

► **The Director-General**

Ms Alena Douhan
Special Rapporteur
Office of the United Nations High
Commissioner for Human Rights
Palais Wilson
Rue des Pâquis 52
1201 GENEVA

7 June 2023

Dear Special Rapporteur,

I wish to acknowledge receipt of your new communication dated 5 June 2023, following up on my response of 9 May 2023 to your initial communication of 25 April 2023, concerning the draft resolution on measures recommended by the Governing Body under article 33 of the ILO Constitution on the subject of Belarus that is now before the International Labour Conference for consideration and possible adoption.

Your communication was posted on the webpage of the General Affairs Committee of the Conference as soon as it was received while the General Affairs Committee was also apprised of the receipt of your communication before starting its deliberations on the draft resolution. At the outset, I note that your follow-up communication, which according to my understanding remains exceptional under the established procedures, was addressed to me on the date the 111th Session of the International Labour Conference was opened, which happened to be also the date on which the General Affairs Committee of the Conference examined the draft resolution concerning the measures recommended by the Governing Body under article 33 of the ILO Constitution on the subject of Belarus. Despite the timing of your communication and out of deference to the Special Procedures of the Human Rights Council, I wish to provide the following explanations on three main points.

First, you express the view that “international organizations can only decide on sanctions explicitly provided for in their constituent documents with due respect to provisions of the Charter of the United Nations, purposes and principles of the United Nations and other peremptory norms of international law, including the obligation to promote and protect human rights.”

Even though the detailed explanations set out in the Office Memorandum dated 9 May 2023 adequately address concerns on the compatibility of article 33 with the international law and the UN Charter, let me stress once again:

- (i) any recommendations made under article 33 of the Constitution may only be made following a failure to comply with a ratified international labour Convention, and a failure to carry out recommendations of an independent Commission of Inquiry conclusively determined by the Governing Body;
- (ii) any action recommended under article 33 must aim exclusively at securing compliance with the recommendations of a Commission of Inquiry. The conception and design of any recommendations made under article 33 are genuinely collective and concerted – and not unilateral – in nature as they arise from a decision taken by the supreme governance organ, the Conference, upon the recommendation of the Governing Body;
- (iii) the Conference and the Governing Body closely follow-up the implementation of any measures adopted by the Conference under article 33 and the Government concerned is systematically invited to present its views;
- (iv) any measures adopted by the ILO under article 33 of its Constitution would be discontinued, in accordance with article 34, as soon as the Government has fully implemented the recommendations of the Commission of Inquiry.

In light of these supervisory features and institutional safeguards, it would be particularly disturbing to contend that in implementing its own express constitutional procedures the UN specialized agency responsible for the promotion of labour rights globally would be in essence violating the values and principles of the UN Charter.

Let me also clarify that contrary to the indications in your communication, Conference decisions taken in pursuance of article 33 are not recommendatory but prescriptive in nature. These decisions reflect the exercise by the Conference of its constitutional powers and carry undisputable authority. It is unquestionable that by joining the Organization and accepting the obligations arising from its Constitution, Member States have committed themselves to complying with decisions of competent organs responsible for implementing constitutional supervisory procedures.

Secondly, you consider that “the removal of the reference to the economic sanctions in 1946, as well as the non-use of article 33 mechanisms even before 1946 support the non-sanctions approach of interpretation of the ILO Constitution in accordance with customary international law provisions on the role of subsequent practice and agreements in interpretation of international treaties.”

Quite the opposite, if anything can be deemed to qualify as subsequent practice and subsequent agreement in relation to the meaning and scope of article 33 of the ILO Constitution, it would be the entire set of Governing Body and Conference discussions and decisions prior to implementing article 33 measures against Myanmar in [March](#) and [November 1999](#), [March](#) and [June 2000](#); as well as the discussions regarding the situation in Belarus at the Committee on the Application of Standards in [June 2006](#) and [June 2022](#) and at the Governing Body in [June 2022](#), [November 2022](#) and [March 2023](#) that led to the current draft Conference resolution. These discussions prove beyond question that the Governing Body and the Conference enjoy wide discretion on the type of ‘wise and expedient’ measures that can be decided under article 33 as being conducive to the effective implementation of the recommendations of the Commission of Inquiry.

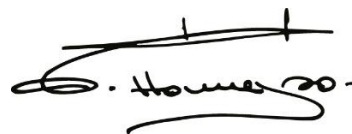
That said, the rarity of recourse to article 33 measures can certainly be explained by the fact that it is conceived to be an exceptional and last resort procedure. Thirdly, you call upon the International Labour Conference “to avoid any steps which could be interpreted as encouraging or authorizing the ILO Member States to take measures not in accordance with the UN Charter.”

In that regard, I feel obliged to rectify all possible misrepresentation of the situation since article 33 measures are specifically designed and exclusively intended to put an end to gross violations of fundamental human and workers' rights and secure compliance with freely ratified international labour standards. Such measures aim at protecting workers and are therefore central to the concerns expressed in your communication concerning human rights. As this is an undertaking aimed at reinforcing UN efforts – and not contradicting those efforts, as your communication wrongly insinuates – the draft resolution specifically instructs the Office to engage closely with the UN Special Rapporteur on the situation of human rights in Belarus, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the UN Special Rapporteur on the independence of judges and lawyers, in order to promote compliance by the Government of Belarus with international human rights law and international labour standards.

In closing, I wish to reiterate that it is for the ILO's tripartite constituents and sovereign governance organs to decide whether and under which conditions they are prepared to apply article 33 measures in a given situation.

I have taken the liberty of sharing this reply with the UN Special Rapporteur on the situation of human rights in Belarus, the UN Special Rapporteur on the protection of the right to freedom of opinion and expression, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, the UN Special Rapporteur on the independence of judges and lawyers and the Chairperson of the Coordination Committee of the Special Procedures.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'G. Hounbo', with a stylized flourish above it.

Gilbert F. Hounbo