English translation of this instruction states: “As requisition of forced labour is declared unlawful and subject to legislative action, all regional authorities, armed forces personnel, police force personnel and other civilian authorities are prohibited from exacting forced labour”. It states further that, “Police force personnel are instructed ... to strictly abide by the Orders [No. 1/99 and its Supplementing Order]”.
- The translated text of an “Additional Instruction” issued by the Department of General Administration of the Ministry of Home Affairs, No. 200/108/Oo, dated 2 June 2005, which supplements Instruction No. 1/2004, dated 19 August 2004, of the Department of General Administration. The supplemental instruction specifies that the prohibition on the requisition of forced labour under Instruction No. 1/2004 applies to construction works (motor roads, railroads, construction of embankments/dykes, and other works for national or regional infrastructure projects), and also to clearing neighbourhoods and other works for rural and urban areas. It also instructs officials “not to collect or demand money” without consent.
- A reference to several new instructions issued in 2004 and 2005 by the Ministry of Home Affairs: No. Pa Hta Ya (Ah Hta Au)/Oo-3 dated 12 December 2004 (on the requisitioning of forced labour), and by the Department of General Administration under the Ministry of Home Affairs: No. 100/108-1/Oo 1, dated 18 January 2005 (investigating complaints of forced labour) and No. 100/108-1/Oo 1 dated 10 February 2005 (orders on prohibition of requisitioning).
- A reference to letter No. 31 Ba (Na Nga Kha-2) 2000 (2), dated 11 July 2000, issued by the Minister’s Offices of the Ministry of Defence; and letter No. 1865/18/Oo (3) dated 15 May 1999; letter No. 1865/15/Oo (3) dated 6 November 2000; and telegram No. (55-Oo) which were issued by the offices of the Commander-in-Chief (army).
- A reference to instructions issued by the Yangon Military Command to the divisions, strategic commands, regiments, and units “to strictly abide by the law”.
- A reference to letter No. 18-3/11 Oo, dated 10 November

2000, which ordered that “a complete record of discussions” be submitted to the Yangon Military Command. The Government states that “at the regimental level, the organizing committee had explained the respective law to the platoon level officers and other ranks”, and that the latter “were also required to sign that they understood the orders”. The Government states that these records were submitted to the Command Headquarters which, in turn, reported this information to the Commander-in-Chief (army). “together with the relevant documents” that Order 1/99 and its Supplementing Order “had already been explained down to the lowest level”.

- A reference to “discussions ... made in in-service organizing committee meetings”.
- A reference to an instruction concerning the representative of the Ministry of Defence on the Convention No. 29 Implementation Committee, issued by the office of the Commander-in-Chief (army) in letter No. 4/305/3 (Kha) 18/ Oo 1 dated 27 November 2002.

14. The Committee notes the texts and references to instructions and letters referred to above. The Committee acknowledges that these communications appear to be in part a response to the previous Committee requests that instructions be transmitted to authorities in the military indicating that forced labour has been declared unlawful in Myanmar. However, the Committee has been given minimal, and in most instances no information, as to the content of the communications. This is a matter of real concern as the Committee has previously expressed that clear and effectively conveyed instructions are required to indicate the kinds of practices that constitute forced labour and for which the requisitioning of labour is prohibited, as well as the manner in which the same tasks can be performed without use of forced labour. The Committee has in a previous observation enumerated a number of tasks and practices requiring identification as closely related with the exaction of forced labour, namely:

- portering for the military (or other military/paramilitary groups, for military campaigns or regular patrols);
- construction or repair of military camps/facilities;
- other support for camps (guides, messengers, cooks, cleaners, etc.);
- income-generation by individuals or groups (including work in army-owned agricultural and industrial projects);
- national or local infrastructure projects (including roads, railways, dams, etc.);
- cleaning/beautification of rural or urban areas;
- the supply of materials or provisions of any kind, which must be prohibited in the same way as demands for money (except where due to the State or to a municipal authority under the relevant legislation) since, in practice, demands by the military for money or services are often interchangeable.

15. The starting point for the eradication of forced labour is to give very clear and concrete instructions to the authorities of the kinds of practices that constitute forced labour. The combination of the lack of information and the one example of the content of one communication (namely, the Additional Instruction No. 200/108/Oo of 2 June 2005) suggests that this does not appear to have been done. It does not appear to the Committee to be a difficult exercise to construct the content of the written communication which would take account of these concerns and include all of the above elements.

16. *Having regard to the Government’s expression of preparedness to continue cooperation with the ILO, the Committee suggests that the construction of such communications to implement the Committee concerns and thereby avoiding continuing repetition of this point by the Committee, could be the topic of such a cooperation. This could for example be done through the Liaison Officer a.i. or some other similar ILO liaison. The Committee asks that in its next report the Government supply information about the measures it*

has taken on this point, and that it also supply copies of the precise texts of the letters and instructions to which it has referred, and in addition a translated version of each.

(2) *Ensuring that the prohibition of forced labour is given wide publicity*

17. On this topic, the Committee notes that the Government, in its latest report (Annex C), refers to the following:

- Letters No. 31, No. 1865/18/Oo (3) and No. 1865/15/Oo (3) and telegram No. (55-Oo), referred to specifically above, were issued by the offices of the Commander-in-Chief (army) and “were also transmitted to all the division command headquarters to thoroughly and clearly explain and direct all Tatmadawmen, strictly not to use forced labour and requisition of labour”.
- A series of “briefings” were carried out between 1999 and 2004 in 14 States and Divisions at the district, township, village and ward levels by “responsible officials” from the Department of General Administration, and which involved “explanations” of Order No. 1/99 and its Supplementing Order.
- A table of data that purports to show the number of attendees at these briefings: a total of 21,505 persons attending 65 district-level briefings; a total of 240,500 persons at five briefings in each of 325 townships; a total of 263,427 persons attending single briefings in 1,648 wards and villages; and an overall total attendance of 525,432 persons at 18,172 briefings.
- A series of two-day “awareness-raising” workshops on the implementation of Convention No. 29, organized by field observation teams, and which it says were held between May and December 2004.

18. The Committee acknowledges that, accepting the information supplied by the Government at face value, efforts appear to have been made by the Government to transmit information about the fact that forced labour has been declared unlawful in Myanmar. However, as with the communications referred to above, the Committee has been given no information as to the content of the briefings and workshops. This again is a matter of real concern, as the Committee has no confidence that the briefings and workshops have been effective in conveying the information. As previously expressed, these workshops and briefings need to clearly and effectively convey instructions about the kinds of practices that constitute forced labour and for which the requisitioning of labour is prohibited, as well as the manner in which the same tasks can be performed without use of forced labour. If the trouble has been taken to undertake activities then again, it does not appear to the Committee to be a difficult exercise to construct the content of the briefings and workshops to take account of these concerns.

19. *The Committee suggests that the construction of such communications to address its concerns, thereby avoiding continuing repetition of this point by the Committee, could be a topic to be pursued in the framework of the cooperation with the ILO. The Committee asks the Government in its next report to supply information which describes the content of the communications in the briefings and workshops on the prohibition of forced labour and copies of any material or documents provided for such briefings or workshops. In addition, having regard to the fact that the Liaison Officer a.i., has had an opportunity to attend one of these events in the past, the Committee requests that the Liaison Officer a.i. be informed in advance when briefings or workshops are to be held and to give him an opportunity to attend such events if he is able. Such access would demonstrate in a real way the commitment of the Government to the overall objective of the elimination of forced labour in Myanmar.*

(3) *Providing for the budgeting of adequate means for the replacement of forced or unpaid labour*

20. In its recommendations, the Commission of Inquiry emphasized the need to budget for adequate means to hire paid wage labour for the public activities which are today based on forced and unpaid labour. In its report, the High-Level Team (2001) stated that it had received no information allowing it to conclude that the authorities had indeed provided for any real substitute for the cost-free forced labour imposed to support the military or public works projects.

21. In its previous observations, the Committee pursued the matter and sought to obtain concrete evidence that adequate means are budgeted to hire voluntary paid labour. The Government in response has reiterated its previous statements according to which there is always a budget allotment for each and every project, with allocations which include the cost of material and labour. The Committee observed, however, that in practice forced labour continued to be imposed in many parts of the country, in particular in those areas with a heavy presence of the army, and that the budgetary allocations that may exist were not adequate to make recourse to forced labour unnecessary.

22. In its latest report, the Government states that it has issued instructions to the various ministries to provide an estimate of the labour costs of their respective projects. The Committee also notes a reference to “a budget allotment” set up by the Myanmar police force for the payment of wages of workers “called upon to contribute labour on an ad-hoc basis” (Appendix A of the Government’s report).

23. *While noting these matters, the Committee indicates that, in view of the widespread nature of the practices of forced labour which have been the ongoing concern of the Commission of Inquiry and each of the ILO bodies, including this Committee up to the present time, the Committee once again asks the Government in its next report to provide detailed information about the measures taken to budget for adequate means for the replacement of forced or unpaid labour. Again this information would demonstrate in a real way the commitment of the Government to the overall objective of the elimination of forced labour in Myanmar.*

(4) *Ensuring the enforcement of the prohibition of forced labour-monitoring machinery*

24. The Committee previously noted that measures taken by the Government to ensure the enforcement of the prohibition of forced labour have included the establishment of seven field observation teams empowered to carry out investigations into allegations of the use of forced labour, the findings of which are submitted to the Convention No. 29 Implementation Committee.

25. The Committee also notes the following matters:

- the report of the Liaison Officer a.i. to the Governing Body in March 2005 that, of the 46 cases transmitted to the Convention No. 29 Implementation Committee in 2004, in only five cases were allegations of forced labour upheld (GB.292/7/2, paragraph 11);
- that the view of the Liaison Officer a.i. is that “the mechanism put into place by the authorities for addressing forced labour allegations, that of sending an ad hoc team composed of senior government officials to the region to conduct an investigation, is not well suited to dealing with the increasing numbers of cases. As the number of allegations of forced labour has increased, they have tended to be investigated internally by the General Administration Department or by the Ministry of Defence” (GB.292/7/2, paragraph 12);
- that the Liaison Officer a.i. received new complaints of forced labour and the requisition of forced labour in December 2004, which led that same month to five

interventions transmitted to the Convention No. 29 Implementation Committee, and that as of 18 February 2005 the Liaison Officer a.i. had received 14 new cases, leading to five additional interventions in February 2005 (GB.292/7/2, paragraphs 9 and 13);

- that, according to an updated report submitted to the Conference Committee on the Application of Standards in June 2005, the Liaison Officer a.i. made interventions on five additional cases in March and April of 2005 (ILC, 93rd Session, C.App./D.6/D, paragraph 11);
- that the Government's latest report (Annex F) and the reports of the Liaison Officer a.i. (ILC, 93rd Session, C.App./D.6/D.III, paragraph 13; GB.292/7/2, paragraph 14; GB.292/7/2(Add.), paragraph 4) in relation to the series of responses in March, April, and May of 2005 from the Convention No. 29 Implementation Committee to the interventions of the Liaison Officer a.i., indicate that in only three cases did investigations by field observation teams lead to prosecution and punishment of local village officials. Further, that in every case involving the armed forces or police officials, either the allegations were reported to have proved groundless following internal investigations or else no information was provided;
- that the report of the Liaison Officer a.i. to the Conference Committee on the Application of Standards in June 2005 (C.App./D.6/D.III, paragraphs 12 and 14), as well as the intervention of the Government representative in the Conference Committee in June 2005, indicate that the Government has begun to systematically prosecute victims of forced labour who lodge what the Government considers to be "false complaints", and that, in light of this, the ILO instructed the Liaison Officer a.i. to temporarily suspend dealing with new allegations of forced labour;
- that on 1 March 2005 the Office of the Commander-in-Chief (army) established a "focal point" in the army headed by a Deputy Adjutant-General and assisted by seven grade 1 staff officers, which the Government indicated to the Liaison Officer a.i. was intended "to facilitate cooperation with the ILO on cases [of forced labour] concerning the military" (GB.292/7/2(Add.), paragraph 3). Two of the interventions of the Liaison Officer a.i. in April 2005, which concerned allegations of forced recruitment of minors into the army, were addressed to the new army focal point (C.App./D.6/D.III, paragraph 11). The Committee also notes the Government's indication in its report that the army focal point had thus far investigated three of five cases of alleged forced recruitment, and that following investigation one case was rejected while in the two others, "two persons were returned to the care of their parents", with no apparent prosecution of those responsible for the forced recruitment. The Government indicated that investigations had been initiated on the two other forced recruitment cases, and that the single case involving an allegation of forced labour by the army was under internal investigation and that the results would be forwarded to the Liaison Officer a.i.;
- the Government's statement in its latest report that among the 50 complaints of forced labour or forced recruitment in 2004, 23 involved the armed forces, and its apparent indication that in two of the 15 cases of alleged forced recruitment by the army, "action had ... been taken against those who enforced recruitment against the existing laws and regulations";
- the Government's indications in its report and the tables attached to its report (Annexes E and G) that purport to show that "action had been taken" against officers or other members of the military in 17 cases of forced recruitment in 2002 and in five cases of forced labour in 2003.

26. Taking into account the above matters, the Committee is extremely concerned that the assessments made by the field observation teams and the Convention No. 29 Implementation Committee, and those made thus far by the army focal point,

appear to lack independence and credibility. The Committee notes with concern from a report submitted for discussion to the 294th Session of the Governing Body in November 2005 (GB.294/6/2) that "recent developments have seriously undermined the ability of the Liaison Officer a.i. to perform his functions" (paragraph 7), and that, while he has continued to receive complaints from victims or their representatives concerning ongoing forced labour or forced recruitment, he is unable to refer these cases to the competent authorities as he did in the past, in part because of the Government's policy of prosecuting victims for allegedly false complaints of forced labour (paragraph 8).

27. The Committee fully concurs with the view expressed by the Governing Body that it is imperative that the Government should cease prosecuting persons who complain that they are victims of forced labour and instead take increased action to prosecute perpetrators of forced labour. This requires the Government to take the necessary measures to develop credible, fair and more effective procedures for investigating allegations of forced labour, in particular those involving the army. The Committee on this issue also requests the Government to cooperate more closely with the Liaison Officer a.i. and the Office. The Committee reiterates the importance of instituting a mechanism such as the Facilitator as a credible channel for the treatment of complaints that protects the victims and leads to the prosecution, punishment and imposition of sanctions against those responsible for the exaction of forced labour.

IV. Final remarks

28. Apart from the communication dated 31 August 2005 from the ICFTU, to which the Committee has previously referred, the Committee notes the general evaluation by the Liaison Officer a.i. of the forced labour situation, on the basis of all the information available to him, which "continues to be ... that although there have been some improvements since the Commission of Inquiry, the practice remains widespread throughout the country, and is particularly serious in border areas where there is a large presence of the army" (February 2005 report of the Liaison Officer a.i., document GB.292/7/2, paragraph 8).

29. The Committee also notes the conclusions concerning Myanmar, adopted by the Governing Body at its 294th Session in November 2005. In its conclusions, the Governing Body indicated that there was a general feeling of grave concern about the degradation of the situation, and that members of the Governing Body were particularly concerned and critical about the recent threats which had been made against the Liaison Officer a.i. as well as the former Acting Liaison Officer and Informal Facilitator, and which resulted in paralysing his capacity to discharge his responsibilities. A number of Members were of the view that the only way which was left to the ILO, in light of the further very disturbing developments which had taken place, was to enable the Conference itself to revisit the measures adopted in the 2000 ILC resolution under article 33 of the Constitution, by placing a specific item for that purpose on the 2006 agenda in order to review and, as appropriate, to strengthen them. However, taking into account the willingness expressed by the representative of the Government to cooperate and the fact that any step relating to action by the Conference would in any case need to be reconfirmed at its next session, the Governing Body, among other things, requested the Government at various levels, including the senior leadership, to take advantage of the time available prior to March 2006 to resume an effective dialogue with the International Labour Office.

30. The Committee fully concurs with the view expressed by the Governing Body and trusts that the implementation of the very explicit practical requests made by this Committee to the Government, will demonstrate the true commitment of the Government to resolve this long running problem of forced labour to which there is a solution.

[The Government is asked to supply full particulars to the Conference at its 95th Session.]

Document D.5

C. Brief summary of developments since June 2005

1. In the conclusions it adopted last year at the close of the special sitting concerning the application by Myanmar of the Forced Labour Convention, 1930 (No. 29), the Committee on the Application of Standards noted that the recommendations of the Commission of Inquiry had still not been implemented, and that the extent of forced labour had not significantly changed in most areas, including ethnic areas, and its worst forms continued. The Committee expressed its strongest condemnation and urged the Government to demonstrate its stated determination to eliminate forced labour and to take the necessary measures to ensure compliance with the Convention. The Committee deplored the treatment of the very High-Level Team, and was alarmed by the Government's stated intention to prosecute people it accused of lodging complaints of forced labour. The Committee's general view was that governments, employers and workers, as well as other international organizations, should now activate and intensify the review of their relations with Myanmar that they were called upon to make under the 2000 resolution, including as regards foreign direct investment in all its various forms, and relations with state- or military-owned enterprises in Myanmar. The Committee noted that a number of serious issues needed to be urgently resolved: (i) the Government should give clear assurances that no action would be taken against persons lodging complaints of forced labour, or their representatives; (ii) a number of serious allegations of forced labour that were still outstanding, including those concerning the army, should be resolved in a credible manner; (iii) the ILO's presence in Myanmar should be strengthened and the Government should issue the necessary visas without delay; and (iv) the freedom of movement of the Liaison Officer should be fully respected. The following brief overview of the main developments since its last session should be of interest to the Committee.
2. At its 294th Session (November 2005) the Governing Body had before it an update on further action that had been taken pursuant to the resolution adopted by the Conference in 2000,¹ as well as an update on developments in the situation since June 2005.² This included information on the prosecution of two persons (Aye Myint and Su Su Nwe) who had lodged complaints of forced labour with the ILO and with the authorities. Information was also provided on a series of death threats made against the Liaison Officer a.i. and subsequent indications from the Myanmar authorities that they intended to withdraw from the ILO. There had been no resolution of any of the serious issues identified by the Committee on the Application of Standards in June 2005.
3. The Governing Body expressed its grave concern about the degradation in the situation. It also firmly rejected what appeared to be attempts to influence the ILO's position through various forms of pressure and intimidation, in contradiction with the commitment that the authorities had consistently pledged to the eradication of forced labour in cooperation with the Organization. Members of the Governing Body were particularly concerned and critical about the threats which had been made against the Liaison Officer a.i. as well as against Mr. de Riedmatten (former acting Liaison Officer and Informal Facilitator). The Myanmar authorities were urgently requested to guarantee the full exercise of the Liaison Officer's functions, and were also earnestly warned about the responsibility they would

¹ Docs. GB.294/6/1 and GB.294/6/1(Add.).

² Docs. GB.294/6/2 and GB.294/6/2(Add.).

have to bear under international law for any consequence that could result from their attitude.

4. A number of members of the Governing Body were of the view that the only option left to the Organization was to enable the Conference itself to revisit the measures adopted in 2000 under article 33 of the Constitution, by placing a specific item for that purpose on its 2006 agenda. However, taking into account the willingness expressed by the Myanmar Ambassador to cooperate and the fact that any step relating to action by the Conference would in any case need to be reconfirmed by the Governing Body at its March 2006 session, the Governing Body (i) requested the Government at various levels, including the senior leadership, to take advantage of the time available until March 2006 to resume an effective dialogue with the Office; (ii) understood, however, that to be meaningful any future dialogue should be based on the mandate provided by the conclusions of the Committee on the Application of Standards in 2005; (iii) indicated that the dialogue would also have to address the issues and cases raised in its own debate and in the present conclusions; and (iv) indicated that the authorities should, in the meantime, cease prosecuting victims of forced labour or their representatives and instead should take action against the perpetrators.
5. At its 295th Session (March 2006) the Governing Body had before it a report detailing discussions that had been held with the Myanmar Ambassador in Geneva and with the authorities during an ILO mission to Yangon in early March.³ Although the threats against the Liaison Officer had ceased and the Government had stated its intention to cooperate with the ILO rather than withdraw from the Organization, no progress was made on the outstanding issues. In particular, no agreement could be reached as regards the establishment of a credible system for addressing complaints of forced labour, and the authorities reaffirmed their determination to prosecute anyone lodging what they considered to be a “false” complaint of forced labour.
6. The overwhelming reaction of the Governing Body was one of profound concern. In particular, the issue of prosecutions represented a further deterioration in the situation which seriously undermined any prospect of progress, and was in direct contradiction with the conclusions adopted at the International Labour Conference in 2005. The Myanmar authorities should cease prosecuting such individuals and should release those already imprisoned for such activities, including Su Su Nwe and Aye Myint. Under these circumstances, the Workers moved that, as previously envisaged in November 2005, an item should be placed on the agenda of the 95th Session of the International Labour Conference “to review what further action could be taken by the ILO in accordance with its Constitution in order: (i) to effectively secure Myanmar’s compliance with the recommendations of the Commission of Inquiry; and (ii) to ensure that no action is taken against complainants or their representatives”. This received the general support of the Employers and many Governments, and was thus adopted. For the purpose of the review, the Office was instructed to prepare an analysis of all relevant options which the Conference could consider taking to ensure compliance with the Convention or to draw in any other appropriate way the consequences of the situation, taking into consideration a number of specific proposals that had been made in the course of the discussion (this analysis is before the Conference as document *Provisional Record* No. 2, 95th Session, ILC).
7. Under the additional item of its agenda the Conference will thus review further action to be taken in accordance with the ILO Constitution.

³ Doc. GB.295/7.

D. Latest developments since March 2006

8. On his return to Yangon following the Governing Body session, the Liaison Officer a.i. requested a meeting with the Minister for Labour to brief him on the discussions. The Minister indicated that he was busy during that period and not available to come to Yangon from the new capital at Naypyitaw. The Liaison Officer a.i. met instead with the Deputy Minister on 10 April.⁴ He underlined that the Governing Body's main concern had been the prosecution of complainants, which was seen as undermining the Government's assurances on continued cooperation with the ILO. The Deputy Minister explained that since the international community put pressure on Myanmar as a result of false allegations, it was necessary for the Government to take action against those responsible for making such allegations. He reiterated that Myanmar had cooperated all along with the ILO, and would continue to do so. He noted, however, that continued pressure on Myanmar as a result of false information from politically motivated opponents of the Government made it very hard to cooperate fully with the ILO.
9. Over the last year the Liaison Officer a.i. has been permitted to travel independently in the country, on a case-by-case basis. At the same time, it has been made clear by the authorities that they consider these case-by-case agreements to be exceptions to the procedures governing the travel of diplomats and United Nations officials, which (notwithstanding the previous understanding on freedom of movement) they take to also apply to the Liaison Officer. Although he has been able to travel to the places he has wished, the Liaison Officer a.i. considers that in a context where the authorities are determined to pursue a policy of prosecuting persons involved in making complaints of forced labour, it is not appropriate for him to put people at risk of possible legal action by contacting them during his travel, nor is it reasonable to expect them to speak freely to him under such circumstances. For this reason, the Liaison Officer a.i. has chosen not to travel in the country while these concerns remain unaddressed.
10. The Liaison Officer a.i. continues to receive allegations of forced labour. Although not in a position to verify the details himself, he is particularly concerned about persistent and detailed accounts – from sources both within Myanmar and across the border in Thailand⁵ – of forced labour being exacted by the army over the last few months in the context of military operations in northern Kayin (Karen) State.⁶ In addition to villagers being forced to accompany army columns as porters (along with convicts from prisons), owners of bullock carts were reportedly forced to transport food and other supplies to front-line troops.
11. At the time this report was finalized, there had been no further developments in the appeals processes of Su Su Nwe or Aye Myint. As regards the prosecution of the three persons in Aunglan township, the Liaison Officer a.i. has learned that on 19 May the township court ordered that one of the three persons (Aung Than Tun) be arrested and serve a two-year prison term. No further details of the order, or of the final judgement in the case (if any), are known at this time.

⁴ Also present at the meeting was the new Director-General of the Department of Labour, Col. Chit Shein.

⁵ To supplement and cross-check the information that he was receiving within Myanmar, the Liaison Officer a.i. travelled to Bangkok and Chiang Mai in May to meet with persons and organizations having information on the situation.

⁶ More specifically, allegations have been received concerning Thandaung township (Kayin State) and Shwekyin township (Bago Division near the border with Kayin State).

**FOR DISCUSSION****Document D.6****E. Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)****Further action taken pursuant to the resolution adopted in 2000 by the International Labour Conference**

1. The resolution adopted in 2000 by the International Labour Conference under article 33 of the Constitution called on the Organization's constituents to "review, in the light of the conclusions of the Commission of Inquiry, the relations that they may have with [Myanmar] and take appropriate measures to ensure that [Myanmar] cannot take advantage of such relations to perpetuate or extend the system of forced or compulsory labour referred to by the Commission of Inquiry, and to contribute as far as possible to the implementation of its recommendations". A similar call was made to international organizations. The resolution invited the Director-General to report to the Governing Body on the outcome of the measures undertaken by the member States and international organizations.
2. An interim report was provided to the March 2001 session of the Governing Body which summarized the initial responses received by the Director-General.¹ The replies from the Organization's constituents indicated that in general they had adopted what was then described as a "wait-and-see" approach, in the light of the ongoing dialogue which was taking place between the ILO and the Myanmar authorities and which seemed to have the potential of achieving positive results. However, as the momentum in the process of dialogue and cooperation subsequently slowed, there were increasingly calls to return to the application of the measures adopted under the 2000 resolution.² In reports to the Governing Body in November 2004 and March 2005 the Office provided some details of

¹ Document GB.280/6.

² These calls were made in the debates in the Governing Body at its 286th Session (March 2003), 288th Session (November 2003) and 289th Session (March 2004), and were reflected in the conclusions adopted at those sessions. Similar calls were also made in the Committee on the Application of Standards at the 92nd Session (June 2004) of the International Labour Conference.

which it was aware concerning further action taken by constituents under the 2000 resolution.³

3. In the conclusions adopted at its March 2005 session, the Governing Body *inter alia* noted “the growing feeling ... that the ‘wait-and-see’ attitude that prevailed among members, following the initiation of meaningful dialogue since 2001, appears to have lost its *raison d’être* and cannot continue” and indicated that its conclusions should be transmitted to all those to whom the 2000 resolution was addressed. Accordingly, the Director-General wrote on 21 April 2005 to the member States of the ILO, drawing these conclusions to their attention and indicating that any relevant information they may wish to provide would be included in a full report to the November session of the Governing Body. The Director-General also requested that the contents of his letter be brought to the attention of the employers’ and workers’ organizations of the respective countries. Similar letters were sent, also on 21 April, to international organizations⁴ and to the United Nations Economic and Social Council.
4. In the conclusions adopted at the end of its special sitting in June 2005, the Committee on the Application of Standards of the International Labour Conference *inter alia* indicated that:

... In the view of the Committee, recent developments had further confirmed the conclusions of the Governing Body at its March 2005 session that the “wait-and-see” attitude that prevailed among most members since 2001 had lost its *raison d’être* and could not continue. The Committee’s general view was that Governments, Employers and Workers, as well as other international organizations, should now activate and intensify the review of their relations with Myanmar that they were called upon to make under the 2000 resolution, and to urgently take the appropriate actions, including as regards foreign direct investment in all its various forms, and relations with state- or military-owned enterprises in Myanmar. In accordance with the conclusions of the Governing Body in March, the present conclusions should be transmitted to all those to whom the 2000 resolution was addressed. The results of such reviews should be fully reported to the Director-General so that the Governing Body could have a complete picture in November. As regards the Economic and Social Council (ECOSOC), it should be requested to reactivate its consideration of the item placed on its agenda in 2001 in this regard, and Members in ECOSOC should be ready to support such a move. ...

Accordingly, the Director-General wrote on 15 July 2005 to member States and on 22 July 2005 to international organizations (the texts of these letters are reproduced in Appendices I and II, respectively). As regards the question of the reactivation by ECOSOC of its consideration of this matter, the Director-General wrote on 30 June to the Secretary-General of the United Nations (this letter is reproduced in Appendix III).

³ Documents GB.291/5/2 and GB.292/7/1.

⁴ Letters were sent to the following 63 international organizations: African Development Bank, African Union, ALADI – LAIA, Andean Community, Arab Labour Organization, ASEAN, Asian Development Bank, Asian Productivity Organization, Caribbean Development Bank, CARICOM, CERN, Council of Europe, CRADAT, Economic and Social Commission for Asia and the Pacific, Economic and Social Commission for Western Asia, Economic Commission for Africa, Economic Commission for Latin America and the Caribbean, ECOWAS, European Bank for Reconstruction and Development, European Commission, FAO, IAEA, ICAO, IFAD, IMF, IMO, Inter-American Development Bank, Inter-Parliamentary Union, IOM, ITU, League of Arab States, Nordic Council, OECD, OHCHR, OIC, Organisation internationale de la Francophonie, Organization of American States, PAHO, SAARC, SELA, United Nations, UN/DESA Population Division, UNAIDS, UNCTAD, UNDP, UNECE, UNEP, UNESCO, UNFPA, UNHCR, UNICEF, UNIDO, UNIFEM, UNODC, UNRWA, Universal Postal Union, WFP, WHO, WIPO, WMO, World Bank, World Tourism Organization, and WTO.

5. The following replies to the Director-General's letters of April and July had been received at the time this document was finalized.

Replies from member States

6. In letters dated 23 September and 28 October 2005 the Government of *Hungary* indicated that it and the Hungarian social partners had been following the Government of Myanmar's violation of the forced labour Convention for several years and fully supported the efforts of the ILO in this area. It had therefore immediately informed the social partners of the contents of the Director-General's letter of 15 July 2005 and had held consultations on this matter. Hungary was deeply concerned by the credible reports on the use of forced labour in Myanmar. The Government fully subscribed to the European Union's Common Position. It also wished to reaffirm its strong support for the ILO Liaison Officer in Myanmar and for maintaining a presence of the ILO that was able to operate effectively and without interference, including freedom of movement for the Liaison Officer. It was its firm view that anyone bringing complaints of forced labour to the ILO should be free from intimidation or punishment. It also strongly condemned the orchestrated campaign of death threats against the Liaison Officer.
7. In a letter dated 5 October 2005, the Government of *Switzerland* indicated that there had been consultations with the relevant parts of the federal administration, the Swiss central organizations of employers and workers, as well as the federal tripartite committee for ILO questions. The Ministry of Foreign Affairs had supported the conclusions of the 292nd Session of the Governing Body, and the Government was to study how the strengthened sanctions adopted by the European Union would be incorporated in the measures by Switzerland. On the one hand, the Government reaffirmed the desire for the continuation of a fruitful dialogue; on the other hand, after years of unmet expectations, violations of the most fundamental rights should be sanctioned through suitable means. The Government also reported that the Union of Swiss Employers (UPS) had confirmed its support of the measures adopted by the Swiss Federation on 2 October 2000 regarding Myanmar and considered that, through them, Switzerland had already done what was necessary in this matter.
8. In a letter dated 10 October 2005 the Government of *Mauritius* indicated that the content of the Director-General's letter had been brought to the attention of respective employers' and workers' organizations with a request that they provide any relevant information either through the Government or directly to the ILO. The Mauritius Trade Union Congress had indicated that it had no observation to offer. In addition, the Government indicated that it did not in any way whatsoever condone the alleged malpractices perpetrated by the Government of Myanmar in contravention of the forced labour Convention.
9. In a letter dated 21 October 2005, the Government of *Austria* provided the following information. In relation to Austria's overall trade, imports from and exports to Myanmar in 2004 each represented 0.01 per cent (€5.3 million and €10.7 million euros, respectively). There were currently no direct flight connections between Austria and Myanmar. The Austrian trade unions had demanded that the one existing connection be discontinued, and before that was done – among other things for economic reasons – there were discussions between the unions, the representatives of the employers and representatives of the relevant international trade union bodies. Since the International Labour Conference in June 2005 there have been tripartite consultations which have discussed making Austrian companies, which have dealings with Myanmar, aware of the violations of ILO standards by Myanmar. The Organization of Austrian Chambers of Commerce had taken the initiative of visiting Austrian companies operating in Myanmar; no violation of ILO rules could be established. An annex was also included which provided a history and summary

of current European Union measures against Myanmar (reproduced in Appendix IV). The content of the EU Common Position was also highlighted by the Government of *Belgium* in a letter dated 7 November 2005. The Government of Belgium further indicated that it was paying close attention to the issue of forced labour in Myanmar and expressed its strong support for the work of the ILO in the country.

10. In a letter dated 24 October 2005 the Government of *Sweden* indicated that it had brought the matter to the attention of the representative workers' and employers' organizations in Sweden in order that they might take appropriate action, and enclosing a response from the Swedish Trade Union Confederation.⁵ The Government indicated that Sweden's relations with Myanmar were of limited extent. Diplomatic relations were conducted through Sweden's accredited embassy in Bangkok. Economic relations were practically negligible. No Swedish direct investments in Myanmar were recorded between 1995 and the second quarter of 2005. In terms of Sweden's overall trade, imports from Myanmar in the first half of 2005 represented 0.004 per cent (SEK14.7 million), and exports to Myanmar represented 0.0008 per cent (SEK0.4 million). The Swedish Government had officially informed Swedish importers of the 2000 resolution and the recommendations of the Commission of Inquiry. The Swedish Government has, especially since 1990, strongly and explicitly urged the return of democracy to Myanmar and a strengthening of the respect for human rights, including the elimination of forced labour. Since 1996 these efforts had been conducted through the European Union Common Position on Myanmar. In the preamble to this Common Position, reference was made to the practice of forced labour as one of the reasons for the sanctions (see Appendix IV for a summary of the Common Position). In 1997 the European Union had also excluded Myanmar from access to trade preferences as a result of an investigation into human rights abuses, focused on forced labour. This decision was recently reviewed and the European Union found no reason to lift it in view of the credible reports of forced labour, in particular by the military. In the course of its Presidency of the European Union, Sweden had led a European Union Troika mission to Myanmar in January 2001, which had inter alia urged Myanmar to re-enter dialogue with the ILO with a view to eradicating forced labour. Sweden supported the 2000 resolution of the International Labour Conference and stood ready to promote, within the European Union, and in conformity with the provisions of the WTO, further measures should the authorities in Myanmar fail to take the necessary steps to end the practice of forced labour. Sweden underlined that it was of utmost importance that the Government of Myanmar re-engaged, as soon as possible, in a dialogue with the ILO, and strongly supported the ILO Liaison Officer in Myanmar, operating effectively and without hindrance. Anyone bringing complaints of forced labour should be free from intimidation or punishment.
11. In a letter dated 27 October 2005, the Government of *Denmark* indicated that it fully supported the 2000 resolution of the International Labour Conference and that it shared the view that the "wait-and-see" approach unfortunately appeared to have produced too few results. It had brought the Director-General's letter to the attention of the Danish employers' and workers' organizations and distributed the letter and its appendices to the tripartite members of the permanent Danish ILO committee. In a letter to the Committee, the Danish Government recommended that the committee reiterate its 2001 appeal to Danish companies to review any cooperation with Myanmar in the light of the situation in the country. All social partners in the committee had informed the Government that they at present had no relations with Myanmar and that they, like the Government, supported the reiteration of the 2001 recommendation to Danish companies. In an annex giving details of Denmark's and the European Union's relations with Myanmar, it was indicated inter alia that Denmark's trade with Myanmar was limited and had declined in recent years. Imports from Myanmar had decreased by 24 per cent from 2003 to 2004 (from DKK108 million to

⁵ The content of this response is summarized in para. 18 below.

DKK82 million) and exports to Myanmar had declined from DKK7.3 million in 2003 to DKK7 million in 2004. The Danish Ministry of Foreign Affairs also advised Danes not to travel to Myanmar.

12. In a letter dated 28 October 2005, the Government of *Germany* indicated that Germany's trade with Myanmar was small. Imports were mainly textiles, wood and agricultural (fishery) products totalling €105 million in 2004. The value of exports was €20 million, mainly machinery and electrical and motor vehicle technology. German investments had stagnated over a number of years, and were at a level of around US\$15 million. No further investments have been made in the last years and, due to the political situation, export credits were not available. Germany ended its development cooperation with Myanmar after 1988-89 (earlier it had been the second largest donor after Japan). There were no bilateral agreements to prevent double taxation or for investment guarantees. German investors had gradually withdrawn from Myanmar, as the poor conditions for investment provided only very limited possibilities for profits. Tourism was a potential growth area which should be kept under review. Of the approximately 242,000 tourists who visited Myanmar in 2004, 14,000 (or 6 per cent) came from Germany. Germans were thus the largest group of European tourists to Myanmar. About 27 per cent of tourism came from Europe, 8 per cent from North America and 64 per cent from the Asia-Pacific region (including Australia). Myanmar participated also in some tourism promotion exhibitions abroad. Given the very limited engagement of German firms in the Myanmar market, the German Government could at the present time give no exact data on their actual involvement in Myanmar. About two dozen of the members of the "Ostasiatische Verein", which retained a small representation in Yangon, were active in Myanmar through offices, subsidiaries or joint ventures. These were mainly trading companies or transport or logistics suppliers, which generally would not be involved in the use of forced labour. The German companies in Myanmar were in activities which were not typical for any kind of forced labour. The small share and the kind of activities in which German companies were engaged in Myanmar were such that it did not seem to be sensible to try to influence German companies to further reduce their engagement. Germany continued to support the important work of the Liaison Officer in Myanmar. The ILO community should, as a whole and on a tripartite basis, continue to insist that Myanmar guarantee the security and the freedom of movement of the Liaison Officer.
13. In a communication dated 1 November 2005, the Government of the *Netherlands* provided a preliminary overview of its relations with Myanmar, indicating inter alia that as regards Myanmar the Netherlands pursued a policy of deterrence, discouraging economic activity in or with the country. This policy was an outgrowth of the June 2000 resolution by the ILO condemning the large-scale use of forced labour by the ruling military junta. The policy covered not only trade and investment, but also extended to the service sector, including tourism. Dutch businesses and individuals should be aware that various infrastructural or tourist facilities in Myanmar, in which they may invest or which they use as businesspeople or visitors (e.g. airports, roads, hotels), may have been built using forced labour. The Government further indicated that it was organizing a meeting of experts on Myanmar and that representatives from a number of companies doing business with Myanmar had also been invited. The purpose of the meeting was to facilitate the exchange of a broad range of information among central government, business and industry, NGOs, and trade unions in order to gain the most complete picture of possible Dutch-Myanmar relations, particularly as regards trade and investments. The meeting would also be an opportunity to explain the Dutch deterrence policy in greater depth and to urge companies to respect it. The results of the meeting would be incorporated into a report that would be presented to the ILO in early November.

14. In a letter dated 1 November 2005, the Government of the *United Kingdom* expressed its strong condemnation of the use of forced labour in Myanmar and its strong support for the work of the ILO in addressing this problem. It indicated that there were allegations reported by the ILO of forced labour in the production of commodities including farmed prawns and fish, as well as teak production, and that the United Kingdom was paying particular attention to these in relation to imported produce. It was also considering options in other related areas such as shipping. It was aware of various regulations that should provide a basis for inspection of conditions on board ships while in United Kingdom ports, and any non-compliance which would warrant detention in port. It would bear these regulations in mind in inspecting any Myanmar ships in United Kingdom ports. The Government further indicated that it was aware of plans by Indian and South Korean companies to construct a pipeline from Myanmar to India, and that in its role as Presidency of the EU would be reminding the Indian and South Korean Governments and the companies involved about the importance of ensuring that forced labour was not used in Myanmar in connection with this project. It also outlined the developments in the EU's Common Position on Myanmar due to concerns over human rights abuses including forced labour (see also Appendix IV for further information). It expressed its strong support for the Liaison Officer and unequivocally condemned the death threat campaign against him. It called on the Myanmar Government to take immediate action to halt this campaign and to enable him to travel freely throughout the country again. It also called on the authorities to facilitate a presence of the ILO which could operate effectively and without hindrance. It was essential that anyone bringing complaints of forced labour should be free from intimidation or punishment.
15. In a communication dated 3 November 2005, the Government of *Norway* provided information on its review of its relations with Myanmar. It indicated that it had for a long time been deeply concerned about the deteriorating situation in Burma and in particular the need for an effective implementation of the prohibition of forced labour. The Norwegian Government encouraged its citizens not to trade with, invest in or travel to Burma. It adhered to the framework of the EU Common Position on Myanmar (see Appendix IV for a summary). In addition to providing funds for humanitarian activities and peace, reconciliation and democracy projects in its bilateral contacts especially countries within ASEAN+3, it had focused on the need for national reconciliation, democratization and human rights in Myanmar. Norwegian trade relations with Myanmar were limited. Imports from Myanmar in 2004 totalled NOK 11.5 million, a slight decrease from 2003. The main commodity imported was teak. The Government also indicated that it had brought the Director-General's letter to the attention of the most representative workers' and employers' organizations of Norway as well as the tripartite Norwegian ILO Committee.
16. The Governments of *Iceland* and *Azerbaijan* provided information on steps that they were in the process of taking. In a letter dated 29 August 2005 the Minister of Social Affairs of *Iceland* stated that the promises made through the years by the spokesmen of the Government of Myanmar had proved to be worthless and he was sorry to say that the situation had become more serious for the general public in that country. It was also indicated that the Director-General's letter had been forwarded to the Ministry of Foreign Affairs of Iceland for consideration. In a letter dated 14 October 2005 the Government of *Azerbaijan* indicated that the matter had been submitted to the Cabinet and had also been brought to the attention of the national employers' and workers' organizations so that they could take any appropriate action and inform the ILO directly or through the Government.
17. The Governments of *Lebanon*, *Rwanda* and *Panama* indicated that they did not maintain relations with Myanmar. *Lebanon* and *Panama* also indicated that they had brought the content of the Director-General's letter to the attention of their national employers' and workers' organizations. *Lebanon* further added that according to the statistics at its disposal for the year 2004, no authorizations had been granted to any Myanmar nationals

to work in Lebanon. The Federation of Chambers of Commerce, Industry and Agriculture of Lebanon had also indicated that it had distributed the content of the Director-General's letter to its member chambers.

Replies from employers' and workers' organizations

18. In a letter dated 21 October 2005, the *Swedish Trade Union Confederation* indicated that the widespread practice of forced labour in Myanmar had been a major concern to the Confederation for many years. It had written several times in recent years to the Swedish Government, including most recently on 19 September 2005, requesting that strong measures be taken against Myanmar, including a ban on Swedish foreign direct investments, and that action to restrict trade with Myanmar be taken within the European Union context. The Confederation had also requested the Swedish Government to raise the matter of action against Myanmar with the United Nations, the World Trade Organization and other relevant international organizations. In response to the resolution adopted in 2000 by the International Labour Conference, the Confederation decided in February 2001 inter alia to request its affiliated trade union federations to investigate their respective sectors to ensure that no Swedish enterprises or public bodies had trade relations or investments in Myanmar and that no goods were imported from the country. On one occasion in 2002 one of the affiliates refused to agree to a temporary labour permit in Sweden in relation to a joint venture. Following the International Labour Conference in June 2005 the Confederation had once again requested its affiliates to conduct a review of their respective sectors and take action as appropriate. The Confederation had also taken steps to raise public awareness of the situation and to provide technical assistance to those struggling for freedom, democracy and human rights in Myanmar. The Office also received a copy of a letter dated 4 October 2005 from the *Swaziland Federation of Labour* to the Commissioner of Labour of Swaziland requesting that there be a tripartite discussion of Swaziland's position as regards the question of Myanmar.
19. In a communication dated 8 November 2005 the *AFL-CIO* (United States) reported that it had continued its supportive relationship with the Federation of Trade Unions-Burma (FTUB) as well as with various ethnic unions, especially on documenting forced labour in Myanmar and violations of other internationally recognized labour standards. The AFL-CIO had urged multinational enterprises such as AON, Chevron, Premier Oil and UNOCAL to cease their operations in the country. The AFL-CIO also recalled that it had called on the United States Government in 2000 to ban immediately all imports from Myanmar, at a time when the United States was one of its largest consumer markets. The United States Congress responded in 2003 by banning all imports from Myanmar, and the required annual renewal of the ban had taken place in 2004 and 2005. To the AFL-CIO's knowledge no other country had banned imports from Myanmar.
20. In addition to the above information from national workers' organizations, the Office also received a communication dated 7 November 2005 from the *International Confederation of Free Trade Unions* (ICFTU), on the actions that it had taken. The ICFTU noted that, in many cases, these actions were taken with the support and cooperation of regional and national workers' organizations. It indicated that in 2004 it had written to the State Peace and Development Council (SPDC) to protest at the death sentences passed on a number of individuals, including activists and leaders of the FTUB, for alleged contacts with the ILO. It had simultaneously called on its worldwide membership to take similar action. It had also taken steps to publicly denounce SPDC accusations that the FTUB had been involved in terrorist acts. It had also made various interventions with governments and the UN High Commissioner for Refugees to prevent possible forced repatriation of Myanmar migrant workers in view of the danger that they would be exposed to forced labour and/or other

violations of fundamental rights if returned to Myanmar. In 2003, 2004 and 2005, the ICFTU had submitted detailed information to the ILO Committee of Experts as regards the continued imposition of forced labour in Myanmar. Over the same period, it had also addressed the UN Commission on Human Rights on the issue, urging it to support ILO action in this regard. It had similarly addressed the European Commission and the European Parliament, and in cooperation with the European Trade Union Confederation (ETUC) and their common European affiliates, had intervened with the European Commission with a view to strengthening the EU's Common Position on Myanmar, notably on the matter of targeted and effective economic sanctions. In June 2005, it had written to all of its affiliated organizations, requesting them to urge their respective governments to press the UN Economic and Social Council (ECOSOC) to resume its examination of forced labour in Myanmar, in line with the ILC resolution of June 2000 and the conclusions at the 93rd Session of the ILC. In October 2005, it had called on all its affiliated organizations to press their respective governments to request the UN Security Council to place an item on its agenda concerning Myanmar. In 2003, it had also warned the ADB against financing a proposed dam in Myanmar because of the implications as regards forced labour. With regard to business and investments, from 2003 to 2005 the ICFTU had written to several hundred companies engaging in business activities in or with Myanmar, urging them to cease these activities on the grounds that they could have the direct or indirect effect of perpetuating the practice of forced labour. It had subsequently published its correspondence with those companies which maintained their links with Myanmar on its "Burma companies database". In January 2005, it had also published a comprehensive study which argued that it was impossible to do any business in or with Myanmar without supporting the military authorities.

Replies from international organizations

21. In a letter dated 26 August 2005 the *United Nations High Commissioner for Human Rights* indicated that the Special Rapporteur on the situation in Myanmar had not been granted access to the country since November 2003 and that his latest request to visit the country had been turned down only the previous week. The Special Rapporteur had recently tabled his 2005 report to the United Nations General Assembly (a copy of which was provided). Further to his recent assessment the High Commissioner regretted that the current human rights situation in Myanmar continued to be a cause for serious concern. The United Nations human rights machinery received and followed up on an ongoing basis allegations of widespread violations, particularly in ethnic minority areas, as well as continued reports of the misuse of legal machinery and a prevailing culture of impunity. Communications to the Government, however, rarely received a response. The prevalence of forced labour and increasingly difficult operational circumstances of the ILO Liaison Officer in Myanmar was to be deeply regretted.
22. In a letter dated 7 November 2005 the *European Commission* recalled that, since the suspension of Myanmar from the Generalized System of Preferences in 1997, the country had not benefited from tariff- and quota-free access to the EU market. Asset freeze lists had been updated on the occasion of the yearly reviews of the EU's Common Position on Myanmar. Since April 2003, the list for the visa ban and asset freeze included individuals, organizations and companies associated with the military regime. In April 2004, the ban on technical assistance and training had included brokering services and other services for military activities as well as a ban on provision of financing and financial assistance. In October 2004, a prohibition was introduced for EU-registered companies and organizations preventing them from granting any financial loan or credit, or acquiring or extending participation in named Myanmar state-owned enterprises. The European Commission also expressed its strong support for the ILO Liaison Officer in Myanmar and underlined the need to maintain an ILO presence in the country operating effectively and without

hindrance. The Commission continued to monitor the situation very closely and future steps would be proportionate to the evolution of the situation and to the implementation by Myanmar of the recommendations of the ILO as regards forced labour.

23. International organizations have mainly replied to the Director-General's letter of 21 April 2005; some of them have followed up after the letter of 15 July 2005. In letters dated 25 May, 14 June and 1 September 2005 the *Asian Development Bank* (ADB) indicated that the status of its lending and technical assistance operations in Myanmar had not changed since its previous replies of 8 December 2000 and 5 February 2001. It also clarified that Myanmar was a part of the Greater Mekong Subregion (GMS) and, because of its geographical location, participated in regional meetings and workshops for the benefit of all its neighbours, but that there was no ADB direct assistance to Myanmar under any of the GMS regional technical assistance projects. In a letter dated 8 June 2005 the *Association of Southeast Asian Nations* (ASEAN) indicated that the ASEAN labour ministers and their senior officials were kept informed of developments in the elimination of forced labour in Myanmar by the senior officials of that country, including recently at the Fourth Senior Labour Officials Meeting held from 5-6 May 2005 in Siem Reap. The senior labour officials had expressed their sincere hope "that the matter could be resolved soon in an amicable manner". In a letter dated 17 August 2005 the *International Maritime Organization* provided details of the technical assistance it had provided to Myanmar in 2004-05.⁶
24. The *World Bank* indicated that it currently had no programme in Myanmar and therefore was not in a position to provide any additional information. The *World Tourism Organization* indicated that, since Myanmar was not at present a member, it had no relevant information to contribute. The *Food and Agriculture Organization*, *UNESCO*, and the *United Nations Population Division* also indicated that they had no relevant information to provide. The *Universal Postal Union* indicated that it had requested the regional adviser for Asia for detailed information on the situation of forced labour in the postal sector, which would be provided in due course.

Geneva, 9 November 2005.

Submitted for discussion.

⁶ This information is on file and is available from the Office on request.

Appendix I

Letter dated 15 July 2005 from the Director-General to member States of the ILO

Dear ...

Further to my letter of 21 April 2005, a copy of which I attach for ease of reference, I have the honour to draw your attention to the conclusions of the special sitting of the Committee on the Application of Standards, held at the 93rd Session of the International Labour Conference, to examine developments concerning the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29). These conclusions were adopted by the International Labour Conference on 16 June 2005, and are enclosed herewith. A complete record of the discussions in the Committee is available at:

<http://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/pr-22-3.pdf>

The conclusions are directly relevant to the review that the Organization's Members were called upon to make of their relations with Myanmar, and the decision they will have to take as regards action.

I would also wish to draw your attention to the fact that the conclusions urge that the United Nations Economic and Social Council (ECOSOC) should be requested to reactivate its consideration of the item concerning Myanmar placed on its agenda in 2001, and encourage member States of the ILO who are represented in ECOSOC to support this course of action.

As noted in my earlier letter to you, a full report on action taken by the Organization's constituents will be prepared for the 294th (November 2005) Session of the Governing Body. Please provide the Office with all relevant information to allow this report to be prepared.

May I also request that you bring the contents of this letter to the attention of the employers' and workers' organizations of your country so that they may take any appropriate action and inform me either directly or through you.

Yours sincerely,

(Signed) Juan Somavia.

Appendix II

Letter dated 22 July 2005 from the Director-General to international organizations

Dear ...

Further to my letter dated 21 April 2005, attached for ease of reference, I have the honour to draw your attention to the conclusions of the special sitting of the Committee on the Application of Standards of the 93rd Session (June 2005) of the International Labour Conference concerning the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29). These conclusions, which have been endorsed by the International Labour Conference on 16 June 2005, are enclosed herewith. A complete record of the discussions in the Committee is available at:

<http://www.ilo.org/public/english/standards/reIm/ilc/ilc93/pdf/pr-22-3.pdf>

As I noted in my earlier letter to you, a full report on action taken by the Organization's constituents, as well as by international organizations, will be prepared for the 294th Session (November 2005) of the Governing Body, and will include any relevant information or further information that you will provide.

I wish to thank you in advance for your cooperation in this important matter.

Yours sincerely,

(Signed) Juan Somavia.

Appendix III

Letter dated 30 June 2005 from the Director-General to the Secretary-General of the United Nations

Dear Secretary-General,

Further to my letter dated 21 April, I have the honour to draw your attention to the conclusions of the special sitting of the Committee on the Application of Standards of the International Labour Conference concerning the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29). These conclusions, which have been endorsed by the International Labour Conference on 16 June, are enclosed herewith.

I would note in particular the Conference's conclusions that ECOSOC should be requested to reactivate its consideration of the matter which was placed before it since 2001. Accordingly, I would be most grateful for your interest in giving effect to the request of the International Labour Conference. For your reference, I have attached my original letter of 9 March 2001 to the Chairperson of ECOSOC requesting that this item be placed on the Council's agenda in the appropriate manner.

As I noted in my earlier letter to you of 21 April, a full report on relevant action taken by the Organization's constituents, as well as by international organizations, will be prepared for the November session of the Governing Body. Any information relating to action taken on the present request will of course be reflected in that report.

I wish to thank you in advance for your cooperation in this important matter.

Yours sincerely,

(Signed) Juan Somavia.

Appendix IV

History and summary of current European Union measures against Myanmar (annexed to the letter from the Government of Austria dated 21 October 2005)

1. The EU has adapted and strengthened its sanctions regime against Burma/Myanmar over the last ten years in response to deteriorating circumstances on the ground, failure by the Government of Burma/Myanmar to make progress on human rights, national reconciliation and use of forced labour. In line with EU sanctions policy the EU has worked to achieve positive change in Burma/Myanmar by placing pressure on those responsible for its policies, whilst minimizing any adverse impact on the general population.
2. In 1996 (CP 96/635/CFSP), with a view to promoting progress towards democratization and securing the immediate and unconditional release of detained political prisoners the EU reaffirmed: the expulsion of military personnel attached to Burma/Myanmar missions in the EU and withdrawal of military personnel from diplomatic missions in Burma/Myanmar; its arms embargo; and the suspension of non-humanitarian aid or development programmes (with specific exceptions). The EU also imposed: an entry visa ban for senior members of the Slorc and their families, senior members of the military or security forces (and their families) who formulate, implement or benefit from policies that impede Burma/Myanmar's transition to democracy; and suspended high-level bilateral government visits to Burma/Myanmar.
3. In 1998 (CP 98/612/CFSP), in response to a deterioration in the internal situation in Burma/Myanmar and lack of progress on releasing political prisoners or steps towards democracy and national reconciliation, the EU amended the visa ban to include transit visas and added the State Peace and Development Council (SPDC), and their families, and also added Burma/Myanmar authorities in the tourism sector. It deleted SLORC (State Law and Order Ruling Council).
4. In 2000 (CP 2000/346/CFSP) in response to severe and systematic violations of human rights, the continuing and intensified repression of human rights and still no steps taken towards democracy and national reconciliation, the EU introduced a list of those subject to the visa ban in the categories previously identified and imposed an assets freeze for listed individuals. It also introduced an embargo on the supply of equipment which might be used for internal repression.
5. In 2001 (CP 2001/757/CFSP) in response to a complete lack of progress on any front and the failure to take action to eradicate the use of forced labour in accordance with the recommendations of the ILO report of 2001, the EU updated the visa ban and assets freeze list. The EU also introduced some specific exemptions for the visa ban. The visa ban and assets freeze list was again updated in October 2002 (CP 2002/831/CFSP).
6. In April 2003, the EU decided on a further strengthening of the Common Position through the extension of the scope of the list for the visa ban and asset freeze to include also individuals, organizations and companies associated with the military regime who formulate, benefit or implement policies that impede Burma/Myanmar's transition to democracy and their families and associates. In 2003 (CP 2003/297/CFSP), the EU also introduced a ban on the supply of technical training and assistance for goods on the military list and spelt out in more detail exemptions to all measures in line with the EU Sanctions Guidelines.
7. In 2004 (CP 2004/423/CFSP) in response to a lack of progress by the Government of Burma/Myanmar on any of the lift criteria, the EU widened the ban on technical assistance and training to include brokering services and other services for military activities,

introduced a ban on the provision of financing and financial assistance related to military activities and updated the visa and assets freeze ban lists.

8. In October 2004 (CP 2004/730/CFSP) in response to continued lack of progress by the Government of Burma/Myanmar and the failure to release Daw Aung San Suu Kyi and other members of the National League for Democracy (NLD), and the failure to allow a genuine and open national convention, the EU strengthened its sanctions against Burma/Myanmar. The EU extended the visa ban to include serving members of the military of Brigadier-General or above and members of their families, extended the assets freeze to include prohibitions on the granting of any financial loan or credit to Burma/Myanmar state-owned enterprises and the acquisition or extension of participation in the same.
9. In 2005, the EU again revised its Common Position imposing sanctions against Burma/Myanmar. The current measures imposed by the EU can be summarized as:
 - A visa ban and assets freeze against named members of the military regime, the military and security forces, the military regime's economic interests and other individuals, groups, undertakings or entities associated with the military regime, and their families.
 - A visa ban against serving members of the military of the rank of Brigadier-General and above.
 - A comprehensive embargo on arms and equipment which might be used for internal repression and a ban on military personnel attached to diplomatic representations in and from Burma/Myanmar.
 - A ban on high-level government visits at the level of political director and above. A suspension of most non-humanitarian aid.
 - Prohibition on EU companies making finance available to named Burma/Myanmar state-owned companies, their joint ventures and subsidiaries.



SIXTH ITEM ON THE AGENDA

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

**Further action taken pursuant to the resolution
adopted in 2000 by the International Labour
Conference**

Addendum

1. Since the finalization of GB.294/6/1, the following additional replies to the Director-General's letters have been received.
2. In a letter dated 1 November 2005, the Government of *Australia* indicated that it had conducted a review of its relations with Myanmar and was satisfied that these relations in no way perpetuated the practice of forced labour. It had received written confirmation from its Embassy in Yangon and AusAID that no Australian Government-funded programmes in Myanmar, which were largely humanitarian in nature, contributed in any way to the practice of forced labour. Further, it had never received any information to suggest any association with forced labour by Australian companies operating in Myanmar.
3. In a letter dated 10 November 2005, the Government of *Canada* indicated that it had taken a number of initiatives subsequent to those outlined in its letter of 6 March 2001. Measures adopted in July 2003 included the denying of visas to members of Myanmar's ruling State Peace and Development Council and senior government and military officials, and the imposition of travel restrictions on Myanmar diplomats in Canada. At that time, its call for the business community not to engage in further investment agreements or commercial ventures in Myanmar had been reiterated. In his intervention at the July 2005 ministerial meeting of the Association of South-East Asian Nations Regional Forum held in Vientiane, Canada's Minister of Foreign Affairs had inter alia reinforced the call by Canada for the Myanmar authorities to take immediate and effective measures to eliminate forced labour. Canada had supported and would continue to support the ILO's ongoing scrutiny of Myanmar's forced labour practices. The Government also indicated that it had brought the contents of the Director-General's letters to the attention of Canadian employers' and workers' organizations.

4. The Government of *Finland* indicated by letter dated 9 November 2005 that Finland's economic relations with Myanmar were of limited extent, with imports (1 January to 30 August 2005) valued at €124,700, and exports at €451,100. There were no records of direct investments to Myanmar. The Government also outlined the EU Common Position on Myanmar. It expressed its strong support for the ILO Liaison Officer and the ILO's efforts for the elimination of forced labour in Myanmar. The ILO presence should be able to operate effectively and without hindrance, and anyone bringing complaints of forced labour should be free from intimidation or punishment. It was of utmost importance that the Government of Myanmar re-engaged as soon as possible in a dialogue with the ILO, and Finland would actively seek to promote such an engagement, bilaterally as well as in its capacity of Member of the European Union. The Government also indicated that it had forwarded the Director-General's letters to the representative workers' and employers' organizations of Finland.
5. In a letter dated 9 November 2005, the Government of the *Netherlands* supplemented the information that it had provided in its communication dated 1 November (summarized in GB.294/6/1, paragraph 13). In particular, the Government noted that on 3 November it had held the expert meeting on Dutch relations with Myanmar mentioned in its earlier communication. It recalled that the purpose of the meeting had been to facilitate the exchange of a broad range of information among various stakeholders. It was the first time that a discussion of this scope had taken place in the Netherlands. The meeting had provided an opportunity to explain the Dutch policy of discouraging economic activity in or with Myanmar in greater depth and to urge all parties involved to act accordingly. The meeting had provided valuable ideas and further actions for all parties involved. The Government would see to their follow-up under its Myanmar policy.
6. The Government of *Poland* indicated in a letter dated 10 November 2005 that developments as regards the issue of forced labour in Myanmar were a source of growing concern for Poland. It reiterated the EU Common Position on Myanmar, and also expressed its strong support for the ILO Liaison Officer and condemned the orchestrated death threat campaign against him. Poland was of the opinion that anyone bringing complaints of forced labour should be free from intimidation or punishment.
7. In a letter received by the Office on 9 November 2005 the Government of *Sudan* indicated that it was ready to proceed with further discussions on the modalities for giving effect to the conclusions of the Committee on the Application of Standards.
8. In a letter dated 8 November 2005, the *Confederation of Italian Trade Unions* (CISL) provided information on a number of initiatives that it had taken in the period 2002-05. These included interventions with a number of Italian companies having trade relations with Myanmar requesting them to cease such relations because of the prevailing situation of forced labour and workers' rights in Myanmar; a call on Lauda Air in 2003 to cease its direct flights to Myanmar; interventions with the EU and the Italian Government (including in its role as then-Presidency of the EU) to take a stronger position on the Myanmar issue, including the introduction of targeted economic sanctions; interventions in 2004 and 2005 with the Italian Government in support of United Nations Security Council consideration of the situation in Myanmar, inter alia because of the deteriorating situation of forced labour and labour rights, as well as requests that these concerns be raised with Myanmar's neighbours in the context of talks between the EU and these countries; and an intervention in 2005 with the Italian Government to express concern at increasing Italian imports from Myanmar, in particular timber and textiles. Steps were also taken by the CISL over this period to strengthen its relations with trade unionists from Myanmar and to support them in their work. Interventions were also made in support of humanitarian initiatives in Myanmar and its border areas, in particular as regards HIV/AIDS.

9. By letter dated 9 November 2005 the Government of Azerbaijan transmitted a letter of 21 October from the *Azerbaijan Trade Unions Confederation* expressing the Confederation's support for the activation and intensification of the review of relations with Myanmar by ILO Members and international organizations. While the Confederation did not have relations with a Myanmar counterpart, it would through its representative in the ILO continue to support all efforts to ensure Myanmar's observance of its obligations under the forced labour Convention.

Geneva, 14 November 2005.

**FOR DISCUSSION**

SIXTH ITEM ON THE AGENDA

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

1. At its Special Sitting in June 2005, the Committee on the Application of Standards of the International Labour Conference had before it, in addition to the observation of the Committee of Experts on the Application of Conventions and Recommendations, two documents setting out the developments over the previous year.¹ At the end of its discussion, the Committee adopted the following conclusions:

After taking note of the information from the Government representative, the Committee noted with grave concern the observation of the Committee of Experts which examined the measures taken by the Government to give effect to the recommendations of the Commission of Inquiry. The Committee of Experts had once again pointed out in its observation that the recommendations of the Commission of Inquiry had still not been implemented. The Committee of Experts and the vast majority of speakers in the Committee had expressed its strongest condemnation and urged the Government to demonstrate its stated determination to eliminate forced labour and to take the necessary measures to ensure compliance with the Convention. The extent of forced labour had not significantly changed in most areas, including ethnic areas, and its worst forms – including forced labour for the army and forced recruitment of child soldiers – continued.

In this regard, the Committee had taken note of the latest developments reported by the Director-General as well as by the Liaison Officer ad interim. The Committee welcomed the release of the third person in the high treason case, but regretted that he was not exonerated of the charges. The Committee could only deplore the fact that the Government had failed to demonstrate sufficient commitment to the elimination of forced labour, as reflected both by its treatment of the very High-Level Team (vHLT), and by its response to the concrete steps recommended by the vHLT and by the Governing Body. The Committee was alarmed in particular by the Government's stated intention to prosecute people it accuses of lodging false complaints of forced labour, and by the apparent intimidation of complainants.

¹ ILC, 93rd Session (Geneva, 2005), Committee on the Application of Standards, documents C.App./D.6 and C.App./D.7.

In the view of the Committee, recent developments had further confirmed the conclusions of the Governing Body at its March 2005 session that the “wait-and-see” attitude that prevailed among most members since 2001 had lost its *raison d’être* and could not continue. The Committee’s general view was that Governments, Employers and Workers, as well as other international organizations, should now activate and intensify the review of their relations with Myanmar that they were called upon to make under the 2000 resolution, and to urgently take the appropriate actions, including as regards foreign direct investment in all its various forms, and relations with State- or military-owned enterprises in Myanmar. In accordance with the conclusions of the Governing Body in March, the present conclusions should be transmitted to all those to whom the 2000 resolution was addressed. The results of such reviews should be fully reported to the Director-General so that the Governing Body could have a complete picture in November. As regards the Economic and Social Council (ECOSOC), it should be requested to reactivate its consideration of the item placed on its agenda in 2001 in this regard, and Members in ECOSOC should be ready to support such a move.

The Committee noted that a number of serious issues, some of which were already identified by the vHLT in its aide-mémoire, needed to be urgently resolved:

1. The Government should give clear assurances that no action would be taken against persons lodging complaints of forced labour, or their representatives, in order that the Liaison Officer a.i. could fully continue to accept and channel such complaints to the competent authorities, and urgent discussions should be undertaken with a view to making available the safeguards and protection built into the Facilitator mechanism.
2. A number of serious allegations of forced labour that were still outstanding, including those concerning the army, should be resolved in a credible manner.
3. The ILO’s presence in Myanmar should be strengthened to enhance its capacity to carry out all its various functions, and the Government should issue the necessary visas without delay.
4. The freedom of movement of the Liaison Officer a.i. as recognized by the Understanding and necessary to the discharge of his functions should be fully respected.

The Committee was of the view that the test of the real commitment of the authorities was and still remained their willingness to urgently discuss the outstanding issues at the highest level and to commit to a substantive policy dialogue that can finally address the forced labour problem. This commitment should moreover be reflected in changes to the law as well as in any future Constitution. Depending on developments in this regard, the general view was that the Governing Body at its next session should not limit itself to reviewing the steps taken under the 2000 resolution, but should also be ready to consider further steps.

2. Developments as regards the follow-up to the 2000 resolution are set out in document GB.294/6/1 (which will be available in the week before the Governing Body’s discussion in order that it can reflect the maximum number of replies). The present document gives an overview of the various other developments that have taken place.

II. Developments following the International Labour Conference

3. On 7 July 2005, the Director-General wrote to the Minister for Labour of Myanmar (reproduced in Appendix I). On his return to Yangon at the end of June, the Liaison Officer a.i. requested a meeting with the Minister. The Minister was not available, but the Liaison Officer a.i. was able to meet on 4 July 2005 with the Director-General of the Department of Labour, who indicated that the decision of the International Labour Conference was regrettable and it was difficult to see how progress could be made in the dialogue when measures were being taken against Myanmar.

4. In the months of June, July and August 2005 a series of mass rallies and meetings of official and semi-official organizations were held around Myanmar on an almost daily basis. These included a series of mass rallies organized by the Union Solidarity and Development Association (USDA) to “guard against the danger posed by destructionists through united strength of the people”, as well as meetings of the Myanmar Women’s Affairs Federation and the Myanmar War Veterans Organization. At nearly all of these meetings, officials of the organizations concerned gave speeches highly critical of the ILO; a number of speakers also called on the Myanmar authorities to withdraw from the ILO.² The State media carried most of these speeches in full.³
5. In the months of August and September 2005, the Liaison Officer a.i. received a series of death threats (21 in total), delivered through the Myanmar postal system to his private residence. These threats, which were subsequently described as part of an organized campaign of intimidation, supposedly came from inhabitants of various towns around Myanmar and stated that the Liaison Officer a.i. should leave the country or he would be killed (a sample of one of these letters is reproduced in Appendix II).⁴ The informal facilitator and former Liaison Officer a.i., Mr. Léon de Riedmatten, received similar threats at the end of August. In view of the gravity of this situation, immediate steps were taken in Geneva and in Yangon. In close consultation with the United Nations designated official for security in the country, a number of measures were implemented as regards the security of the Liaison Officer a.i. and his family, and written interventions were made with the

² These speakers also called on the authorities to declare the exiled Federation of Trade Unions of Burma an illegal organization, a step that was taken by the authorities and announced in Notification No. 3/2005 of the Ministry of Home Affairs dated 28 August 2005.

³ For example, the 12 July edition of the *New Light of Myanmar* reported a speech by a Myanmar Women’s Affairs Federation divisional chairperson who stated that “The ILO without accepting Myanmar’s plausible explanation on forced labour, continues to put pressures on the latter, leaving some 160 garment factories closed. ... The ILO which is an institution in the service of workers turned out to be a trouble-maker for Myanmar people. Hence, the country should resign from the ILO”; and under the front-page headline: “Wipe out those who harm our three main national causes”, the *New Light of Myanmar* on 11 August reported a speech by a war veterans’ organization delegate who stated that “The traitors are ... using the ILO as a podium to put pressures on the Tatmadaw [military] government. The ILO has permitted terrorists and fugitives to attend its meeting. It is against its rules. The ILO is breaking its own rules and providing encouragement to the terrorists and fugitives, while encroaching on the nation’s sovereignty. In reality, it is insulting the entire Myanmar people.”

⁴ It should be noted that the texts of several of these letters were identical, even though they supposedly came from individuals living in different parts of the country. Several other letters appeared to have been written by the same individuals, although signed in different names.

Myanmar authorities, including the Prime Minister (see Appendix III).⁵ No formal response to these interventions was received from the Myanmar authorities.⁶

6. However, before departing Yangon for consultations in Geneva, the Liaison Officer a.i. had the opportunity to meet on 30 August 2005 with the Minister for Labour. In the course of this meeting the Minister assured him that the authorities were aware of their responsibility for his security, and stressed that Myanmar had a reputation as a very safe country so he should have no concerns about his personal security except in certain remote areas. Despite these assurances, he continued to receive further threats in his absence,⁷ although he has received no additional threats following his return to Yangon on 20 September. He was able to meet with the Minister for a second time on 23 September 2005.
7. The various developments described above have seriously undermined the ability of the Liaison Officer a.i. to perform his functions. Even if his freedom of movement had not already been restricted, the climate of intimidation created by the mass rallies and media campaign is not one in which people could be expected to speak freely to him. Similarly, people have naturally been much more cautious than in the past to raise cases of forced labour with him. The security concerns raised by the death threats would also prevent him from travelling in the country.
8. In spite of this, the Liaison Officer a.i. has continued to receive complaints from victims or their representatives concerning ongoing forced labour and forced recruitment. He is of course not in a position to ascertain the veracity of these complaints. Regrettably, however, he is unable to refer these cases to the competent Myanmar authorities for further investigation as he did in the past, because of indications from the Minister that any person who made what the authorities considered to be a false complaint would be prosecuted.⁸ On the other hand, the Liaison Officer a.i. is aware that in one very serious case of forced labour that he had raised with the authorities in 2004, the villages in question have not been subjected to further forced labour since that time.

⁵ ILO headquarters wrote to the Permanent Mission of Myanmar in Geneva on 12 and 16 August 2005 to express its grave concern and seek appropriate action to ensure the Liaison Officer a.i.'s safety. The designated official also wrote to the Myanmar authorities on 15, 16, 19 and 22 August 2005 in similar terms. When the threats continued to be delivered in increasing numbers, the Director-General wrote on 24 August to the Prime Minister of Myanmar. This letter is reproduced in Appendix III. The designated official also wrote to the Prime Minister to raise the serious concerns of the United Nations system and request that the authorities conduct an investigation into the matter. The matter was also referred by the ILO and by the designated official to United Nations headquarters at the highest levels.

⁶ However, the Myanmar security services did indicate verbally to United Nations security personnel in Yangon that they would look into the matter and take appropriate steps. The Liaison Officer a.i. has not at any time been contacted by the Myanmar authorities in relation to any investigation, nor asked to provide the original letters for examination.

⁷ In response to these, the Executive Director for Fundamental Principles and Rights at Work, Mr. Tapiola, wrote to the Minister for Labour on 12 September 2005.

⁸ The comments of the Minister, and the decision by the ILO to suspend interventions with the authorities concerning cases of forced labour, were reported to the International Labour Conference in June (see ILC, 93rd Session (Geneva, 2005), Committee on the Application of Standards, document C.App./D.6, Part B, p. 10, para. 12).

9. The Liaison Officer a.i. has been closely following the situation of Su Su Nwe, who had successfully prosecuted local officials in January 2005 for imposition of forced labour.⁹ She was convicted on 13 October 2005 of criminal intimidation and sentenced to 18 months imprisonment in a case brought against her by some other local officials. Her family contacted him on 18 October 2005 to express their deep concern that they had been prevented by prison authorities from providing her with the medication that she needed for a serious heart condition. The Liaison Officer a.i. has also been following up on the situation of U Aye Myint, one of the three persons convicted of high treason on the basis of contacts with the ILO, who was released from prison earlier this year. He was re-arrested on 27 August 2005 and charged with “spreading false information”.¹⁰ According to the information received, the basis for this charge is a letter of complaint sent to the Myanmar authorities and copied to the Liaison Officer a.i. concerning a land confiscation issue. U Aye Myint’s trial is under way and he is in police custody having been denied bail. Both of these cases were raised with the Minister for Labour (see below).

III. Visit to Yangon

10. As no reply had been received to the Director-General’s 7 July 2005 letter to the Minister for Labour (see Appendix I) or to his subsequent letter to the Prime Minister (see Appendix III), a new attempt was made to develop a dialogue and to seek clarification of the intentions of the authorities through an informal and frank discussion with the Minister for Labour. For that purpose, a representative of the Director-General joined the Liaison Officer a.i. in Yangon for direct discussions with the Minister over a period of two days (18 and 19 October 2005). These consultations enabled the Office to directly express the urgent need to take effective action in response to the threats and to clarify the continued commitment of the authorities in the light of a number of developments that seemed to give precisely the opposite indication. If a genuine commitment did still exist, it would then be critical to find ways to credibly address the outstanding issues.
11. The discussions in Yangon confirmed, however, that the authorities had indeed considered the option of withdrawing from the ILO, as called for in the series of mass rallies in recent months, and that after they had taken advice from all competent departments, including the Supreme Court and the Attorney-General, the authorities had already made the decision to withdraw from the ILO. The notification of this decision had however been delayed in order to examine if other options were available.
12. The ILO delegation underlined that there was no other credible option under the circumstances but for the authorities to remedy the situation as regards the Liaison Officer a.i. and give a credible commitment to addressing the other outstanding issues, in particular through the establishment of a mechanism which could give the required confidence and guarantees to victims of forced labour to seek redress. Detailed consideration had already been given to this question in the past by both sides, and had led to agreement on the facilitator mechanism. In this regard the delegation raised two cases which precisely demonstrated the need for such a mechanism.¹¹

⁹ These officials had appealed, but the Supreme Court recently upheld their convictions under article 374 of the Penal Code on the basis that they had violated Order No. 1/99 which prohibited forced labour. The officials in question have now been released at the end of their prison terms.

¹⁰ These charges were lodged under section 5(e) of the 1950 Emergency Provisions Act.

¹¹ These concerned, first, the imprisonment of Su Su Nwe for criminal intimidation and current serious concerns about her state of health and, second, the ongoing prosecution of U Aye Myint (see

13. However, the Minister made it clear for the first time¹² that the Facilitator mechanism was unacceptable in principle to the Myanmar authorities as it constituted an “invasion of Myanmar’s sovereignty”. He also clearly indicated that the Myanmar side was not willing to engage in any review of the steps recommended by the vHLT nor of the Plan of Action. The only mechanism which could be acceptable to them in dealing with complaints of forced labour was through the current ILO presence. The delegation indicated that the Office could be ready to enter into good faith discussions as to how such a mechanism could be developed, provided the authorities were also willing to explore this possibility in good faith. However, as things stood, the delegation expressed grave doubts as to whether this could be a serious option. First, the functions of the Liaison Officer a.i. did not currently include the necessary guarantees for the victims that were built into the facilitator mechanism. Second, the Minister had provided no indications about what action the authorities intended to take to effectively redress the very serious situation faced by the Liaison Officer a.i. This was critical since the threats made against him, and the recent campaign of mass rallies and media criticism of the ILO which had given rise to these threats, seriously impaired his capacity to discharge his normal functions. The delegation insisted that, if the authorities expressed a willingness to continue to delay notification of withdrawal to pursue such discussions, this would not be credible unless they would first clearly manifest their support and confidence in the Liaison Officer a.i. and take action against those responsible for the threats.
14. Having sought and received reconfirmation from the Minister that its understanding of the position of the authorities was correct, the delegation underlined that it was ultimately up to the Myanmar Government to decide whether or not to withdraw from the ILO. All that the delegation could do was to warn about the far-reaching and extremely serious consequences of such a step for the country and its image, as it would be an admission of their inability or unwillingness to fulfil the obligations to which they had claimed to be committed. The Minister, however, explained that the move was motivated not by unwillingness to continue cooperation to eradicate forced labour, but by the dissatisfaction of the authorities with the treatment they had received at the International Labour Conference. They were perfectly ready to accept criticism from genuine delegates, but not from people who were not delegates and did not represent real workers. In this situation, the delegation drew attention to the fact that, if the authorities did take the step of withdrawing from the ILO, then the two-year notice period – during which they would still be members of the Organization with all the rights and obligations attached – could still be put to good use in order to continue efforts to solve the outstanding issues. If, as they claimed, the authorities were still committed to the elimination of forced labour, then they could express their willingness to continue to work with the ILO through the Liaison Officer a.i. in the hope of resolving these issues. The delegation warned, however, that this could be convincing to the Governing Body only if the authorities offered very serious guarantees that the ability for the Liaison Officer a.i. to discharge his functions would be fully restored.

Geneva, 25 October 2005.

Submitted for discussion.

para. 9 above for further details on these two cases). The Minister indicated that just because certain individuals had had some contact with the ILO in the past did not mean that they were above the law. As regards the humanitarian concerns for Su Su Nwe, the Minister promised that the authorities would take care of her health condition.

12 See the report of the very High-Level Team (document GB.292/7/3), para. 13.

Appendix I

Letter dated 7 July 2005 from the Director-General to the Myanmar Minister for Labour

Dear Minister,

As you are aware, the Committee on the Application of Standards adopted conclusions on the observance by your country of the Forced Labour Convention, 1930 (No. 29). These conclusions were endorsed by the International Labour Conference on 16 June 2005. Enclosed herewith is *Provisional Record* No. 22 of the discussion which includes the text of these conclusions.

I am drawing the attention of the ILO's constituents as well as relevant international organizations on these conclusions as provided for therein.

These conclusions certainly contain a strong message that cannot be ignored. But they should also be seen as an opportunity to give to the cooperation between the ILO and Myanmar a momentum that has been lost. There is a simple straightforward way to achieve this, which is to resume a meaningful dialogue. This was precisely the objective of the visit that regrettably was not carried through by the very High-Level Team last February.

As pointed out in the Committee's conclusions, the willingness of the authorities to urgently discuss the outstanding issues at the highest level is indeed the test of their real commitment. As far as the Office is concerned, I can assure you that the will to resume such meaningful dialogue exists and could confirm itself concretely and quickly both in Yangon and Geneva.

As regards one of the main outstanding issues, the Office has already made it clear that problems which have emerged with respect to the treatment of allegations received by the Acting Liaison Officer have to be acknowledged but could certainly be resolved through open, frank and objective discussions.

As regards such open, frank and objective discussions on the above and other outstanding issues, the Office believes that to serve their objective and be really effective they need to be carefully organized, prepared and scheduled. It is thus ready to examine urgently with the authorities in Yangon and Geneva how and when preparatory conversations could be held for that purpose.

It is my sincere hope that, in line with the commitment they have expressed so far to cooperate with the ILO, the authorities will wish, through you, to give to this matter the serious and urgent consideration it warrants, and I am looking forward to receiving timely indications in this regard.

Yours sincerely,

(Signed) Juan Somavia.

Appendix II

Example of a threatening letter received by the Liaison Officer a.i.

To

Mr Richard Horsey
I.L.O Liaison officer (a.i.)

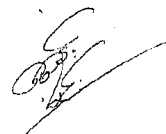
I.L.O is accusing our country of using forced labour. That is wrong. In our country there is not forced labour. Most of our people paid their labour according to their wishes of the construction work of pagoda. More over they collectively taking part in cleaning work and maintenance of the houses in their village of their own wishes. That is our loveable tradition. So there is no forced labour in our Union of Myanmar.

I.L.O is controlled by U.S CIA. Therefore U.S and western big countries are accusing our country of using forced labour by groundless facts and gave pressure.

According to accusations of I.L.O, U.S and western big country imposed economic sanction on our country. Over one hundred and sixty garment factories were closed down due to economic sanctions in 2003. The closure has left over 70000 Myanmar women jobless and 600,000 dependents had lead to the life of total misery. Ousting them from their job is violation of human right and forced into unemployment.

Moreover terrorist are sheltering your I.L.O. They are presenting the false accusations to your I.L.O. So I.L.O is becoming a terrorist supporting stage.

Therefore I would like to urge you not to interfere our internal affairs. If you interfere our internal affairs, your head will be cut off and our people will crush you and poison you. Be careful; danger is everywhere for you.



Appendix III

Letter dated 24 August 2005 from the Director-General to the Myanmar Prime Minister

Excellency,

You are aware of the serious concern provoked in the UN family in Myanmar by the death threats to the ILO Liaison Officer Mr. Richard Horsey, and more recently to Mr. Léon de Riedmatten who has performed various functions on behalf of the ILO. It is my duty as Director-General of the ILO to seek your immediate personal intervention to take the action that the circumstances urgently require to stop such threats and guarantee their safety and normal conditions for the exercise of their functions.

It is clear from the content of the threats, which have been communicated to the authorities, that they mirror the campaign and attacks voiced by various government-affiliated organizations against the ILO and which were reported in great detail in papers like the “New Light of Myanmar”. Under these circumstances, let me recall the international responsibility of the Government of Myanmar for any development that may occur. This also includes the obvious obligation to ensure the smooth functioning of the ILO Liaison Office in Yangon and the security of its staff under the relevant Understanding.

It is in my view also essential to bring much needed clarity to the scope and implications of the conclusions reached by the International Labour Conference at its last session in June 2005. I have indeed written to the Minister for Labour to offer an open dialogue to review all these implications, in the spirit that had enabled the cooperation between Myanmar and the ILO to develop over the last five years. It is regrettable that while no answer has been received, the ILO has been targeted by this well orchestrated campaign. It is difficult to see how these developments can further your interests in the ILO.

This approach for dialogue remains valid and I hope it could through you be urgently activated. I would thus hope that in the interest of our continued cooperation all channels can be used to clarify the situation and any misunderstandings. My Office has been in touch with Ambassador Nyunt Maung Shein in Geneva to indicate that there are various ways that could be explored to resume the much needed dialogue.

In any event, I have to inform the Officers of the Governing Body and, in due time, the relevant bodies of the ILO on the evolving situation in Myanmar.

Yours sincerely,

(Signed) Juan Somavia.



SIXTH ITEM ON THE AGENDA

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

Addendum

Additional information

1. On 31 October 2005, U Aye Myint was found guilty under section 5(e) of the 1950 Emergency Provisions Act of “spreading false information” and sentenced to seven years’ imprisonment. According to the information received, the basis for the charges was that U Aye Myint, a lawyer, had allegedly advised a group of farmers who had had their land confiscated by the authorities to report this matter to the ILO Liaison Officer. In 2003 U Aye Myint had been sentenced to death for high treason for alleged contacts with the Liaison Officer, but had been released in January 2005 (see GB.294/6/2, paragraphs 9 and 12, for further information.)
2. The Liaison Officer a.i. has also received information that three villagers from Aunglan township (Magway Division) were informed in October 2005 that they were being prosecuted by the local authorities for sending false information to the ILO. The charges related to the death in late 2004 of a villager during forced labour which was reported to the Liaison Officer a.i. and on which he intervened with the authorities (see International Labour Conference, 2005, C.App./D.6., paragraph 11).
3. On 9 November 2005, the Director-General received a letter from the Minister of Labour, U Thaug, which is appended.

Geneva, 11 November 2005.

Appendix

Letter dated 7 November 2005 from the Myanmar Minister of Labour to the Director-General

Dear Director-General,

I would like to refer to your letter dated 7 July 2005 regarding our relations with the ILO.

Although at present we are compelled to seriously consider the withdrawal of Myanmar from the ILO due to the desire of the entire populace, I also believe that there still exist time and space to explore options and opportunities to continue our ongoing cooperation with the ILO.

I hope that ILO will reciprocate our good faith and sincerity in our relations. Such cooperation should be free from politicization and mutually beneficial to both sides.

Yours sincerely,

(Signed) U Thaung,
Minister.



FOR DEBATE AND GUIDANCE

SEVENTH ITEM ON THE AGENDA

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

1. Following discussion of the item at its 294th Session (November 2005), the Governing Body adopted the following conclusions:

In the light of the documents before the Governing Body and after listening to the Ambassador of Myanmar, the Governing Body had a thorough exchange about developments.

There was a general feeling of grave concern about the degradation of the situation which these developments – including the most recent condemnation of Aye Myint, the situation of Su Su Nwe, and other individual cases raised during the discussion – reflected. It was also one of firm rejection of what appeared as attempts to influence the ILO's position through various forms of pressures and intimidation, including that of withdrawal, in contradiction with the commitment that the authorities have consistently pledged to the eradication of forced labour in cooperation with the Organization.

Members of the Governing Body were particularly concerned and critical about the threats which have been made against the Liaison Officer a.i., as well as to the former Acting Liaison Officer and Informal Facilitator (Mr. Léon de Riedmatten), following a public campaign against the ILO and which resulted in paralysing his capacity to discharge his responsibilities. The Governing Body reiterated its full confidence and support for the Liaison Officer of the ILO. The authorities of Myanmar were urgently requested to guarantee full exercise of his functions. They were also earnestly warned about the responsibility they would have to bear under international law for any consequence that could result from their attitude.

A number of Members were of the view that, as already contemplated by the International Labour Conference in its conclusions last June, the only way which was left to the Organization, in light of the further very disturbing developments which had taken place, was to enable the Conference itself to revisit the measures adopted in the 2000 International Labour Conference resolution under article 33 of the Constitution, by placing a specific item for that purpose on its 2006 agenda in order to review and, as appropriate, to strengthen them.

However, taking into account the willingness expressed by the Ambassador to cooperate and the fact that any step relating to action by the Conference would in any case need to be reconfirmed at its next session, the Governing Body, firstly, requests the Government at various levels, including the senior leadership, to take advantage of the time available between now and March 2006 to resume an effective dialogue with the Office. Secondly, it was

understood, however, that to be meaningful any future dialogue which the Office would conduct with the Government should be based on the mandate provided by the conclusions of the International Labour Conference. Thirdly, the dialogue would also have to address the issues and cases raised in the present debate and conclusions. Fourthly, the authorities should, in the meantime, cease prosecuting victims of forced labour or their representatives and instead should take action against the perpetrators.

2. Mr. Richard Horsey continued to act as interim ILO Liaison Officer. The present report summarizes his activities since November 2005 together with discussions that have taken place between ILO headquarters and the Permanent Representative of Myanmar in Geneva followed by a mission to Yangon from 12 to 13 March.
3. The Governing Body should be informed that Mr. Léon de Riedmatten, the Yangon representative of the Centre for Humanitarian Dialogue and Informal Facilitator for the ILO, has been unable to secure an extension for his Myanmar visa beyond the end of March 2006. Consequently, he will have to leave the country at that time and close his office.
4. In November 2005, the Myanmar authorities announced that they had begun moving to a new administrative capital near the town of Pyinmana, 390 km north of Yangon. Construction of the new capital is scheduled for completion by the end of 2007. Most Ministries, including Labour, Foreign Affairs and Home Affairs have already relocated. The Department of Labour, which is the main counterpart for the Liaison Officer, is currently maintaining a contact point in Yangon at the level of director.
5. At its first organizational session held in New York in January 2006, the United Nations Economic and Social Council (ECOSOC) had before it the request from the Director-General dated 30 June 2005 for it to reactivate its consideration of the item concerning forced labour in Myanmar that had been placed on its agenda in 2001. It is foreseen that ECOSOC will discuss this matter at its substantive session in July 2006 under item 14 of its agenda.
6. The Governing Body may also be interested to know that the United Nations Security Council held an informal discussion on the situation in Myanmar on 16 December 2005. A briefing, which included information on the forced labour situation and developments in the ILO, was provided by Undersecretary-General for Political Affairs, Mr. Ibrahim Gambari, at which the Secretary-General was also present.

Activities of the Liaison Officer

7. On 30 November 2005, the Liaison Officer a.i. met with the Minister for Labour to discuss ways to give concrete effect to the pledge given by the Government of Myanmar to continue cooperation with the ILO. He noted in particular the importance of a credible mechanism for dealing with complaints of forced labour. There were, however, two matters which needed to be speedily resolved in order for meaningful progress to be made, as the Governing Body had indicated. These concerned, on the one hand, the legal action that had been taken against a number of persons having a connection with the ILO and, on the other hand, his own security and freedom of movement. As regards the death threats, the Minister gave assurances that the Government of Myanmar was taking the matter seriously, and the competent authorities were investigating. The Government could assure him of his safety. The Minister also noted that the Liaison Officer a.i. was free to travel in the country and did not need to be accompanied by a staff member of the Ministry. No assurances were however obtained as regards the legal action against persons having a connection with the ILO. As regards the next steps, the Minister noted that the authorities were not at present agreeable to any strengthening of the ILO presence, but were

committed to cooperating with the current presence, including as regards complaints of forced labour. Following the meeting, the Liaison Officer a.i. confirmed in writing with the Minister the assurances regarding his security, and underlined that these should apply equally in respect of Mr. de Riedmatten. As a result of the assurances provided by the Minister concerning his security, the Liaison Officer is willing to consider this particular matter closed.¹

8. In addition to this meeting with the Minister for Labour, the Liaison Officer also wrote on 7 December to the designated army focal point for the ILO to request a meeting. No response has been received to this request.
9. Since November 2005, the Liaison Officer a.i. has had a range of meetings in Yangon and Bangkok with members of the diplomatic community, representatives of international organizations, and representatives of non-governmental organizations. On 23 February he had the opportunity to meet in Bangkok with the Special Rapporteur on the Situation of Human Rights in Myanmar.
10. From 18 to 21 January the Liaison Officer a.i. travelled to Taninthayi Division in the south of Myanmar.² This trip was conducted independently of the authorities. In line with the previously established practice, he informed the authorities shortly before his departure of his plans. He was able to freely visit all areas that he wished to, including some restricted areas. In addition, on 21 February he travelled to Lashio town (northern Shan State) for a government press conference.
11. The Liaison Officer a.i. continues to receive complaints from individuals alleging they have been subjected to forced labour, or from representatives of such persons. Regrettably, he continues to be unable to refer these cases to the competent Myanmar authorities for further investigation, as the authorities still maintain that they will prosecute anyone who lodges what they consider to be a false complaint. Indeed, a number of individuals are currently being prosecuted on this basis (see below). The Liaison Officer a.i. is concerned that the lack of investigation of the cases of forced labour reported to him, and the signal sent by the recent prosecutions of complainants, will tend to reinforce the climate of impunity surrounding government officials who have recourse to forced labour. This in turn will undermine any progress made in this regard as a result of the convictions of several local government officials in early 2005 for illegal imposition of forced labour.
12. The Liaison Officer a.i. has continued to closely follow developments in three cases previously reported to the Governing Body in which individuals who had lodged complaints of forced labour have subsequently been prosecuted.³
 - Ma Su Su Nwe, who had successfully prosecuted local officials in January 2005 for imposition of forced labour, was convicted on 13 October 2005 of criminal intimidation and sentenced to 18 month's imprisonment in a case brought against her

¹ In its English-language edition dated 28 November, the semi-official weekly newspaper *Myanmar Times* carried an article headlined "Government pledges to continue cooperation with ILO" which reported the comments made by the Permanent Representative of Myanmar to the Governing Body, including as regards the measures to ensure the safety of the Liaison Officer a.i.. The Burmese-language version carried a similar article in its 25 November edition.

² He travelled by air to the town of Dawei (Tavoy), and from there by road to Launglon township and Myitta sub-township.

³ See doc. GB.294/6/2 (November 2005), paras. 9 and 12; and doc. GB.294/6/2(Add.) (November 2005), paras. 1 and 2.

by some other local officials. Appeals to the district and divisional courts were summarily rejected in November 2005, and on 1 February 2006 the Supreme Court of Myanmar also summarily rejected her appeal. The last avenue remaining is to the Special Appellate Bench of the Supreme Court. As regards her health, recent information received from her family indicates that although there continues to be cause for concern, she is receiving medical attention and necessary medication, including from specialists at Yangon General Hospital, and this has led to some improvements in her condition.

- U Aye Myint, a lawyer who was previously sentenced to death for high treason on the basis of alleged contacts with the ILO but released from custody in January 2005, was rearrested in August 2005 and charged under the 1950 Emergency Provisions Act with “spreading false information”. The basis for this charge appears to be a letter concerning a land confiscation issue that he sent to the authorities on behalf of his clients, and which he copied to the ILO. U Aye Myint was convicted in October 2005 and sentenced to seven years’ imprisonment. His appeals to the district and divisional courts were summarily rejected on 2 January and 7 March, respectively.
- Three persons (U Zaw Htay, U Thein Zan and U Aung Than Tun) are currently being prosecuted in Aunglan township (Magway Division) under section 182 of the Penal Code for “providing false information to a public servant”. The charges relate to the death of a villager in late 2004 which allegedly occurred during forced labour.⁴ The three individuals assisted the family of the deceased to report the matter to the ILO and to the authorities. During the investigation of this matter, the family of the deceased was apparently intimidated into signing a statement that the allegation they had made was false. It is on the basis of this statement that the three persons are now being prosecuted for providing false information.

The Liaison Officer a.i. wrote to the Minister for Labour on 16 February to express his concerns over these three cases, and to urge that the Myanmar authorities take steps to resolve them. In a reply from the Deputy Minister for Labour dated 26 February it was indicated that these three prosecutions were not a consequence of contacts with the ILO and that the authorities “had no obligation to interfere in the matters relating to the judicial system.”

13. The Liaison Officer a.i. has also received information concerning the conviction and imprisonment in November 2005 of nine trade unionists under the 1950 Emergency Provisions Act and for contact with illegal organizations.⁵ A tenth person arrested in connection with this case, Aung Myint Thein, died in custody in November 2005. The Liaison Officer a.i. has to the best of his knowledge never had any contact or exchange of information with these individuals. Based on the allegations made against them in a government press conference held on 28 August 2005, it appears that the basis for their prosecution was contacts with the exiled Federation of Trade Unions of Burma (FTUB). The Liaison Officer a.i. wrote to the Minister for Labour concerning this case on 15 December and, *inter alia*, requested copies of the court records from these trials. He has not received any response.

⁴ See International Labour Conference, 2005, C.App./D.6, Part B, paras. 11 and 14.

⁵ These persons were: Thein Lwin Oo, Win Myint, Wai Lin, Myint Lwin, Ye Myint, Aye Thi Khine, Daw Yin Kyi, Aye Chan and Hla Myint Than.

Discussions in Geneva and visit to Yangon

14. In accordance with the conclusions of the Governing Body, the Office endeavoured to resume a meaningful dialogue also in Geneva through the Permanent Representative of Myanmar in order to find some acceptable solution to the outstanding issues.
15. In the light of the objections to the facilitator system, explicitly voiced for the first time by the authorities through the Minister for Labour in Yangon and the Permanent Representative in Geneva last November, the Office first tried to find whether another system could be developed which would offer similar guarantees but would address the concerns expressed by the Myanmar authorities that it offended their sovereignty.
16. Immediately after the November 2005 session of the Governing Body, the Office started informal discussions with the Permanent Representative of Myanmar in Geneva, during which it raised the possibility of establishing a mechanism which – unlike the facilitator system – would seek to place the two sides on an equal footing. In the light of some preliminary encouraging reactions, the Office then elaborated in an informal document a Joint Panel mechanism⁶ which would confidentially address complaints submitted by alleged victims and make a prima facie determination of the validity of the complaint. In this informal document, the Office also elaborated on the possibility of building up the capacity to address complaints within the framework of the Office of the ILO Liaison Officer.
17. This informal document gave rise to some comments and requests for clarification from the Myanmar side, which ultimately resulted in their indicating that the Joint Panel was not the preferred option, but they indicated their willingness to consider the possibility to accommodate complaints within the Liaison Officer framework; at the same time, they emphasized the strong views of the Myanmar side regarding their right to take legal action against persons making false allegations, in line with the position taken by the Minister for Labour when he met with the Liaison Officer in November 2005. The Office pointed out that this could be an issue of fundamental significance which needed to be clarified before entering into any discussion of specific modalities.
18. In this context a mission took place to Yangon.⁷ The discussions were held with the Minister for Labour in two comprehensive meetings (on 12 and 13 March), in which the Permanent Representative of Myanmar in Geneva, U Nyunt Maung Shein, also participated.
19. The mission made it clear from the outset that it was prepared to explore in detail the modalities of all the options which had been envisaged so far, including as appropriate the facilitator system, to find a solution that could be acceptable to both sides. There was, however, as indicated in Geneva, a preliminary question of great significance concerning the stated intention of the authorities to use what they viewed as their right to take legal action against persons lodging complaints which the authorities considered to be false as a “deterrent against the proliferation of false allegations with ulterior motives”.

⁶ It was envisaged that a Joint Panel could be composed of two members having the required credentials appointed by the two sides, and a third person appointed by an unimpeachable institution to arbitrate in cases of possible disagreement.

⁷ On the ILO side, the mission consisted of Mr. Francis Maupain, Special Adviser to the ILO Director-General, together with Mr. Richard Horsey, the interim Liaison Officer.

- 20.** The mission made it clear that this raised three major problems. The first related to the specific mandate given by the International Labour Conference and the Governing Body according to which “no action would be taken against persons lodging complaints of forced labour or their representatives”. The second was that it would defeat the very purpose of any mechanism which – in line with the conclusions of the High-Level Team in 2001 from which the idea of such a mechanism derived – was that victims should have the possibility of lodging complaints without fear of reprisals. The third was that it would arguably be against the letter and spirit of the forced labour Convention itself, which makes it an obligation on the authority to establish a really adequate system of enforcement.
- 21.** The mission indicated, however, that it understood the concern of the authorities that whatever mechanism could be established should not be manipulated by the submission of false complaints. The strong view of the mission was, however, that in practice, the best deterrent to such political manipulation would precisely be the establishment of an objective, impartial mechanism involving persons of unimpeachable integrity that would have the required credibility in dismissing such false complaints. This would moreover give real credibility to the repeated pledge of the authorities to eradicate forced labour.
- 22.** During the discussions, the Minister for Labour clarified the following points. Under the clear instructions that he had received from the authorities, the joint panel option was ruled out. They considered it to be a system parallel to the judiciary and which would bring in a foreign arbitrator which would go against the requirements of Myanmar law. The only solution he was authorized to consider was that complaints be addressed through the Office of the ILO Liaison Officer with its current composition. He pointed out that the Liaison Officer would have the possibility to meet with complainants before referring the complaints to the Ministry of Labour. As regards the question of prosecutions, the Minister strongly insisted that the situation in Myanmar was different from that of other countries in view of the fact that political forces were taking full advantage of issues such as forced labour to politicize the situation and tarnish the reputation of the Myanmar authorities. This is why the authorities were determined to use the relevant provisions of the Penal Code ⁸ to deter such political manipulation. The Minister indicated that it was of the view of the authorities that a distinction had to be made between genuine complaints, which they could accept, and politically motivated allegations, which they could not. In the course of the discussion, the Myanmar side said that as a compromise they could possibly consider to wait until a person had made more than one or two false allegations before enforcing these provisions of the Penal Code.
- 23.** The mission noted that the option they had envisaged within the framework of the Liaison Officer – which would require necessary legal guarantees and sufficient administrative support – was a far cry from the one which the authorities seemed to have in mind. It was to build up a credible mechanism with sufficient administrative support and legal guarantees to address the complaints that were received, whereas the authorities indicated that the Liaison Office had to remain as it was – that is, at below its initial strength. It was not clear at all that the Liaison Officer would have the necessary facilities to carry out such a task in view of the repeated suggestion that he enjoyed the same facilities as other United Nations staff in Myanmar as well as in view of the guidelines recently issued by the

⁸ He indicated that these were the following sections: 182(b) (giving false information with intent to cause a public servant to use his lawful power to the injury or annoyance of any person), 420 (cheating and dishonesty), 469 (forgery for the purpose of harming reputation) and 499 (defamation).

authorities which could further restrict such facilities.⁹ Lastly, there was no guarantee that his evaluation of the prima facie validity of a case would not be reversed when transmitted to the Ministry of Labour and the complainant then prosecuted. This was indeed the very situation that had led to the decision of the Director-General, confirmed by the Governing Body, to request him to no longer entertain complaints for fear the complainants would subsequently be victimized. This was prompted by the specific cases referred to in the conclusions of the Governing Body and which have so far not been resolved (see above).

24. As far as the “compromise solution” referred to by the Minister was concerned, the mission pointed out that it could not make any commitment that would prejudice the correct interpretation of the forced labour Convention. Under the ILO Constitution, only the International Court of Justice (or a tribunal specially established for that purpose) would be competent to provide such an interpretation at the Governing Body’s request. In any case such a compromise was unlikely to be found acceptable by the Governing Body given the mandate contained in its conclusions from November 2005. However, the mission considered that there was indeed a possible compromise that could be explored. The mission could understand that the authorities may have doubts as to whether the mechanism would act as a sufficient deterrent against false allegations. However, the best way to overcome these doubts was to establish the joint panel mechanism on a time-bound experimental basis. In that framework it might be possible to build in to the mechanism some provision for summarily dismissing complaints coming from a source which had a history of lodging complaints which had subsequently been reliably found to be without basis. The functioning of this system would then be reviewed after a certain period of time. In the meantime, the acceptance of such a mechanism would give enormous credit to the determination of the authorities to eradicate forced labour.
25. Since the Minister reiterated, however, that he had no authority to discuss any other solution than the one he had elaborated on, the mission then had no alternative but to draw his attention to the possible consequences that could derive from such a position, should this attitude not change in the meantime, and raised the question of what could possibly be the reaction of the Myanmar side to such consequences. The mission finally expressed the hope that in the light of the discussions and explanations it had given, the authorities might take advantage of the remaining time to leave greater flexibility to their representatives. The Office for its part would remain ready to continue these discussions in an open and frank manner through the Permanent Mission in Geneva, and in Yangon.

Yangon, 13 March 2006.

For debate and guidance.

⁹ In February 2006, the Myanmar Ministry of National Planning and Economic Development issued a set of “Guidelines for UN Agencies, International Organizations and NGOs/INGOs” which inter alia provide that counterpart ministries must give their approval for any travel within Myanmar by United Nations staff (it is necessary that such a request be made in writing at least two weeks in advance), and that an official from the Myanmar side will accompany them.

Conclusions on document GB.295/7: Developments concerning the question of the observance by the Government Myanmar of the Forced Labour Convention, 1930 (No. 29)

The Governing Body has considered all the information before it, including the comments of the Permanent Representative of Myanmar. The overwhelming reaction was one of profound concern at the continued lack of any meaningful progress in the situation.

In particular, the determination expressed by the Myanmar authorities to prosecute individuals involved in lodging “false allegations” represented a further deterioration in the situation which seriously undermined any prospect of progress, and was in direct contradiction with the conclusions adopted at the International Labour Conference in 2005. The Myanmar authorities should cease prosecuting such individuals and should release those already imprisoned for such activities, including Ma Su Su Nwe and U Aye Myint.

Under these circumstances, the Workers moved that, as previously envisaged in November 2005, an item should be placed on the agenda of the 95th Session of the International Labour Conference (May-June 2006) as follows: “*To review what further action could be taken by the ILO in accordance with its Constitution in order (i) to effectively secure Myanmar’s compliance with the recommendations of the Commission of Inquiry and (ii) to ensure that no action is taken against complainants or their representatives.*” For that purpose, the Office would be instructed to prepare an analysis of all relevant options which the International Labour Conference could consider taking to ensure compliance with the Convention or to draw in any other appropriate way the consequences of the situation.

This resolution, with an amendment made by the Employers to the Preamble, received the general support of the Employers and many Governments, and it can thus be considered that it has sufficient support to be adopted as amended. In the course of the discussion, a number of specific proposals concerning possible action were made. It was understood that the Office would take these into consideration in preparing its analysis of the options.

In the meantime, all remaining possibilities to resolve the issue should continue to be pursued.

