Voices for freedom of association

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Convention No. 87

Convention concerning Freedom of Association and Protection of the Right to Organise[1]

The General Conference of the International Labour Organisation,

Having been convened at San Francisco by the Governing Body of the International Labour Office, and having met in its Thirty-first Session on 17 June 1948,

Having decided to adopt, in the form of a Convention, certain proposals concerning freedom of association and protection of the right to organise, which is the seventh item on the agenda of the session,

Considering that the Preamble to the Constitution of the International Labour Organisation declares "recognition of the principle of freedom of association" to be a means of improving conditions of labour and of establishing peace,

Considering that the Declaration of Philadelphia reaffirms that "freedom of expression and of association are essential to sustained progress",

Article 4

Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

Article 6

The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organisations.

Article 7

The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

Article 8

1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.
2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Article 9

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.
2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 10

In this Convention the term "organisation" means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

Part II. Protection of the Right to Organise

Article 11

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

Part III. Miscellaneous Provisions

Article 12

1. In respect of the territories referred to in article 35 of the Constitution of the International Labour Organisation as amended by the Constitution of the International Labour Organisation Instrument of Amendment, 1946, other than the territories referred to in paragraphs 4 and 5 of the said article as so amended, each Member of the Organisation which ratifies this Convention shall communicate to the Director-General of the International Labour Office with or as soon as possible after its ratification a declaration stating –
   (a) the territories in respect of which it undertakes that the provisions of the Convention shall be applied without modification;
   (b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;
   (c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;
   (d) the territories in respect of which it reserves its decision.
2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.
3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservations made in its original declaration in virtue of subparagraphs (b), (c) or (d) of paragraph 1 of this Article.
4. Any Member may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 16, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 13

1. Where the subject matter of this Convention is within the self-governing powers of any non-metropolitan territory, the Member responsible for the international relations of that territory may, in agreement with the Government of the territory, communicate to the Director-General of the International Labour Office a declaration accepting on behalf of the territory the obligations of this Convention.
2. A declaration accepting the obligations of this Convention may be communicated to the Director-General of the International Labour Office –
   (a) by two or more Members of the Organisation in respect of any territory which is under their joint authority; or
   (b) by any international authority responsible for the administration of any territory, in virtue of the Charter of the United Nations or otherwise, in respect of any such territory.
3. Declarations communicated to the Director-General of the International Labour Office in accordance with the preceding paragraphs of this Article shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration

indicates that the provisions of the Convention will be applied subject to modifications it shall give details of the said modifications.

4. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

5. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 16, communicate to the Director-General of the International Labour Office a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

Part IV. Final Provisions

Article 14

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 15

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 16

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 17

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 18

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 19

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 20

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides,
   (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 16 above, if and when the new revising Convention shall have come into force;
   (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

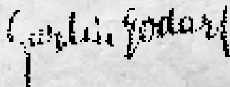
Article 21

The English and French versions of the text of this Convention are equally authoritative.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its Thirty-first Session which was held at San Francisco and declared closed the tenth day of July 1948.

IN FAITH WHEREOF we have appended our signatures this thirty-first day of August 1948.

The President of the Conference,



The Director-General of the International Labour Office,

Editorial

By a vote of 127 in favour, 0 against and 11 abstentions, the 31st Session of the International Labour Conference held in June and July 1948 adopted one of the most important Conventions in the sphere of labour relations and fundamental human rights: Convention No. 87 on freedom of association and protection of the right to organise.

The adoption of this Convention was the fruit of an initiative by two major trade union organizations of the day and gave legal embodiment to one of the fundamental principles of social justice enshrined in the Constitution of the International Labour Organization and subsequently reiterated in the Declaration of Philadelphia, thus confirming the universal and tripartite vocation of the ILO. This meant that by virtue of close cooperation, the notion of the general good was able to prevail over the diverging interests.

In that connection, the statements delivered before the vote by the spokespersons for the groups representing Governments, Employers and Workers, Messrs. Guzmán, Cornil and Jouhaux, were significant and continue to be valid. With forward-looking vision they spoke out in favour of developing the tripartite system and fomenting social progress.

The statement by Mr. Léon Jouhaux has retained its topicality and relevance into the present day, undiminished either by time or thoroughgoing technological, political and economic change: " It is as Reporter for the Workers' members that I speak on this matter. I should like to say that the Workers' representatives will vote in favour of the Convention now before you, but we shall not vote without certain reservations.

"It is quite certain that the present Convention does not correspond to the situation as regards the development of the right to organise in the world today and particularly in our countries. There is no doubt that it contains a number of gaps, a number of defects, and a number of points liable to misinterpretation. Nevertheless, as it was found that some countries were not applying freedom of association in their territories (or were applying it subject to restrictions), we considered it essential that the Conference should take positive action on a first Convention, so that freedom of association in its primary stage should be respected in all countries.

"It is evident that the International Labour Organisation finds itself, in present circumstances, in a situation which it should have avoided. Since 1920, freedom of association has been embodied in the Constitution of the International Labour Organisation, and should have been applied in full ever since that date, and the work of the International Labour Office in this field at the present time should have been merely to follow the development of the right to organise in all the different countries so as to register the progress achieved by all countries in this respect.

"What I have said did not take place; and, when we examine this text and compare it with the existing situation in our own countries, we are struck by the very large gap between the text now before you and what our trade unions in our own countries have already obtained."

The opening lines of the statement quoted above reflect a deep sense of history and a forward-looking vision of labour relations. Now, 50 years after the adoption of this Convention, its universality has stood the test of time. Nevertheless, there is still some reluctance in some quarters as to its ratification and it is not always fully observed. The past five decades have witnessed gross violations of the fundamental trade union rights, freedom of association and the right to organize, and heavy-handed repression of workers in some parts of the world.

Economic globalization and the imperatives of productivity are also prompting the less visionary to resort to arguments that effectively diminish if not annul worker rights, in favour of greater competitiveness based on working conditions which are so often unacceptable. The ILO has nevertheless maintained its fundamental mission of protecting and promoting fundamental human rights, endeavouring to eliminate poverty, promote job creation, improve working conditions and worker protection and encourage the adoption and observance of international labour standards.

To mark the 50th anniversary of Convention No. 87, the Bureau for Workers' Activities is highlighting some significant cases in which ILO supervisory bodies intervened in keeping with established procedures. Some cases constitute what might be called history still in the making, while others have had a successful outcome; but over and above the final outcome, one constant has always been the confidence reposed in the institution by workers' organizations that have had to fight for the right of association in difficult circumstances. This is why in presenting them, while endeavouring to be mindful of the legal considerations involved, we have attempted to provide some information concerning the political context in which they arose.

We convey special acknowledgement and thanks to the trade unionists who have shared their testimonies with us, and apologize to the countless others who have actively contributed to ensure respect for the principles of freedom of association, but whom we have not mentioned. Finally, special thanks go also to the experts whose cooperation proved invaluable in producing this edition, particularly our colleagues attached to the Freedom of Association Branch of the ILO.

Giuseppe Querenghi

Director
ILO Bureau for Workers'Activities

Foreword

Ask any trade unionist to name one ILO Convention and the chances are that the answer will be Convention No. 87 – the one that guarantees to workers the basic rights to organize and work freely to protect and promote their interests.

Those who drew up and adopted the Convention in 1948 did a remarkable job: they produced a text which fits easily onto a single sheet of paper and yet defines comprehensively the most fundamental of trade union rights. Their drafting skills were matched by their vision. Working at a time when the world was emerging from horrific conflict, they saw the need for trade unions to be involved fully as partners in reconstruction and to underpin that process with a clear definition of their basic rights. Many of the same people were also at the negotiating table the following year when the International Labour Conference completed the task with the adoption of Convention No. 98 on the Right to Organise and Collective Bargaining.

At the time, the critical importance of the adoption of these two Conventions might not have been obvious. The Workers' group's rapporteur in 1948, Léon Jouhaux himself, pointed out that recognition of the principle of freedom of association already figured in the founding 1919 Constitution of the ILO. That meant that every State joining the ILO undertook to respect trade union rights; but the reality was that many did not. It was legitimate to ask whether the adoption of Convention No.87, and then Convention No. 98 would do much to improve matters. Fifty years later, it is clear that they have made a tremendous difference.

Most obviously, the Conventions constitute an authoritative definition of what actually are trade union rights. Trade unionists around the world defending and asserting their rights use them as a reference point which stands above the provisions of national law and practice. Closely related to this application is the concept of the universality of the rights they proclaim: they apply to all workers without any distinction whatsoever, and to all countries. Whatever their level of development, their culture, their social or political system, or their regional location, all of them must respect freedom of association.

Once Conventions Nos. 87 and 98 had been adopted, it became possible to use the ILO's supervisory mechanisms to monitor their application in member States which had ratified them. However, it rapidly became clear that their importance was such that specific new mechanisms were needed to deal with them. This realization led to the creation in 1951 of the Governing Body's Committee on Freedom of Association. This Committee was from the beginning, and remains, unique in the ILO's supervisory system. It is the only place in the Organization where trade unions, and others, can go to submit complaints against governments even when they have not ratified the Conventions which they are alleged to be violating. This possibility exists precisely because the ILO Constitution requires respect of freedom of association, and member States cannot evade that responsibility by the simple device of non-ratification of Conventions Nos. 87 and 98.

Soon the tripartite Committee on Freedom of Association will have examined 2,000 cases. In each of them it examines the allegations brought, the reply of the Government concerned, and draws up conclusions and recommendations for action to bring the situation into conformity with the freedom of association Conventions.

What has been the outcome of this work?

Obviously, violations of trade union rights have not been eliminated. Today they are widespread, serious, and all too often on the increase. But that harsh reality does not detract from the fact that the ILO, through Conventions Nos. 87 and 98 and others dealing with freedom of association, and its machinery to supervise their application, has made a difference. This edition testifies to that fact.

As it has examined the complaints brought before it, the Committee on Freedom of Association, as well as the ILO Committee of Experts, has built up a still growing body of case law which has made clear what the basic rights set out in Conventions Nos. 87 and 98 actually mean in practice. The most recent ILO publication setting out this jurisprudence runs to well over 200 pages. One outstanding example illustrates the significance of this process. It is well known that Convention No. 87 makes no explicit reference to the right to strike. Yet, in examining concrete situations, the ILO supervisory bodies have always considered that the right of unions to organize their activities freely which is set out in the Convention clearly implies their right to take strike action, and they have elaborated in detail the substance of that right.

Trade unionists have good reason to mark this 50th anniversary of Convention No. 87. But we have little cause for complacency. Today, attacks on workers' fundamental rights and the challenges of accelerating globalization require of us, and of our partners in the ILO, the same commitment and the same vision that inspired those who brought the Convention into being. The Workers' group is seeking new ways to extend the supervisory powers of the ILO in respect of all of the fundamental rights Conventions, and to give the international community greater powers to enforce their application. Decisions which potentially can be as momentous as those taken 50 years ago are before us. No doubt 50 years from now, another generation of trade unionists will judge whether we were equal to the task.

William Brett
Chairman, Workers'Group
Governing Body of the ILO

Opening session of the International Labour Conference, 17 June 1948, which adopted Convention No. 87 on Freedom of Association and Protection of the Right to Organise.

31st Session of the International Labour Conference, June-July 1948, San Francisco

Address delivered by Mr. Léon Jouhaux, Workers' delegate, France

It is as Reporter for the Workers' members that I speak on this matter. I should like to say that the Workers' representatives will vote in favour of the Convention now before you, but we shall not vote without certain reservations.

It is quite certain that the present Convention does not correspond to the situation as regards the development of the right to organise in the world today and particularly in our countries. There is no doubt that it contains a number of gaps, a number of defects, and a number of points liable to misinterpretation. Nevertheless, as it was found that some countries were not applying freedom of association in their territories (or were applying it subject to restrictions), we considered it essential that the Conference should take positive action on a first Convention, so that freedom of association in its primary stage should be respected in all countries.

It is evident that the International Labour Organisation finds itself, in present circumstances, in a situation which it should have avoided. Since 1920, freedom of association has been embodied in the Constitution of the International Labour Organisation, and should have been applied in full ever since that date, and the work of the International Labour Office in this field at the present time should have been merely to follow the development of the right to organise in all the different countries so as to register the progress achieved by all countries in this respect.

What I have said did not take place; and, when we examine this text and compare it with the existing situation in our own countries, we are struck by the very large gap between the text now before you and what our trade unions in our own countries have already obtained. We are no longer at the stage of primary claims. We are now claiming a share in the management of national economy. We have accepted obligations in the national community and, consequently, we have obtained a number of rights. These rights are far from being recognised in the present text. Nevertheless, in social legislation (both national and international), acquired rights remain undiminished if they are superior to those provided by a Convention, and there is therefore no risk for us in accepting the present text.

Still, we regret that, in present circumstances, so many sectional views and selfish interests, and so much lack of understanding were shown in the discussion on this matter. I should like to say to our employer friends that they are not in the International Labour Organisation in order to defend an attachment to a dead past. They are in the Organisation to serve progress; and they should not fear bold ideas, because it is only by bold thought that we can secure a future of progress. When they speak of the public interest, they should not merely mean their own interests, but those of the national community which they represent and of those of the international community in which they collaborate. I must tell them in all sincerity that, if their attachment to the past should continue as at present, their action might lead – and this would be to the detriment of their own interests – to the workers disinteresting themselves in the International Labour Organisation.

I should also like to say – because it is a matter of regret to me – that the Government representatives show, in their thought and action, too much attachment to national sovereignty. National sovereignty is of course a highly reputable conception, because it is an expression of independence.

But it is unusual to hear arguments regarding national sovereignty in 1948, nearly thirty years after the establishment of the International Labour Organisation, which presupposes the abandonment to some extent of national sovereignties. In order that the Organisation may play its part in developing labour legislation equally in all countries, it is absolutely necessary to make national sovereignty give way to international interests if we are to prevent the dumping of which Governments complain so often and if we wish to establish peace.

The present Convention on freedom of association contains all these defects; and it is to be regretted that we have not before us a text which, by reflecting economic development, and consequently the development of the right to organise, would record it as a dynamic force which would support the International Labour Organisation in its work. If the International Labour Organisation is to remain – and it must remain – the motive force of social progress, it must boldly lead the way and not fear new ideas; it must abandon outworn ideas and try to represent progress.

All these arguments are important to us workers. But I repeat that we shall vote in favour of this Convention because it is a first condition to the essential and continued progress on the road which the International Labour Organisation should follow.

It is the duty of the countries in which development is most advanced to help in the development of countries which are economically backward, for otherwise their own reforms will be endangered. In the International Labour Organisation, there is not a single country or group which can exclude itself from the prevailing atmosphere; but there are countries which should help the others down the difficult path which they must follow in order to achieve an improved economy and the freedom of the workers. Who can say today whether the level reached by some countries will be typical of the future? Who can say whether the social evolution of man, of which a great economic philosopher (whose name I need not tell you) spoke in the early days of industrialism, is not entering an intermediate stage, that of nationalisation? If the formulation of a theory must be absolute, he said, its application must take account of the changing realities of the social scene. We are today in the midst of an international economic revolution. We must hope that the efforts of all in the International Labour Organisation will be to

Léon Jouhaux, French worker delegate, addressing an assembly of worker delegates hosted by the American Federation of Labour at the 1948 Session of the International Labour Conference.

assist the development of this peacemaking and emancipatory revolution, and that all will realise that it is based on the co-operation of labour, through its trade union organisations, in the exercise of freedom. For where there are duties there must be rights.

We consider that freedom is not only a human right; it is also, in the present circumstances, a collective right, a public right of organisation. If it is not respected even in the most highly developed countries, it may turn them from their path and lead to the opposite of the result hoped for.

The representatives of the workers will therefore vote in favour of the present Convention, with all its faults, because it is a first step in the application of a freedom which is indispensable to the development of humanity, and because it is a first recognition of the absolute necessity for the participation of the workers, through their organisations, in the whole of human development and particularly in economic development. We shall vote in favour of it because it is essential that those who have not yet those liberties should receive them. We shall vote, however, with the idea of giving this reform later on all the boldness needed in order that the International Labour Organisation may take its rightful place in the vanguard of progress.

Officers of the Groups

Government Group:

Chairman: Mr. VALENZUELA (Argentine Republic).
Vice-Chairman : Mr. GUDMUNDSSON (Iceland).
Secretary: Mr. WOU (China).

Employers' Group:

Chairman: Sir John FORBES WATSON (United Kingdom)
Vice-Chairman: Mr. GEMMILL (Union of South Africa)

Members of the Bureau:
Mr. CHAPA (Mexico)
Mr. WALINE (France)
Mr. TAYLOR (Canada)
Mr. FENNEMA(Netherlands)
Mr. SHAW (United States)
Mr. CORNIL(Belgium)
Mr. MEHTA (India)
Mr. PONS (Uruguay)
Mr. CAMPANELLA(Italy).

Secretary: Mr. LECOCQ, General Secretary, International Organisation of Employers.

Assistant Secretary: Mr. EMERY, Assistant General Secretary, International Organisation of Employers.

Workers' Group:

Chairman: Mr. JOUHAUX (France).
Vice-Chairman : Mr. FENTON (United States).

Members of the Bureau:
Mr. NORDAHL(Norway)
Mr. IBÁÑEZ (Chile)
Mr. VAVRICKA(Czechoslovakia)
Mr. Thakin LWIN (Burma)
Mr. SERRARENS (Netherlands)
Mr. ROBERTS (United Kingdom).

Secretary: Mr. MONK, Member of the Governing Body of the International Labour Office.

Drafting Committee

Mr. Justin GODART, President of the Conference.
Mr. Edward PHELAN, Secretary-General of the Conference.
Mr. JENKS, Legal Adviser.
Mr. LAFRANCE, Chief of the Secretariat Services.

Edward Phelan, Secretary-General of the 31st Session of the International Labour Conference, addressing the plenary. Left to right Messrs. Rens, Little, and Mr. Justin Godart, President of the Conference.

Luis Alvarado, Government delegate (Peru), Chairman of the Governing Body, at the opening session of the International Labour Conference, 17 June 1948, San Francisco.

Final Record Vote on the
Convention concerning freedom of association and protection of the right to organise

For (127)

Argentine Republic:
Mr. Valenzuela *(G)*
Mr. Suárez *(G)*
Mr. Borgonovo *(E)*
Mr. Valerga *(W)*

Australia:
Mr. Makin *(G)*
Mr. Bland *(G)*
Mr. Drummond *(W)*

Austria:
Mr. Maisel *(G)*
Mr. Hammerl *(G)*
Mr. Hoynigg *(E)*
Mr. Boehm *(W)*

Belgium:
Mr. Mertens *(G)*
Mr. Van Den Daele *(G)*
Mr. Cornil *(E)*
Mr. Finet *(W)*

Brazil:
Mr. Bandeira de Mello *(G)*
Mr. Battendieri *(G)*
Mr. Galliez *(E)*
Mr. Parmigiani *(W)*

Burma:
Mr. Zaw *(G)*

Canada:
Mr. Mitchell *(G)*
Mr. MacNamara *(G)*
Mr. Taylor *(E)*
Mr. Bengough *(W)*

Chile:
Mr.Bustos *(G)*
Mr. Dahmen *(G)*
Mr. Díaz *(E)*

China:
Mr. Li *(G)*
Mr. Pao *(G)*
Mr. Lieu Ong-sung *(E)*
Mr. Liu *(W)*

Colombia:
Mr. Mariño *(G)*
Mr. Álvarez *(G)*
Mr. Sarta *(E)*

Costa Rica:
Mr. Hernández *(G)*
Mr. Monge *(W)*

Cuba:
Mr. Mederos *(G)*
Mr. Sandoval *(G)*
Mr. Fernández Pla *(E)*

Denmark:
Mr. Bramsnaes *(G)*
Mr. Koch *(G)*
Mr. Oersted *(E)*
Mr. Jensen *(W)*

Dominican Republic:
Mr. Rodríguez Lora *(G)*
Mr. Aybar *(G)*
Mr. Cocco *(E)*
Mr. Ballester *(W)*

Ecuador:
Mr. Aguirre *(G)*
Mr. Chaves *(W)*

Finland:
Miss Korpela *(G)*

France:
Mr. Hauck *(G)*
Mr. Lambert *(G)*
Mr. Waline *(E)*
Mr. Jouhaux *(W)*

Greece:
Mr. Pavlakis *(G)*
Mr. Chrysanthopoulos *(G)*
Mr. Eliopoulos *(E)*
Mr. Calomiris *(W)*

Iceland:
Mr. Olafsson *(G)*

India:
Mr. Sampurnanand *(G)*
Mr. Lall *(G)*
Mr. Mehta *(E)*
Mr. Shastri *(W)*

Iran:
Mr. Ardalan *(G)*

Irak:
Mr. Bakr *(G)*

Italy:
Mr. Cingolani *(G)*
Mr. Mascia *(G)*
Mr. Campanella *(E)*
Mr. Di Vittorio *(W)*

Mexico:
Mr. de Alba *(G)*
Mr. Guzmán *(G)*
Mr. Chapa *(E)*
Mr. Amilpa *(W)*

Netherlands:
Fr. Stokman *(G)*
Mr. Krijger *(G)*
Mr. Fennema *(E)*
Mr. Fuykschot *(W)*

New Zealand:
Mr. Thorn *(G)*
Mr. Parsonage *(G)*
Mr. Butland *(E)*
Mr. Kilpatrick *(W)*

Norway:
Mr. Berg *(G)*
Mr. Frydenberg *(G)*
Mr. Östberg *(E)*
Mr. Nordahl *(W)*

Pakistan:
Mr. Malik *(G)*
Mr. Aslam *(G)*
Mr. Allana *(E)*
Mr. Ali *(W)*

Panama:
Mr. Alemán *(G)*

Perú:
Mr. Alvarado *(G)*
Mr. Navarro *(E)*
Mr. Docarmo *(W)*

Philippines:
Mr. Magsalin *(G)*
Mr. Lanting *(G)*
Mr. Benítez *(E)*
Mr. Muaña *(W)*

Sweden:
Mr. Björck *(G)*
Mr. Ohlsson *(G)*
Mr. Söderbäck *(E)*
Mr. Vahlberg *(W)*

Switzerland:
Mr. Rappard *(G)*
Mr. Kaufmann *(G)*
Mr. Kuntschen *(E)*
Mr. Möri *(W)*

Syria:
Mr. Sawwaf *(G)*

Turkey:
Mr. Sumer *(G)*
Mr. Fer *(G)*
Mr. Barlo *(E)*
Mr. Özkaner *(W)*

Union of South Africa:
Mr. Briggs *(W)*

United Kingdom:
Mr. Isaacs *(G)*
Sir Guildhaume Myrddin-Evans *(G)*
Sir John Forbes Watson *(E)*
Mr. Roberts *(W)*

United States:
Mr. Morse *(G)*
Mr. Thomas *(G)*
Mr. Zellerbach *(E)*
Mr. Fenton *(W)*

Uruguay:
Mr. Zubiría *(G)*
Mr. Lorenzi *(G)*
Mr. Pons *(E)*
Mr. López *(W)*

Venezuela:
Mr. Meoz *(G)*
Mr. Pifano *(G)*
Mr. Rojas *(E)*
Mr. Malavé *(W)*

Against (0)
Abstentions (11)

The result of the vote is as follows: 127 for, 0 against and 11 abstentions. Therefore, the Convention is adopted.

South Africa

The policy of apartheid (or separate development of different races) was officially adopted in South Africa as the basic policy of the South African Government after 1948. It profoundly affected South African law and society. Apartheid came to dominate virtually every aspect of economic and social activity. It institutionalized and gave the force of law to social segregation through the enactment of a substantial array of legislation. Some of this legislation was directed specifically to labour matters. However, all of it had an impact in one way or another on the political, economic and social life of the country.

Historically, of course, racial and social segregation had its origin at the beginning of this century and henceforth, with the reservation of only some 13 per cent of the land of South Africa for Blacks (establishment of "reserves" or "homelands"), confinement of Blacks to segregated townships or locations, special permits for Blacks to be able to work and live in a particular White area, regulation by law of the employment of Blacks, control of Black education, etc.

Within the implementation of the apartheid system, many liberties, counted as normal in a democratic society, were diminished or lost altogether. Among them in particular were the rights of freedom of association and collective bargaining.

Apartheid engendered fierce opposition both in South Africa and throughout the world. The international community exercised considerable pressure upon the Government with a view to compelling it to abandon its policy.

Among the many essential ways, in which the policy of apartheid was implemented in the sphere of labour law was the passing of the Industrial Conciliation Act of 1956 which governed the registration and regulation of trade unions and employers' organizations, the prevention and settlement of disputes, and collective bargaining. However, Black workers were practically excluded from its scope. Moreover, the Act prohibited the registration of new trade unions comprising members of more than one of the racial groups (the Whites, the Coloureds, the Asians). On the other hand, the Black Labour Relations Regulation Act of 1953 applied exclusively to Black workers and it governed the regulation of conditions of employment, the preservation and settlement of disputes (between the employees and their employers), but since Blacks did not fall within the scope of the Act of 1956 (they were not defined as "employees" in terms of that Act), they could not belong to a registered trade union. Furthermore, the Act of 1953 prohibited strikes by Black workers.

The exclusion of Black workers from the industrial relations system and the policy of White worker protectionism sharply divided South African workers along racial lines. Early in 1973, following a series of strikes by Black workers, the Minister of Labour announced that the Black Labour Relations Regulation Act of 1953 would be amended. But the first amendment in 1977 was criticized, and in that same year the Government appointed a Commission of Inquiry (known as the Wiehahn Commission) to make appropriate recommendations to amend the existing legislation. The Commission's work resulted in a series of enactments, among which of particular importance were the Industrial Conciliation Amendment Act of 1979 (which recognized trade unions with Black employees and integrated Blacks into the industrial relations system, provoking strong criticism), and the Labour Relations Amendment Act of 1981 which repealed the Black Labour Relations Regulation Act of 1953, extended the Labour Relations Act of 1956 to Black workers, and revised the definition of a trade union.

As a result of new Black membership which became possible in the wake of certain changes in the labour legislation, trade union membership soared between the mid-1980s and the early 1990s. The use of strike action and the number of workers involved also continued to increase during the same period. The 1987 strike of mineworkers is still remembered today, among others. Then the Government in that same year banned May Day rallies under

the state of emergency, a large number of Black political opponents were detained, and new legislation proposals (further amendments to the Labour Relations Act of 1956) to restrict further trade union activities were introduced in the form of the Labour Relations Amendment Bill (1987).

In these circumstances, the Congress of South African Trade Unions (COSATU) submitted a complaint on infringements of trade union rights to the May-June 1988 Session of the Governing Body of the ILO. COSATU alleged that, if the above Bill passed, the amendments would make fundamental inroads into the freedom of association of trade unions in South Africa. It also referred to the Labour Relations Act of 1956 which, in its view, sought first to protect racially constituted trade unions and, secondly, to infringe the freedom to strike. As regards the major amendments enacted under the Labour Relations Amendment Act of 1981,

results of these negotiations were in large part accepted by the Government and enacted in February 1991 (Labour Relations (Amendment) Act of 1991). This Act, which concerned the specific issues raised in the COSATU complaint, significantly reduced the scope of the investigations called for under the Commission's original mandate.

In its recommendations, the Commission recalled that the parties had agreed to submit proposed labour relations legislation to a process of extensive consultation with the major actors, which involved the full participation of the trade unions and employers' organizations as well as the Government. It further recalled the necessity to extend the new legislation in the sphere of trade union and collective bargaining rights to agricultural workers and to domestic workers, as well as the necessity, in the process of a revision or a consolidation of the Labour Relations Act, to simplify the Act and to take fully into account the Commission's conclusions on certain aspects of the existing Act which were not in conformity with the ILO's principles and standards on freedom of association. Some of these comments might be recalled as follows:

- the Act gives the Registrar an unfettered discretion to allow or disallow a particular provision in a trade union constitution;
- the wording of the respective section of the Act constitutes a risk of administrative interference in the contents of a trade union's constitution;
- registration is not compulsory under the Act; however, an unregistered union does not enjoy certain important benefits which are conferred on registered trade unions;
- the system created by the Act may deny the advantages of registration to a trade union until it can satisfy the Registrar that it is "sufficiently representative";
- it further creates a system which allows trade unions to define the qualifications for membership by reference to race;
- the Act empowers the administrative authorities to investigate the internal affairs of a union at their entire discretion;
- it prohibits a trade union from affiliating with a political party;
- both the complicated nature of the various pre-strike requirements and the length of time needed to fulfil them have had a negative effect on the exercise of the right to strike;
- trade union organizations have no possibility of recourse to protest strikes;
- the Act does not contain a safeguard of the legality of strikes over social and economic issues affecting workers' and trade union rights;
- legislative and common law provisions expose workers and their unions to actions for damages and/or interdicts in respect of the legitimate exercise of the right to strike; this may effectively deprive workers of their right to take action to promote and defend their economic and social interests;
- there is no provision to provide appropriate protection against dismissal of strikers;
- no measures ensure that unions facing obstacles to collective bargaining due to technicalities in the law or practice exploited by the employers have a means of redress where the procedures are swift and decisions enforceable.

Furthermore, the Commission drew the attention of the Government to the importance of the principle that workers' rights must be based on respect for civil liberties. Finally, it recommended to the Government to give widespread publicity to the report of the Commission, and to bring its law and practice into full conformity with ILO Conventions Nos. 87 and 98.

Shortly after the establishment of the Commission's report in May 1992, the Government responded to it. It conceded that the legislation and practice were not in conformity with the ILO's principles and standards and declared that it was aware of the need for reform in the trade union and labour relations field. It also referred to dramatic changes involving the abandonment of the policy of apartheid which had so profoundly affected South African law and society, in particular over the past 40 years. In its paper the Government explained the existing complex situation in the country and made concrete proposals on how it intended to respond to the Commission's various recom-

In March 1994, the Committee on Freedom of Association dealt with the Government's report which described the economic situation (decrease in the number of employment opportunities, high levels of unemployment, low levels of education resulting in an excess supply of unskilled workers, low wage increases and productivity), the situation of unrest and violence, and gave explanations on the legislative and practical measures taken: the simplification of the Labour Relations Act and draft legislation under consideration, the Basic Conditions of Employment Act of 1983 extended to the agricultural sector and domestic workers in May 1993, and the new Agricultural Labour Act of 1993 applicable to farm workers. The Public Service Labour Relations Act of 1993 covers all public servants except soldiers, prison officers, police and teachers, to whom other Acts apply. It recognizes freedom of association and the right to strike.

In its conclusions and recommendations, the Committee, while observing major political changes in the country as well as far-reaching changes to labour relations legislation, pointed out a number of issues which still needed to be resolved by legislative measures of the Government, in particular:

- farming activities being regarded as essential services by the new Act of 1993, strikes and lockouts are prohibited;
- the old system under the Labour Relations Act is still applied to farm workers (registration of trade unions, control of the contents of their constitutions, interference of public authorities in trade union affairs and collective bargaining agreements);
- legislation to grant trade union and collective bargaining rights to domestic workers should be enacted;
- the Labour Relations Act should be amended having regard to the fact that the provision requiring an absolute majority of workers for the calling of a strike may seriously limit the right to strike;
- the legislation should safeguard the legality of strikes over social and economic issues, and should be brought into conformity with the notion of essential services in the strict sense of the term.

The Committee recommended that the Government should be invited through ECOSOC to continue submitting reports on further measures taken to give effect to the Fact-Finding and Conciliation Commission's recommendations. At its March 1994 session, the Governing Body of the ILO adopted these recommendations.

On 26 May 1994, South Africa again became a Member of the ILO. After having discussed a special report of the Conference Committee on Action Against Apartheid, the June 1994 session of the International Labour Conference adopted the Resolution concerning post-apartheid South Africa in which it asked the Governing Body to instruct the Director-General, inter alia, to provide the necessary support and assistance to the tripartite constituents in South Africa to assist them in the adoption of labour legislation and other measures which are compatible with international labour standards, and to allow them to consider ratification of appropriate Conventions.

Labour legislation reform was high on the agenda of the newly elected, post-apartheid South African Government. As Mr. Mboweni, Minister of Labour, indicated to the June 1995 International Labour Conference, a statutory tripartite body was set up to draft a new Labour Relations Bill. The ILO provided technical assistance on various aspects of industrial relations and employment, including, in particular, the right to organize, collective bargaining, co-determination, termination of employment, settlement of labour disputes, equality of rights, etc. The new Labour Relations Act was adopted in November 1995. On 19 February 1996, South Africa ratified ILO Conventions Nos. 87 and 98.

Address delivered by President Nelson Mandela to the 77th Session of the International Labour Conference

Distinguished President of the International Labour Conference, Director-General of the ILO, honourable delegates and observers, it is a matter of great honour to us that we are able to address this august body, which is one of the most representative institutions within the United Nations system. We thank you most sincerely for your invitation, which we believe was inspired by your commitment to the struggle to end the evil system of apartheid.

We bring you the greetings of the National Executive Committee of our organisation, the African National Congress. Our president, Comrade Oliver Tambo, our membership, the mass democratic movement of our country and the masses of our people, as a whole, as before, all of us look forward to the results of your deliberations, convinced that you will take new measures which will assist us to move forward rapidly towards our emancipation. We must, however, in the first instance express our deepest appreciation to you all for the struggle you have waged over the years for the release of all South African political prisoners. It is thanks to these efforts that I am able to speak to you today. It will be thanks to your efforts that the remaining political prisoners will be released, hopefully in the near future.

Let me assure you that despite the thickness of the prison walls, all of us in Robben Island and other jails could hear your voices demanding our release very clearly. We drew inspiration from this. I knew from the very first day of our incarceration that in the end it would prove impossible for the apartheid system to keep us in its dungeons. We thank you that you refused to forget us. We thank you that you did not tire in your struggle. We thank you for your sense of humanity and your commitment to justice, which drove you to reject the very idea that we should be imprisoned and that our people should be in bondage.

It seems clear today that the road we still have to travel to arrive at the liberation of our people is not too long. The masses of our people are confident that victory is in sight. Our own liberation from prison is taken as a signal that the people will soon liberate themselves from the larger prison represented by the apartheid system. Indeed, the times have changed. I remember distinctly the arrogant bearing of the captains of the apartheid system when they took power 42 years ago, convinced that they were the elect of God. They went about their business of perpetrating a crime against humanity with unequalled determination, brutality and confidence. They moved forward towards their goal like a juggernaut, crushing everything in their way, ever ready with clever words to present their criminal venture as the very epitome of civilised behaviour. In the end, of course, they became slaves to the goddess of violence and war, and even as they massacred they found words to justify their action and took action to punish even the dead as transgressors of their criminal law. Nobody knows how many are dead that should have been alive. Nobody knows how many children have died in the last 40 years simply because the apartheid system denied them food and good health. None can tell how many bodies lie strewn across southern Africa, the victims of a merciless campaign of repression within South Africa and Namibia, of aggression and destabilisation in the rest of our region. Today, those who have imposed themselves on us as our Government openly admit that their grand design has failed. They say the system of White minority rule must come to an end. The apartheid system can no longer be sustained. Those who were imprisoned have had to be released. Those who were driven into exile shall return to the country of their birth. Those who were condemned to a position of slavery shall be masters of their destiny. The tragedy is that those who were killed by the apartheid system cannot be resurrected.

Today we speak with hope about the prospects of ending the apartheid system. These constitute a tribute to the millions of our people who refused to succumb to tyranny, who refused to fear death, who refused to be enslaved. It is thanks to their courage and heroism that the apartheid system can no

longer be sustained. It is also thanks to the courage and heroism of the peoples of southern Africa as a whole, who not only fought for their own emancipation but also refused to be terrorised, to accept the perpetuation of the apartheid system.

History will surely recall that there are very few other issues which united humanity as much as did the opposition of the nations to the apartheid crime against humanity. The actions that the international community took to express its revulsion against this crime are part of the equation of struggle which has taken us to the moment of hope and confidence which we have reached today. In this context, we would like to take this opportunity to salute the ILO for its enormous contribution to our common struggle. The actions you took which resulted in the withdrawal of South Africa from the ILO a quarter of a century ago, and what you have done since then, are important elements in the common efforts of all humanity to isolate, and by this means, destroy the system of apartheid.

And so, where are we today? The situation suggests that it would be possible for our people, through their political representatives, to enter into negotiations for the transformation of South Africa into a united, democratic and non-racial country. But for this to happen, a climate conducive to negotiations has still to be created. As you know, on the initiative of the ANC, we met President de Klerk and his colleagues in Cape Town at the beginning of last month. The purpose of that meeting was to address the issue of the removal of the obstacles that stood in the way of the process of negotiations. At the end ot the meeting, we were happy to announce that agreement had been reached on the removal of all the obstacles that we have identified, and which the rest of the world has also recognised as obstacles that needed to be removed.

We are encouraged that even yesterday President de Klerk announced the lifting of the state of emergency over the greater part of the country, as well as the release of another group of political prisoners. These steps constitute part of the process of implementing what was agreed a month ago. Of course, more will have to be done to ensure that the agreement is implemented in full. We are confident that this will be done and it should be done as a matter of urgency. As was agreed in Cape Town, we shall continue to press for this result. We are confident that you will therefore persist in your own demands that all political prisoners must be released, political trials ended, the exiles returned, repressive legislation repealed, and the state of emergency ended in its entirety. We make these points not to question the *bona fides* of the leadership of the South African Government. Indeed, we have said it in the past and believe it to be true that President de Klerk and his colleagues are men and women of integrity. We accepted their good faith that they will abide by what was agreed. But until what was agreed has been done, we cannot afford to lower our guard in the belief that the promise has become reality.

Indeed, we should make the point here that not everybody in our country has as yet accepted that a negotiated resolution of our problems is the best way forward. There are many among our White compatriots who are determined to resist change, arms in hand. The continuing violence of the police against unarmed people is the tip of the iceberg which illustrates the dangers we face from those who are committed to the perpetuation of White privilege and domination. We must, in this context, also mention the continuing senseless carnage that is taking place in the Province of Natal. We have made it very clear to the Government that they must discharge their responsibility and end this violence. We, for our part, will continue to do everything in our power to solve this problem by peaceful means, whatever the obstacles in our way. We would like to take this opportunity to urge you to support the international campaign initiated by our democratic movement, to draw attention to this situation and to generate the necessary pressure to oblige the South African Government to end the killing of our people. You should know that there are present in this hall representatives of our major trade union federation, COSATU, who have come out in part to take up this issue of Natal violence. With the removal of the obstacles to negotiation, it would then be possible to bring all the representatives of political forces in the country together, to agree on all the necessary measures which would lead to the elaboration and adoption of a democratic constitution.

In this regard, we would like to inform you that, more than ever before, the ANC is determined to ensure the broadest possible unity of all those within our country who are opposed to apartheid and are in favour of a genuine democratic transformation. We believe that these forces should act together in the interest of a speedy advance toward the creation of a non-racial democracy.

Central to that democratic perspective is, of course, the principle of one person, one vote on a common, non-racial voters' roll. We believe

We are going to require your continued political and material assistance with regard to all these matters as well as our continuing struggle. I think we are safe in assuming that the ILO will not fail us. I say this because you have already established a tradition of assistance to and co-operation with us, which we are certain will continue. We are obliged to you for the assistance you have given us with regard to the training of our trade unionists as well as some of our skilled personnel. In this regard we would also like to extend our thanks to you for the assistance you extended to our democratic trade union movement, which made it possible for them to reach agreement with the South African employers to change their repressing Labour Relations Act. We now await government action on this matter so that this important agreement is translated into law.

We want to build a system of co-operation with all nations so that the liberated South Africa itself becomes a force of peace, friendship and social progress throughout the world. We believe that our people, of all colours, with all their talents and genius, have an important contribution to make to the realisation of this universal objective. This once more underlines the urgency with which we have to move to get rid of the apartheid system which makes this international intercourse impossible.

Mr. President, and dear friends, thank you very much for receiving us with such warmth. Thank you very much for listening to us with such kind attention. Let us walk the last mile together. Let us together turn into reality the glorious vision of a South Africa free of racism. Free of racial antagonisms among our people. No longer a threat to peace. No longer the skunk of the world. Our common victory is certain. Thank you.

Chile

After the coup d'état which in September 1973 overthrew the elected President Salvador Allende bringing an end to a long democratic process, trade union rights and working and living conditions of Chilean workers seriously deteriorated. The primary effort of the military Government in achieving its political and economic objectives had been to secure an abundant supply of cheap labour, competitive and disciplined, wielding no political influence whatsoever and, if possible, without any form of professional (trade union) organizations. The application of such an economic model in the context of the social market economy would supposedly let employers select a suitable labour force and to fix wages arbitrarily. The application of force was supposed to contain any stirrings of discontent and the Government's industrial relations policy aimed at bringing the strength and activities of trade unions to the lowest possible ebb.

In spite of those measures which were favourably pursued by the military regime, the Chilean trade union movement continued to thrive.

Having regard to numerous complaints concerning the violations of trade union rights in Chile, as well as to the complexity of the situation in the country, the supervisory bodies of the ILO, that is, the Committee on Freedom of Association, stressed the desirability of a thorough examination of this situation and suggested to the Governing Body that the Fact-Finding and Conciliation Commission should deal therewith. This recommendation was approved by the Governing Body at its February-March 1974 Session. The three members of this Commission were designated by the Governing Body in June 1974. The Government of Chile consented thereto.

The Commission held two sessions (in July and October 1974) to consider the case of Chile; it visited the country in November-December 1974 and submitted its report with recommendations in May 1975.

By promulgating its "Labour Plan" in July 1979, the Chilean Government set out to adopt legislative measures with a view to integrating the trade union movement within the economic model proposed by the new Government. The "labour plan" thereby set the standard "for the practice of industrial relations in the country. A review of decrees was adopted to this effect. Countless measures were adopted to restrict political and trade union freedom around issues that were particularly sensitive: the right to organize meetings, strikes, to engage in collective bargaining. The new economic model brought the closing of enterprises, cuts in wages, unemployment, but also a sharp drop in trade union membership. At this juncture, trade unions started to mobilize their members in the struggle for the protection of their jobs and wages. The trade unions in opposition proclaimed three basic tasks: defence of labour rights; denunciation of the anti-union laws; achievement of democratic freedoms.

The Government's repressive policy had given rise to a common effort on the part of the various trade union groups and organizations to join together in a united front. In the early 1980s, the Chilean trade union movement started to show signs of remarkable vigour and to make major strides. Following massive protest movements, the National Command of Workers (CNT) was formed in May 1983 as the first national trade union coordinating structure, composed of five trade union organizations of which the most important one, the National Trade Union Coordinating Body (CNS), was led by its President Manuel Bustos. The Government clamped down immediately by persecuting top trade unionists like Mr. Bustos, Mr. Blest, Mr. Troncoso, Mr. Martínez.

The situation in Chile was reflected in two complaints, dealt with by the Committee on Freedom of Association, related to the violation of trade union rights, filed on 7 May 1984 by the CNS and on 16 October 1984 respectively by the International Confederation of Free Trade Unions (ICFTU), the World Federation of Trade Unions (WFTU) and other trade union organizations.

The first case (No. 1285) challenged the mistreatment of Mr. Clotario Blest, the founder of the National Association of Public Employees

(ANEF) and of the Unitary Confederation of Workers (CUT), who had been the victim of a physical attack in May 1983 following a meeting at which the CNT was set up. Furthermore the complaint concerned the detention on alleged charges of unlawful conduct of a number of trade union leaders, the violent repression of several demonstrations and marches (which took place in the course of 1983), the violation of the internal autonomy of trade union organizations by way of various forms of interference (such as removal of trade union officials from office, preventing them from standing for election, requisition of the record books, raids on trade union premises by the *hal*), and acts of anti-union discrimination (reprisals following participation in strikes and dismissals of workers engaged in trade union activities).

In its reply to the allegations the Government reacted by expressing its regrets over the mistreatment of Mr. Blest, its surprise and lack of information about the alleged detention of trade unions leaders, with the exception of the case of Mr. Bustos, President of the CNS, and Mr. Troncoso, President of the Confederation of Building Workers, charging that the latter had both participated in a march without permission and had obstructed pedestrians and vehicular traffic. As regards the violation of the internal autonomy of trade unions, the Government argued that the persons in question had not met the legal requirements. All their other arguments concerning the remaining charges proved equally inadequate.

In connection with this case (No. 1285) the Committee on Freedom of Association noted a lack of sufficient information from the Government in certain cases. It recalled that measures depriving trade union leaders and members of their freedom on grounds related to their trade union activity constituted an obstacle to the exercise of trade union rights; that these rights included the right to organize, public demonstrations (where the authorities should strive to reach agreement on the place of demonstration); that dismissals for trade union activity infringed the organization's freedom of activity of the right to elect freely its representatives. It further recalled the right of the inviolability of union premises as well as the principle of non-discrimination on grounds of trade union membership or activity. The Committee reminded the Government of the need to apply fully the principles of freedom of association and the right to organize.

The second complaint filed by the ICFTU, WFTU and other trade union organizations (Case No. 1309) concerned a number of events that had taken place in Chile since September 1984: brutal intervention by the forces of order (carabineers) against the demonstrators, including torture of the arrested trade unionists and ensuing deaths, not only in Santiago but also in other cities of the country. At the request of the Ministry of the Interior, Mr. Bustos, President of the CNS, Mr. Di Giorgio, president of the petroleum workers, and Mr. Montecinos, national leader of the copper workers, were indicted for having organized peaceful protest days of action. They had been arrested. Particular mention was made of the case involving Mr. Aguirre Ballesteros, a trade union activist who had been arrested by the police, then had disappeared and was later found dead. Furthermore, the headquarters of certain trade union organizations had been attacked by the police, their materials destroyed and papers confiscated.

New allegations concerning this case were sent by the ICFTU and other international as well as national Chilean trade union organizations in the course of 1985 and 1986. They referred to numerous harassments, arrests and the banishment of trade unionists, e.g. the removal from executive office of Mr. Bustos who was pronounced unfit to exercise trade union functions; systematic attacks by the forces of order on the headquarters of various trade union organizations during which trade union officers were beaten and threatened with death; several killings of participants during demonstrations; the full halt for a certain period of the CTC (Copper workers) following the court decision barring its leaders from performing their duties; dismissals of trade union officials and members; and the transfer to state bodies of assets of trade union organizations which had been declared unlawful.

Further violation of trade union rights were brought to the attention of the Committee successively in 1987, 1988, 1989 and 1990 by the ICFTU, World Confederation of Labour (WCL), WFTU and a number of Chilean trade union organizations: arrests, murders and death threats meted out to trade union officials; violent repression of the marches organized by unions; dismissals; searches of the premises of trade union organizations and of the homes of several national trade union leaders; raids on their homes; the denial of collective bargaining rights to certain categories of workers; attempts to discourage unionization in certain enterprises and establishments; discrimination in employment between union-

ized and non-unionized workers; and a host of other unfair anti-union practices.

Systematic harassment and persecution were particularly directed against Mr. Bustos. In its replies to the Committee on Freedom of Association, the Government accounted for the latter's removal from office on grounds that the legislation did not allow persons who had been tried and sentenced to hold trade union office. Although this instance of removal was subsequently cancelled, he had again been arrested in September 1985 (and for three days not given water or food), then released upon the unanimous decision by the Court of Appeal, but in 1985 he was again arrested and charged with contravention of the State Security Act (i.e. with participation in meetings for the purpose of conspiring to destabilize the Government, and holding unauthorized demonstrations). In October 1987, Mr. Bustos, together with other trade union leaders, were charged again for breach of this Act in connection with their call for a general strike on 7 November 1987 (including the incitement to riots) and were arrested. Mr. Bustos was incarcerated with common criminals and faced repeated death threats. In August 1988 he was sentenced to internal exile in the district of Parral, together with another trade union leader Mr. Arturo Martínez, who was sentenced to internal exile in Chañaral.

The Committee on Freedom of Association, following the complaints and supplementary information received from the ICFTU, WCL and other national Chilean trade union organizations, expressed its deep concern over these events and pointed out to the Government that the arrest and sentencing of workers' representatives for activities related to the defence of workers' interests were contrary to the principle of the free exercise of trade union rights. The Committee insisted in 1988 on the release of Mr. Bustos. The request was reiterated in 1989. As a result, Mr. Bustos was granted a presidential pardon.

The Committee expressed its serious concern at the large number of complaints filed and, taking into account the serious nature of the allegations concerning the situation in Chile as described earlier systematically urged the Government to comply with the basic principles of freedom of association and other trade union rights. It requested impartial and in-depth inquiries into the cases of death and tortures of trade unionists, the release of leaders and members arrested in connection with their trade union activity, and that the Government urgently take every step necessary to put an end to the climate of violence since respect for human rights was essential for the development of trade union activities.

In its conclusions and recommendations to the Government covering the period from 1985 to 1990, the Committee recalled a number of principles of freedom of association in connection with the situation in Chile, in particular:

- freedom of trade union assembly is one of the fundamental aspects of trade union rights and the public authorities should refrain from any interference;
- the importance of protecting trade union premises;
- trade union organizations should be able to have recourse to protest strikes, as well as to organize public demonstrations;
- prohibiting the calling of strikes is incompatible with the principle of freedom of association;
- banishment of trade union leaders or trade unionists because of their trade union activities is incompatible with the principle of freedom of association;
- disqualification of trade union leaders elected at trade union congresses constitutes a serious violation of the right of a trade union organization to elect its representatives freely. (In this connection, it might be added that conviction and persecution for activities which by their nature could not constitute a genuine threat to the proper exercise of trade union functions should not be grounds for disqualification from holding trade union office);
- arrest by the authorities of trade unionists against whom no charge is brought may give rise to restrictions on freedom of association;
- the right of trade unions to organize meetings freely at trade union premises, without the need for prior organization is an essential element of freedom of association;
- all categories of workers, within the scope and meaning of ILO Convention No. 98, should enjoy the right to collective bargaining;
- the Government should guarantee respect for the right of trade unions to meet freely, particularly in the context of preparations for collective bargaining.

The case was also dealt with by the Governing Body of the ILO to which the Committee on

Freedom of Association was submitting its reports with conclusions and recommendations.

The complaints lodged by the international and national trade union organizations and their solidarity contributed to the positive outcome of the case. The Government of Chile released the detained trade unionists, discontinued the legal proceedings brought against them and, in general, followed the Committee's recommendations, which was noted by the Committee in May 1990.

In March 1990 President Patricio Aylwin took over as President of the Republic of Chile following free democratic elections held months earlier. In this way, a transition process has started towards democracy in which trade unions can be free to take part. Successor to Mr. Aylwin in 1994 was President Eduardo Frei, also democratically elected. The dawn of freedom, democracy and hope is on the horizon in a country where the trade union actor is still among the major players.

It is most important for us to remain vigilant within the ILO and to continue to work within it as the only forum we have …

Manuel Bustos
Former President
CUT
Chile

For many years, and particularly since the 1973 military coup, Manuel Bustos Huerta was the visible face of Chile's labour movement. Until 1996, he was president of the Unitary Confederation of Workers (CUT) and had previously headed the National Trade Union Confederation (CNS). During the dictatorship of General Augusto Pinochet he underwent imprisonment, exile and banishment for opposing the neoliberal economic model and the concomitant anti-trade union policies imposed by the military government. During that painful chapter of Chilean trade unionism, the ILO was always felt to be close at hand, says Bustos, who today vividly recalls the support given and the initiatives taken by top-level ILO representatives to end military persecution against him and other trade union leaders and workers in general. His beginnings were not easy. At 11 years of age he was a farm-hand, after which he worked in a textile factory in Santiago, where he took his first steps as a trade union leader. This is why the subject of child labour evokes a strong and determined reaction from him. He is deeply convinced that much harm is currently being done to children by incorporating them into the labour force instead of allowing them to complete their basic education or pursue higher studies so as to equip themselves better to meet the challenges of a highly demanding job market. Today, this former trade union leader is beginning a new phase in his life, this time in the world of politics, having been elected deputy and sworn in as a Member of Parliament for the next four years.

L.E.: *The difficult years of repression and struggle to restore democracy to Chile are now over. In retrospect, how did you perceive the role of the ILO? Did it inspire your confidence? Do you think that its initiatives helped in your case and, more generally, in the evolution towards freedom of association?*

M.B.: I believe that we the workers of Chile were helped by the role played by the ILO during the military dictatorship. We were fortunate in terms of the ILO representatives who associated themselves with us at very difficult times and considering that it was a tripartite organization that was at odds with the government of the day. The ILO representative was even expelled from Chile on one occasion.

But I would like to make a personal comment: the ILO rendered us an enormous service in that it kept our cause alive in the international arena. I would like to recall, if I may, the case of José Aguiriano (God rest his soul), a Spaniard and a top-level ILO official. While I was in exile, for example, it once occurred to him to say to me: "I would like you to come and have breakfast with me". I went from Italy to Geneva and when we were together he said to me: "I'm going to meet Guillermo Arthur (the then Minister of Labour in the military government) and I would like us to call on him together to explain to him in your presence just how much the ILO regrets your expulsion from the country and urge them to reconsider their policies." Naturally I went along, as I did not wish to miss such an opportunity. That is but one instance of the many things that the ILO has done for us, in the same way that it enabled us, for instance, to train more than 4,500 workers under ILO programmes, with ILO resources.

This is another reason why I consider the ILO as an organization of paramount importance, in addition to the fact that it is the only tripartite body dedicated to the trade union movement and the world of work internationally, and given the role it plays in the Third World and wherever there are worker organization problems, despite its difficulties of modernization and keeping in step with the times and the complex issues with which it must

grapple. Mention of an international body associated with freedom of association and the right of workers to organize necessarily brings the ILO to mind. And it is a unique institution. This is why we must care for it, help it to develop and grow stronger every day, as it is the only high-level champion of the interests of the world's working classes.

L.E.: *Does any special moment stand out in your mind concerning the role of the ILO?*

M.B.: There was first of all the initiative I already mentioned, in which we personally approached the Minister of Labour who was representing the Chilean dictatorship at the ILO Conference. That was highly significant. I have never known whether it had anything to do with my return to Chile, but the move had been made. Representations were always being carried out by the ILO concerning the repression we were facing. At every annual meeting, delegates on the Credentials Committee introduced an agenda item on the legitimacy of the Chilean delegation, which was then discussed. As a tripartite organization, the ILO could not take sides, but in the case of Chile, we were favoured by the existence of agreements to act and denounce Chile's dictatorship. These are some very special instances of ILO initiatives with respect to Chile. No doubt it must have felt pressured at times by one or the other group – governments or employers – and certainly at all times by the Chilean dictatorship, which was constantly complaining about the role being played by the ILO in support of the struggle of the Chilean trade union movement. Complaints were always being made about the role of ILO representatives in Chile, above all because they would attend the activities we organized. The military dictatorship would forbid them to attend as it considered our organizations to be illegal. But even so they always came. They crossed police lines to be with us and bring us words of encouragement. To my mind therefore, and I repeat, the ILO and the International Confederation of Free Trade Unions (ICFTU) played the most important role in lending political and moral as well as international support to our struggle.

L.E.: *To use a farming metaphor, could it be said that the Chilean labour movement is now reaping what was sown by the ILO during the dictatorship?*

M.B.: I have to say with the greatest regret that my impression is that we have recently lost the capacity to utilize all those people who were trained with ILO support. If you went from Arica to Punta Arenas you would come across workers in the smallest, most remote province who would tell you that they have participated in ILO training courses organized for CUT or for the former National Trade Union Confederation. And if you were to ask what they were now doing, they would say: "Nothing". This is why, with all the problems of trade union leadership that we are facing, we are unfortunately losing a sizeable pool of trade union activists who were trained over the past 12 years.

But the fault is ours and not that of the ILO. The Organization is always with us. It is always willing and it supports us. It is true that at present we are implementing no major ILO programmes or projects. There are just a few small ones, but the fault is ours, as the ILO is always ready to help us.

L.E.: *This year marks the 50th anniversary of Convention No. 87. Do you think it is still relevant in a globalized world where production structures are undergoing radical transformation*?

M.B.: There are many who are keen on eliminating it on the ground that it is incompatible with modernization in the world. I would like to repeat, however, that it is always possible to discuss ways in which countries can better implement the Conventions safeguarding freedom of association and collective bargaining, but they most certainly cannot be considered as having lost their validity.

Freedom of association and the encouragement of workers' organizations do not lose validity in the face of current and future changes. Quite the contrary, the ongoing world economic changes are marked by such greed that mechanisms should exist to keep things in check, for the process is advancing in a truly cruel fashion, sacrificing workers, young people, women and children to the interests of market dynamics and being driven by considerations of economic performance and profit alone. I say again, these Conventions are fully valid and should therefore be supported and improved.

L.E.*: The ILO has set itself another task, a worldwide mobilization against child labour and the exploitation of minors. When that mobilization is over it hopes to establish a new Convention to avoid the abuse of children, including sexual abuse. Would you like to comment on this topic?*

M.B.: The ILO has waged major battles. It took up the cause of women's rights and has managed to give legitimacy to the struggle of women the world over for their labour rights. It has not been easy, but I believe that we have made major advances thanks to the ILO and other United Nations agencies. The ILO has now thrown its weight behind the campaign against child labour. I hope that we will be receptive to this worldwide message at the meeting to be held in Geneva in an attempt to find a solution that will end or at least help to reduce the unspeakable injustice of destroying the future of children and young people both morally and materially.

L.E.*: Do you therefore agree that child labour causes twofold damage in that the child or young person is exploited and their future as adults is blighted?*

M.B.: It is destroying children between 12 and 14 years of age. They have less opportunity to study and are therefore being left behind in the present-day society, which is much more demanding. Furthermore, there is the matter of the type of work into which children are being drawn, such as commercial sex work, as many governments around the world look the other way. We must therefore show ourselves to be capable of saving our young people and I believe that the ILO should make this one of its campaigns.

I am a firm believer that children should not work, but should go to school.

L.E.*: Would you like to use our columns to send message to trade unionists in ILO member States, against the background of your experience of struggle for democracy and your dealings with the ILO?*

M.B: I should like first of all to greet all my friends and colleagues at the ILO, first and foremost the Workers' group, the Bureau for Workers' Activities, but also the three groups as a whole. I thank them as well for the considerable solidarity they have shown towards me as a leader and towards the people and workers of Chile. I also believe that it is most important for us to remain vigilant within the ILO and to continue to work within it as the only forum we have that promotes and is always mindful of the social component and the only one in which society is represented on a tripartite basis: by workers, employers and governments.

Another aspect of my message would be that we should help to sensitize the governments concerned as to the need to keep their quotas up to date, as this has major implications for the further development of the ILO. We should be able to give a higher profile to the work of the ILO in the world so that people may be better acquainted with what it does and, in the cases of the more problem-ridden countries, to be better placed to provide even more solidarity and encouragement through physical outreach by the ILO. My experience shows that when the ILO arrives in a country under dictatorship and repression, the resulting sense of support is tremendous. This may be due to its image or to some other factor, but when in the Chile of 1984 or 1985 you were told that you had had a telephone call from an ILO representative visiting the country, you felt protected. Perhaps there is no real protection, but as it is the world organization of workers, one feels encouraged to press on.

This is why I believe that the ILO should never lose its role as a giver of solidarity, the more so in those instances where this is really needed, for much remains to be done in many places to achieve full respect for freedom of association and workers' rights.

Costa Rica

In the early 1980s, as a response to the aggravation of the economic crisis in all its aspects in a number of countries of Central America (in particular Costa Rica, Guatemala and Honduras), and the action of the trade union movement, some measures were taken to undermine the trade union influence and to develop the "solidarist associations" of workers. These associations, very close to the employers, were allegedly created to take the place of trade unions.

The case of Costa Rica (No. 1483), dealt with by the supervisory bodies of the ILO, may well serve as an example of the development, functioning and consequences of the existence of such associations.

On 21 December 1988 the International Confederation of Free Trade Unions (ICFTU) filed a complaint with the ILO concerning the violation of trade union rights in Costa Rica. The complaint was examined by the Committee on Freedom of Association at its successive meetings in May 1990, November 1990 and May 1991 and then drew the case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

The ICFTU pointed out that the Act (No. 6970 of 7 November 1984) on solidarist associations institutionalized a series of anti-union practices which were contrary to ILO Conventions Nos. 87 (Freedom of Association and Protection of the Right to Organise) and 98 (Right to Organise and Collective Bargaining). The Act defined solidarist associations as "bodies of indeterminate duration which have their own legal personality, and which to achieve their purposes, may acquire goods of all kinds, conclude any type of contract and undertake legal operations of any sort aimed at improving their members' social and economic conditions so as to raise their standard of living and enhance their dignity. To this effect they may undertake savings, credit and investment operations and any other financially viable operations."

In its Digest of decisions and principles (para. 773) the Committee on Freedom of Association defined solidarist associations as "associations of workers which are set up dependent on a financial contribution from the relevant employer and which are financed in accordance with the principles of mutual benefit societies by both workers and employers for economic and social purposes of material welfare (savings, credit, investment, housing and educational programmes, etc.) and of unity and cooperation between workers and employers".

Thus, this type of association, by nature of its structure and functions, fails to respect the principle of independent organizations of workers as provided by ILO conventions. They have often been used to prevent the development and functioning of genuine workers' organizations, whether trade unions or co-operatives, and they have in fact weakened the trade union movement and destroyed a large number of trade union organizations, in particular when they have assumed collective bargaining functions.

Since the passing of the above Act, a marked deterioration was noted in terms of trade union rights, along with an increase in anti-union practices (e.g. a solidarist association may be set up with a minimum of 12 persons, a trade union organization with 20). The solidarist associations became a means of manipulation by social sectors outside the working class, with social and ideological control exercised by the employers.

During the decade 1980-90 the solidarist associations succeeded in taking the place of the unions in the industrial sector and on banana plantations. The persecution of trade unions and the development of solidarist associations in the private sector resulted, inter alia, in a considerable decline in collective bargaining.

At this stage an ICFTU delegation went to Costa Rica to meet its affiliates and various Costa Rican authorities. They mainly discussed the threat represented by solidarist associations and the use of them for anti-union practices.

The Government stated, however, that the right to organize was laid down in the national Constitution, which enabled both employers and workers to organize freely. It also added that the decline the trade union movement had been suffering, as opposed to the rise of the solidarist movement, was caused in many cases by internal factors which were beyond the competence of the Government.

In this connection, it might be useful to recall that the factors which had promoted the internal development of solidarism were, first of all, the creation of an economic basis through the administration of termination grant funds paid by the employer, and, secondly, the lucrative use of it, in accordance with the Act on solidarist associations. The Government also provided economic support in the form of donations from various institutional sources.

At the 6th Solidarist Congress (held in 1990) the President of Costa Rica announced the Government's intention of amending Act No. 6970 (see above) so that the solidarist associations might be represented on state bodies, e.g. the Social Welfare Fund of Costa Rica, the National Apprenticeship Institute, etc.

The Committee on Freedom of Association requested the Government to supply precise information on the specific cases of anti-union discrimination and pressure on workers to join solidarist associations referred to by the ICFTU, as well as to indicate the scope of the legal protection available to workers and union leaders who were affected by such action, the existence of financial support by employers to the solidarist associations, and the amount of financial assistance by the Government.

In November 1990 the Committee on Freedom of Association expressed serious concern with regard to the weakening of the trade union movement in Costa Rica and the considerable decline in the number of trade union organizations, a development which appeared to be connected with that of solidarist associations. It asked the Government to take necessary measures to remedy the situation. Finally, it recommended to the Governing Body of the ILO to invite the Government to accept a direct contact mission by the ILO for the purpose of examining the allegations in full knowledge of the facts. The Governing Body approved this recommendation, and the Government accepted the mission.

The ILO direct contact mission took place in April 1991. The Government showed a spirit of cooperation and did their utmost to ensure the smooth running of the mission. Nevertheless, the Government declared that the ICFTU's allegations were not true and requested the closing of the procedure. It indicated that the solidarist associations are not the only ones to administer or participate in the management of the termination funds and that there was no factual or legal monopoly in favour of the solidarist movement in this area, or any discrimination against the trade union movement. Finally, the Government declared that it was still willing and had in fact decided to amend legislation in order to revise the standards on the activities of solidarism, thus guaranteeing that the scope of union action would not be subject to discrimination. As a first step, the draft legislation being elaborated by the Ministry of Labour at the time would serve considerably to impose the fines for violations of the Labour Code and establish a new system.

The Committee on Freedom of Association identified three basic issues:

- the alleged interference of solidarist associations in union activities including, in particular, collective bargaining through the signing of "direct settlement", to which they were entitled;
- the alleged existence of dismissals, or other prejudicial acts based on trade union reasons or favouring membership of solidarist associations and inadequate legal protection against this type of act;
- the alleged unequal treatment between solidarist associations and unions as reflected in the legislation.

The Committee also observed that the interference of solidarist associations in trade union activities, including collective bargaining, through direct settlements signed between an employer and a group of non-unionized workers even when a union existed in the undertaking, did not promote collective bargaining as laid down in ILO Convention No. 98.

In its recommendations formulated in May 1991, the Committee noted the Government's willingness to introduce legislation to ensure the real separation of functions between unions and solidarist associations and to adopt effective trade union immunity and other measures that would both guarantee adequate protection against anti-union discrimination and ensure that solidarist associations did not get involved in trade union activities. At the same time the Committee on Freedom of Association referred the case to the Committee of Experts

on the Application of Conventions and Recommendations, which dealt with the case in March 1993 in connection with the application of Convention No. 87, and subsequently it was dealt with by the June 1993 Conference Committee on the Application of Conventions and Recommendations.

Following the examination of this case and the recommendations of the Committee on Freedom of Association, as well as the Conference Committee on the Application of Conventions and Recommendations, the Government asked the Director-General of the ILO in August 1991 to provide technical assistance with a view to improving labour legislation, in particular as regards the protection against anti-union discrimination. The technical assistance was provided in April 1992 and April 1993 by ILO experts who established reports with pertinent recommendations.

Another ILO direct contacts mission took place in October 1993 at the request of the Conference Committee on the Application of Conventions and Recommendations. Following the technical assistance and the direct contacts mission, Legislative Decree No. 7348 (of 18 June 1993) and Act No. 7360 (of 4 November 1993) were adopted to reform the Act on solidarist associations and the Labour Code. Act No. 7360 complies with the various requests by the ILO supervisory bodies; inter alia, it prohibits solidarist associations from undertaking any kind of activity tending to combat or in any way hinder the formation and operation of trade unions and cooperative organizations, as well as from signing collective agreements or direct arrangements relating to labour.

The Act also carries the provision that whenever there is a trade union in an enterprise, to which at least a simple majority of its workers belong, the employer is prohibited from collective bargaining of any type with anyone but the union. Under the new Act trade unions may be formed with the same minimum of 12 members, as are solidarist associations. Finally, the new Act provides for effective protection against all types of anti-union discrimination.

In June 1994, on the basis of the report by the March 1994 session of the Committee of Experts on the Application of Conventions and Recommendations, the Conference Committee on the Application of Conventions and Recommendations noted the above changes with

L.E.: *The difficult years of repression and the struggle to regain democracy in Latin America are now behind us. Looking back on this process, what is your view of the role played by the ILO?*

G.B.: There have been various periods in Latin America. During some of them, military dictatorships prevailed; but we must bear in mind that even at times when there was no military dictatorship, we did not have freedom of association. By this, I mean that even when we had democracy, we did not have freedom of association, so the important point to make is that the ILO has helped enormously; it intervened and made every effort when asked to do so by the trade union movement, for the purpose of investigating, discussing and finding solutions to the various situations which arose. In this respect, the Committee on the Appli

L.E.: *Can you, with your experience, remember any special moment with regard to ILO intervention in the area?*

G.B.: In this region, the ILO has played an important role in supporting the social actors and the trade union movement in particular. I have already mentioned the concept of solidarism, for example. Considerable progress has also taken place in regard to freedom of association when the trade union movement acted jointly with the trade union movement of countries outside the area. In particular, when existing mechanisms were used in countries where our countries have access to markets, as with the Generalized System of Preferences (GSP) in the United States, whose mechanisms acted in coordination with AFL-CIO some years ago in respect of various countries in the area.

We believe that the ILO has played, and can play, a very important role, helping and advising in the task of aligning national legislation with international standards. This is a matter of trust and respect by governments and the business sector regarding the validity and application of international conventions.

L.E.: *This year marks the 50th anniversary of Convention No. 87. Do you think this instrument is still applicable in a world characterized by globalization and fundamental changes in productive structures?*

G.B.: Convention No. 87 definitively protects workers' right to organize themselves; it has been – and still is – a great triumph of democracy. Nevertheless, it appears that it is not enough as a general statement; unless it is paralleled by the possibility of imposing trading sanctions on anyone who does not comply with its provisions, the Convention remains a dead letter. In fact, this has been happening in our countries. That is why we are speaking emphatically about social clauses, a subject which was discussed at the last International Labour Conference and, as you know, caused a very violent reaction from most countries, particularly those in Latin America. That opposition is very significant and should be discussed, since it would be interesting to see whether those who are now saying that everything should be discussed in the ILO, although they have held it in scant respect hitherto, are ready to accept a sanction when the ILO makes a decision on the matter. From what was said, it seems that the relevance of freedom of association and its relationship with international trade are going to be major topics in forthcoming years.

L.E.: *On the basis of your experience as a workers'leader and fighter for trade union freedom, and your contacts with the ILO, do you wish to send a message through this publication to trade unionists in ILO member States?*

G.B.: In my opinion, all trade union members and other constituents should fight to strengthen the ILO and to ensure that its resolutions and conventions have binding force or, at least, are respected and taken very seriously into consideration; in addition to this, it might also be said that it is necessary to revise some international standards which are not in keeping with present circumstances. New conventions should be sought regarding, for example, atypical work, subcontracting, labour associations, etc., taking into consideration that there is a new environment which forces us to formulate new conventions for the protection of labour rights. We must be sufficiently lucid to find what is really essential and important; and for this, a very broad discussion must be initiated. All this must be done without forgetting the need to respect existing Conventions and the fundamental standards and rights on freedom of association, which constitute a historic conquest of the utmost importance and a field in which much remains to be done.

Côte d'Ivoire

The single trade union confederation system imposed by the political authorities in the vast majority of African countries had led in the course of time to weaker industrial relations and situations of injustice with regard to large numbers of workers. The events in recent years in Côte d'Ivoire underpin the necessity of a judicious application of the international labour Conventions to guarantee social justice and industrial peace.

On 22 February and 17 July 1991, the World Confederation of Labour (WCL) filed complaints of violation of Convention No. 87 against the Government of Côte d'Ivoire. It alleged that the Government was holding up the recognition of a new trade union federation named *Dignité* and had engaged in various measures of intimidation and anti-union discrimination against its officials. On that occasion, the WCL recalled that the need to create a new trade union organization capable of ensuring efficiently the protection of their occupational, social and economic interests was felt by a number of workers. This growing awareness was at the root of the Dignité Federation which, several months after having deposited its by-laws at the competent authorities, was still waiting for official recognition: in accordance with the legislation in force, this recognition should have taken effect after a three months' time-limit. However, there have been no further developments. According to the WCL, this delay was an obvious attempt to restrict the development and activities of the Dignité Federation.

The WCLalso stated that the foundation of the Dignité Federation had given rise to acts of intimidation and arbitrary measures against its founders and members. These obstructions prevented them from fulfilling their functions and benefiting fully from their trade union rights for the protection of the workers' interests. As a consequence, the WCLtook the view that freedom of association and protection of the right to organize were not respected. It reminded of the fact that Côte d'Ivoire had ratified Convention No. 87 on 21 November 1960.

Furthermore, the WCL denounced the arrest of trade unionists following a mass demonstration triggered off on 2 August 1990 in protest against the austerity policy of the Government, which resulted in sizeable cuts in wages and staff in the public service. It stated that during this demonstration, 29 members of the Dignité Federation were arrested and detained for 12 days. Moreover, the salaries of three teachers affiliated to the Dignité Federation were suspended, and they received a letter telling them that they were to be posted – in the middle of the school year – to outlying areas in the country. One of them was summoned to appear before the administration of his school and was told that his salary would be restored if he resigned from the Dignité Federation. In the opinion of the WCL, such an attitude on the part of the Government and administrative authorities was contrary to Conventions Nos. 87 and 98. Consequently, it requested that:

- the Dignité Federation be officially recognized and that the authorities do not hamper either its running or activities, in accordance with ILO Conventions Nos. 87 and 98;
- the decision to send the three teachers to the interior of the country annulled;
- the arrears in salary paid.

Following upon this complaint, the Committee on Freedom of Association invited the Government to respect the principle whereby workers should in practice be able to form and join organizations of their choosing in full freedom. The Committee also invited it to ensure that no measures be taken against workers wishing to set up workers' organizations. It requested the Government to state the precise reasons for the arrest and 12-day detention of 29 trade union activists belonging to the Dignité Federation. Lastly, the Committee requested the Government to state the reasons for the transfer of three teachers to the interior of the country.

By a new letter, dated 20 February 1991, the WCLexplained to the Committee on Freedom

of Association that the Government of Côte d'Ivoire had decided unilaterally, on 15 March 1990, to reduce public-sector remuneration by 15 to 40 per cent and to deduct a 10 per cent "solidarity" contribution from wages in the private sector. It explained, further, that on 26 March 1992, during a peaceful protest demonstration against the drop in public-service remuneration, research workers and teachers belonging to the National Union for Research and Higher Education (SYNARES) were arrested. A 48-hour warning strike was called at the same time by the doctors, who left a skeleton service. On 27 March, the Government responded by ordering the striking doctors back to work. It questioned and arrested a number of them, including the General Secretary of the Union of Teachers in Higher Education. Moreover, on the following day several more people were arrested when demonstrating to secure the release of the trade union officials.

Faced with these new flagrant violations, perpetrated in spite of the recommendations of the Committee on Freedom of Association to the Government of Côte d'Ivoire, Mr Peirens and Mr Pinzón, workers' delegates from Belgium and Guatemala respectively at the International Labour Conference, filed on 12 and 18 June 1992 a complaint in compliance with article 26 of the ILO Constitution to explain that after the above-mentioned delaying tactics, the Minister of the Interior, had made it known that he was prepared to issue a registration document to the Dignité Federation. Despite this promise, however, they went on to explain, the General Secretary of the Dignité Federation had been refused this document, prior to his departure for the International Labour Conference, without any explanation. They also stated that the employers had demanded official recognition of the Dignité Federation before authorizing it to take part in social elections and to receive its members' trade union dues; that certain authorities had threatened to take repressive measures if the Dignité Federation acted without "authorisation" (for example, by organizing trade union meetings); that the arbitrary arrests and imprisonment on account of trade union activities were continuing; that a circular from the Ministry of Foreign Affairs, sent to all the diplomatic missions, stipulated that any request for project financing submitted to them by the various groups and associations, including trade unions and political parties, was first to be approved by the local administrative authorities.

Moreover, as regards the arrest and detention of 29 Dignité Federation activists on 2 April 1990, the Government just replied that the facts had to be verified and that the complainant confederation should supply further information.

Noting that the complainants had already described the circumstances in which the arrests took place, the Committee on Freedom of Association at its session in November 1992 once again requested the Government to inform it of the exact reasons for the arrests and detention of trade union officials.

At the same session in November 1992, the Committee noted with interest that the Dignité Federation had been officially recognized, while deploring the particularly long delays that had been necessary before the receipt for the depositing of the by-laws was issued. It stressed that the legal formalities for setting up a trade union should not be applied in such a way that the formation of trade union organizations was delayed or prevented. Considering that any delay caused by the authorities in registering a trade union constituted an infringement of Article 2 of Convention No. 87, it expressed the hope that in future the Government would endeavour to guarantee full respect for the said article, according to which all workers, without distinction whatsoever, had the right to establish and join organizations of their own choosing without previous authorization.

It once again invited the Government to state the precise reasons for the transfer to the interior of the country of the three teachers mentioned in the complaint as well as the reasons for their suspension and why one of them had his salary stopped.

Furthermore, the Committee requested the Government to undertake an inquiry with a view to determining the real reasons for the dismissals of trade union leaders and officials and, if the inquiry revealed that these reasons had been of an anti-union nature, to take the necessary measures to have the people concerned reinstated in their jobs. It requested the Government to take the necessary measures to establish whether the Dignité Federation at the local level of its first-level affiliated trade unions, was in fact the subject of acts of interference and of threats by the authorities and, if so, to take the necessary measures to put an end to such acts and to prevent their recurrence.

As regards the elections of employees' delegates, the Committee considered that the Government should ensure that all recognized

trade union organizations, including the Dignité Federation, be able to present candidates in all enterprises where there is a first-level trade union; this should apply from the first ballot.

As regards the collection of trade union dues, the Committee considered that the Government and the social partners should examine what consequences were to be drawn from the new situation of trade union plurality prevailing in the country, so that the various trade unions be dealt with on an equal basis.

As regards the allegations of acts of interference by employers in trade union activities, the Committee recalled the terms of Article 2 of Convention No. 98, according to which workers' and employers' organizations shall enjoy adequate protection against any acts of interference from each other.

As regards the circular from the Ministry of Foreign Affairs aimed at exercising control over the financial management of the trade unions, the Committee requested the Government to clarify the contents of the circular in question so as to guarantee that trade unions had the right to organize their administration in full freedom in accordance with Article 3 of Convention No. 87.

Furthermore, in 1993 and early in 1994, the WCL notified the Committee on Freedom of Association of exceptionally serious events at the INDEFOR plants in Ihro Lamé during which the army had expelled the workers and their families from their houses – in full rainy season. This event had preceded a wave of dismissals of these same workers. The WCL also denounced the deliberate exclusion of the Dignité Federation members from a census with a view to the social elections at the Free Ports of Abidjan.

In view of the fact that the complaint in question had been filed in compliance with Article 26 of the ILO Constitution, the Committee had already deemed it most desirable, considering the importance and gravity of the case, that a representative of the Director-General should undertake a direct-contacts mission and report to the Committee. By letter dated 19 May 1994, the Government of Côte d'Ivoire had indicated that it was willing to receive such a mission.

Appointed by the ILO Director-General, Mr Keba Mbaye, former Vice-President of the International Court of Justice, first honorary President of the Supreme Court of Senegal and member of the Committee of Experts on the Application of Conventions and Recommendations, accompanied by the Deputy Chief of the ILO Freedom of Association Branch and the Technical Adviser on International Labour Standards, went to Côte d'Ivoire from 24 September to 1 October 1994.

During its stay, the mission met several personalities, in particular the Minister of Employment and the Public Service, the Minister of the Interior and senior officials of the Ministries of Employment and the Public Service, of Justice and of Foreign Affairs. It also met delegations of various workers' and employers' organizations such as the General Union of Workers of Côte d'Ivoire (UGTCI), the Dignité Federation, the Federation of Independent Trade Unions of Côte d'Ivoire (FESACI) and the National Council of Employers of Côte d'Ivoire (CNPI). The Dignité Federation officials were present when the mission visited the management of the Blohorn enterprise (Unilever) in Abidjan, the research plant of Oil-Producing Plants of the Forest Institutes (IDEFOR) at Ihro Lamé, and the management of the Free Ports of Abidjan. The mission thus visited the various enterprises where there had been problems with the recognition of the first-level unions affiliated to the Dignité Federation, with the holding of trade union elections or with job losses following strike action.

The following are extracts from the mission's declaration on its findings:

1. The Dignité Federation has legal personality.
2. First-level unions can establish themselves simply by depositing their by-laws and the list of their officials at the competent authorities. A receipt of this deposit is issued. All doubts are dispelled as regards the rules applicable to the establishment of trade unions.
3. There were no trade union officials – on that day and according to the Minister of the Interior – who were detained for activities linked to the protection of workers' interests. The Minister requested the trade union representatives there present to bring to his attention any cases that might come to their attention.
4. Concerning sanctions which had been allegedly taken against trade union officials, the Government brought out the text of an Act of 30 July 1992 respecting amnesty. Under the terms of that Act, the nine members of SYNARES trade union (named in a complaint with the ILO) have benefited from the amnesty and returned to their jobs. Their salaries have been paid.

5. The employees of IDEFOR at Ihro Lamé who had lost their jobs following strike action on 11 May 1993 would be reinstated following negotiations.
6. The Minister of the Interior assured the mission that Côte d'Ivoire, following the period of return to multipartism and trade union plurality, has decided to apply Côte d'Ivoire laws and international Conventions which it freely ratified, to increasingly ensure the protection of trade union rights to all occupational organizations and their members without any discrimination whatsoever.
7. He pointed out that concrete measures were being taken so that trade union dues would be limited to organizations chosen by the workers.
8. As regards the circular from the Ministry of Foreign Affairs dated 18 May 1992, (already mentioned), the Minister of the Interior declared that it did not apply to the assistance that Côte d'Ivoire trade unions could receive from an international organization of workers to which they were affiliated.
9. Now, obstacles to the freedom of first-level unions of the Dignité Federation to present candidates for election as trade union representatives no longer exist, and this is the case from the first balloting.
10. Meetings and trade union demonstrations can be freely held according to the Minister of the Interior. Meetings in workplaces are subject to progress made at work. Moreover, they are free. The same is true of peaceful demonstrations of a trade union nature.

As regards the problems worrying the dockers, the Committee on Freedom of Association at its meeting in November 1994 invited the Government to take all necessary measures to ensure that the dockers would not be dismissed or excluded from the census on account of their trade union affiliation or their participation in trade union activities.

At its session in March 1998, the Committee on Freedom of Association once again requested the Government to take all possible steps so that social elections would be held as soon as possible at the Free Ports of Abidjan and to ensure that the first-level unions affiliated to the Dignité Federation could take part in them. It once again requested the Government to keep it informed of the election results. Furthermore, it insisted on the Government taking all necessary measures to ensure that the Ihro Lamé workers would be reinstated if this were their wish.

It is quite obvious that the interventions of the ILO, following on the requests from the World Confederation of Labour, have been strongly conducive to the establishment of healthier industrial relations in Côte d'Ivoire and to a more democratic social life in that country.

Convention No. 87 would be the foundation of democracy if it were scrupulously respected by our States ...

Basile Mahan Gahé
Secretary General
Dignité
Côte d'Ivoire

L.E.: *The ILO's standard-setting procedure and supervisory machinery are largely inspired by the principle of moral suasion, but in practical terms this principle is grounded in a number of clearly defined options of legal recourse which are available to workers in all the member States of the ILO. Were you aware of the ILO's complaints procedure at the time complaints were first lodged in 1991 concerning your organization*?

B.M.G.: We were fully aware of the ILO's complaints procedure. We had received the information on this ILO procedure from our international confederation, the World Confederation of Labour. Besides, we had already got an idea of the procedure in question when we had our training at the ILO offices.

L.E.: *Would you recall the immediate events which led up to the moment when your organization lodged its complaint*?

B.M.G.: We had noted several infringements of Convention No. 87, yet ratified already in 1960 by the Côte d'Ivoire Government. First, the Dignité Federation required a government authorization to work on the national territory, instead of a receipt of deposition issued by the competent administration.

Second, all first-level trade unions affiliated to the Dignité Federation required each an authorization to work in their branches. They were prohibited from taking part in the social elections in the enterprises, from paying freely dues to the organizations of their own choosing. The direct debiting of dues was unilateral. Our activists were subjected to anti-union reprisals (arrests, arbitrary transfers to remote areas, improper dismissals, etc.). This was particularly true in large enterprises such as Cosmivoire, Abidjan Catering, Blohorn, Soat, Scaf, Adib Kalout, Free Ports of Abidjan, etc.

Moreover, public-sector teachers found the entirety of their salaries suspended on account of their belonging to the Dignité Federation.

L.E.: *Was the ILO's influence on the outcome of your case direct or indirect?*

B.M.G.: The ILO exerted a very considerable influence. Thanks to the ILO, we obtained in Côte d'Ivoire:

- the recognition of the Dignité Federation and the cancellation of the assent without which no trade union could possibly undertake its activities;
- the participation of all trade unions in the social elections in all enterprises from the first balloting;
- the financing of projects by social partners without the authorization of the government;
- the participation of the Dignité Federation in tripartite meetings.

Nevertheless, the Ihro Lamé workers have not yet been reinstated. And the Government continues to deliver false reports on this. Our five brothers, members of the SYLIDOPACI Executive Committee, are not yet in possession of the cards giving them access to the Free Ports of Abidjan where the elections have not been organized so far.

The cases of the Nelci, Scaf, Soat, Abidjan Catering, Blohorn and Cosmivoire enterprises, indicated in Complaint No. 1594, have fallen into oblivion. The Côte d'Ivoire Government refuses to enter into negotiations on these cases. And they do so despite the repeated letters of invitations we are sending them.

The Government does not keep its promises to respect ILO Convention No. 87. It is turning a blind eye to the compulsory direct deduc-

tions of trade union dues from activists of the Dignité Federation.

Since the previous May Day festivities, all public demonstrations of the Dignité Federation have been either banned or violently repressed. On 4 February 1998, the riot police attacked our activists at the head office of our organization. They went so far as to smash the doors and windows.

L.E.: *In retrospect, would you try to make an appraisal of the extent to which the ILO's intervention was decisive in the outcome of your organization's case?*

B.M.G.: Thanks to the ILO's intervention, quite a lot of our activists are still alive today. The Government is now led to infringe Convention No. 87 with more subtlety when it turns a blind eye to various abuses by the employers, when it seeks the opinion of labour inspectors before dismissing workers' delegates who are activists of the Dignité Federations, when it runs down our organization in the official media. "Joining Dignité is accepting to be slaughtered". Those were the words of the Prime Minister on 1 May 1997.

The Government is dragging out the negotiations about the files introduced by Dignité in order to suffocate the development of our organization.

L.E.: *What, in your opinion, are the strengths and weaknesses of the ILO's supervisory system*?

B.M.G.: In our opinion, the ILO's supervisory system has the following strengths:

1. The obligation for the States to report on the Conventions ratified in consultation with the trade unions, which makes it possible to see whether the commitments are honoured.
2. The Committee of Experts and the Conference Committee on the Application of Standards of the Conference. The workers are playing a very active part in the Conference Committee.
3. The various complaints procedures and, through them, the direct-contacts missions.

The weaknesses of the supervisory system are as follows:

- the slowness of the intervention procedure harms considerably the workers and their organizations;
- in many cases some ILO officials seem to fear that these supervisory actions are interpreted by the governments as an interference in their internal affairs. Whereas they are mere matters of supervising the application of the Conventions ratified by the country involved. Many governments are gambling on this fear of interference by talking about their sovereignty. The non-existence of coercive measures has a strong effect on the lack of efficiency of the ILO's supervisory system.

L.E.: *Would you care to add any other comments concerning the principle of freedom of association and the ILO's role*?

B.M.G.: We think that Convention No. 87 is complete. It would be the foundation of democracy if it were scrupulously respected by our States. The ILO – which is not a police force – cannot really monitor the application of this Convention without the trade union reports.

Unfortunately, in many cases the ILO is in possession of contradictory government and trade union reports. This makes its procedure very long. The slowness of this procedure harms the workers and their organizations considerably.

In fact, our governments respect only sponsors. If the ILO, indeed the oldest of the UN organizations, could give its opinion on the World Bank, the International Monetary Fund and the developed countries allocating loans, subsidies or even donations to our States, the latter would respect and apply the Conventions they ratified.

L.E.: *Do you wish to use our columns to convey a message to your fellow trade unionists in ILO member States, drawing on your own experience with the ILO?*

B.M.G.: We want all trade union confederations to support massively the ILO's action in order to see to it that it is the most important United Nations organization and that it is not replaced one day by some institution. If we are alive today, this is essentially thanks to the ILO. If the workers in our country have one day a subsistence income and some amount of freedom, it will be essentially thanks to the ILO. Otherwise the governments and employers will not hesitate to establish slavery in our States.

In this struggle we are counting on the solidarity of all the workers throughout the world.

Spain

After the civil war, Franco's Government set up an occupational organization system whose essential principles were enshrined in a *Fuero del Trabajo* (Labour Code) promulgated in March 1938. The *Fuero del Trabajo* is one of the fundamental laws of the Spanish State. The system was based on a "national trade union community". All citizens who participated in a production process as workers or employers had to join "vertical trade unions" which grouped together employers and workers under state control. The law provided that the vertical union was an instrument at the service of the State through which its economic policy would mainly be carried out. The *Fuero del Trabajo* was amended in January 1967, but still affirming that Spaniards, insofar as they participate in production, constitute the Trade Union Organization.

Under the Penal Code, an attempt to set up occupational associations outside this organization was an offence. The regulation of collective labour relations was an administrative exercise. Strikes were prohibited.

Nevertheless, there existed workers' organizations which were illegal under Spanish legislation and which had been dissolved at the end of the civil war: the Unión General de Trabajadores (UGT) (General Union of Workers), the Confederación Nacional del Trabajo (CNT) (National Confederation of Labour) and other organizations and groups which had all been subjected to repressive measures by the Government. The UGT, set up before 1919, maintained its complaint and for many decades constituted a resistance movement with regard to the Spanish vertical trade union, with the support of the international trade union movement, in particular that of the (International Trade Union Confederation) ICFTU as from 1949. The UGT had substantial influence, particularly in the Basque provinces and Asturias, and consistently rejected the principle of the single trade union system imposed by law. It also rejected the vertical trade union structure, claiming the right of workers freely to join their own organizations and to strike. The UGT promoted the establishment of so-called enterprise or works councils, formed by a system of direct election by the workers of the unit concerned, and which, at specific times and in certain circumstances, could negotiate with management.

So for many years the UGT was the most important representative organization of Spain. In the fifties the UGT had borne witness to seven of its Confederal Centres retreating underground further to the assasination, in 1953, by the police of the Franco regime, of the President of the organization, Mr Tomás Centeno, which led the UGT to have its Executive transferred out of Spanish territory.

Among the workers' organizations on the edge of the Trade Union Organization, Comisiones Obreras (CCOO), (the Workers' Committees), had acquired a certain prominence as of 1956, especially in Madrid, and particularly in the metallurgy industry. They originated in more or less isolated groups of workers who, in certain factories, designated representatives to raise specific complaints or claims with the firm's management. Between 1964 and the trade union elections in 1966, the CCOO movement gained a new organizational and pragmatic dimension. Activities, including meetings, enjoyed a certain degree of tolerance. The CCOO, following a line of action favourable to "legality", presented candidates at the elections, many of whom were elected and, to some extent, still held trade union responsibilities. In January 1966, a delegation from the Madrid metal workers held a meeting with Mr José Solís, National Trade Union Delegate and Minister/Secretary-General of the Movement, and claimed the right to strike and to enjoy freedom of association and expression, as well as the independence of the trade unions in regard to the authorities, firms and the movement. It should be noted that the period of relative tolerance for the CCOO movement lasted until the trade union elections and the referendum on the Organization of the State Act (Constitution) in 1966.

The lack of freedom of association and the repressive measures of the regime stirred up systematic protest not only in Spain but also at international level. In connection with some examples of violation of freedom of association examined by the Committee on Freedom of Association which will be discussed later, it should be mentioned that the impact of the strikes in 1962-63, along with the subsequent international campaign against Franco (which was keenly echoed in the ILO) resulted in certain endeavours to make changes "from within" in the official trade union movement. The Franco regime's response to the strike movement was harsh repression with dismissals, detentions, torture, trials and sentences. But at the same time, a growing number of initiatives on the part of the Government seemed to move towards the liberalization, opening up or reform of the regime.

In January 1967, the Organic State Law was approved with amendments to the 1938 Labour Code *Fuero del Trabajo*, requiring the adoption of new trade union laws. After the adoption of the Law and the conclusion of the vertical trade union electoral process, a strong repressive reaction set in during the spring of 1967. In this context, it should be mentioned that the ILO Governing Body, at the invitation of the Spanish Government (in respect of which the Committee on Freedom of Association had examined various representations received from workers' organizations) decided to set up (in October 1968) a Working Group to examine the labour and trade union situation in Spain. The Group also paid a visit to Spain (in March 1969) during which it held talks with the Spanish authorities, with representatives of the (official) Trade Union Organization and with trade unionists from outside the Organization, particularly imprisoned persons. Prisoners interviewed at the prisons in Spain included Mr Marcelino Camacho and the leading trade unionist from the metalworkers' union Mr Ramón Rusial.

During its visit to Spain, the ILO Working Group was informed repeatedly that there was an urgent need to adopt new trade union laws since the existing legislation on the subject had been out of touch with the real situation for some time. But – as the National Trade Union Delegate and Minister/Secretary-General of the Movement said to the Fourth Plenary Trade Union Congress (Tarragona, May 1968) – there was no wish to change the existing trade union system, only to change the laws.

The Working Group's report was intended to form the basis for a broad and free debate on the future of the labour and trade union situation in Spain, in which all concerned could participate freely. The ILO Governing Body discussed the report at its November 1969 Session. The Worker members indicated that labour and trade unions could develop in a stable and satisfactory manner only in a normal situation of legality ensuring full exercise of rights and guarantees. They deplored the fact that the Government's trade union bill was not based on the Working Group's suggestions and recommendations. They stated that the Government had not declared a general amnesty for imprisoned workers in accordance with the wish expressed by the Working Group, to which the Spanish authorities had apparently shown readiness to accede; and that harsh sentences continued to be applied for work stoppages. The Workers' group requested the Governing Body to take the necessary measures to keep the appropriate ILO bodies informed on the labour and trade union situation in Spain for the purpose of ensuring proper implementation of the Working Group's proposals.

The undemocratic union reforms proposed and the continuing repression provoked protests and complaints from the international trade union and political bodies. The ILO supervisory bodies, first and foremost the Committee on Freedom of Association, have examined dozens of cases relating to Spain in connection with representations made by the various complainants. The most common matters raised were the following:

- the incorporation of the Trade Union Organization into the structure of the State;
- the illegality and persecution of organizations established outside the Trade Union Organization;
- matters relating to collective bargaining (particularly with regard to the Act on trade union collective bargaining of 24 April 1958);
- penal provisions with regard to strikes (particularly the *Fuero del Trabajo*, the Act of 29 March 1941 on state security, and the Penal Code); repressive measures against strikers;
- trade union rights and civil liberties in general, including repression of workers and trade unions in opposition.

Among the many examples of representations during this period may be cited the series of allegations made by the ICFTU and the CISC (now World Confederation of Labour (WCL)) between April 1967 and April 1969

(Cases Nos. 520 and 540) with respect to various instances of violation of freedom of association (mostly directed against members, activists and sympathizers of the UGT, the CNT, the Alianza Sindical de Euzkadi; and the CCOO). Among the instances of violations referred to may be cited the following:

- detention and confinement of workers from Asturias on grounds of unlawful meeting and illicit assembly (including detentions after a strike);
- suspension of certain guarantees in Vizcaya and the detention and confinement measures by virtue of the state of emergency (it should be mentioned that the state of emergency had been proclaimed in January 1969 in connection with the preparation of the Trade Union Bill and lasted for two months);
- repressive measures taken (detentions and trials before military courts) in connection with the demonstrations of 1 May 1967;
- police repression of other demonstrations in Eibar, Vitoria, Barcelona, Pamplona, San Sebastián, Valencia, Sabadell, Madrid;
- detention of many workers in different various parts of Spain in October 1967 for protest action organized by the CCOO, the UGT and other unions;
- detention of the members of a factory committee (of the UGT) for unlawful association (in July 1968);
- detention of various UGT members in 1968 and 1969.

At its February 1970 Session, the Committee on Freedom of Association recommended to the Governing Body that it should draw the Government's attention to the fact that any measure taken against workers for attempting to set up or revive occupational organizations outside the Trade Union Organization was incompatible with the principles of freedom of association; that the holding of meetings and demonstrations for trade union purposes was an essential aspect of trade union rights; and that confinement measures which could be imposed during the existence of a state of emergency could lead to abuse, especially in regard to trade union activities. With regard to the trade unionists who had been tried or detained, the Committee recommended to the Governing Body that it ask the Government for information regarding the exact nature of the facts on which the accusations were based and the results of the trials.

As the Government did not respond to the conclusions and recommendations in question, the Committee reiterated them at its February 1971 Session. Finally, the Government informed the Committee that as far as Mr Marcelino Camacho was concerned, he had been sentenced in April 1968 by the *Tribunal del Orden Público* (Court of Public Order), for the offence of non-peaceful demonstration, to one year of ordinary imprisonment and a fine of 15,000 pesetas. Later, in February 1970, he was sentenced for offences against public order (four months' detention) and contempt (three years and six months of ordinary imprisonment).

At its November 1971 Session, the Committee on Freedom of Association recommended to the Governing Body to draw the Government's attention to the fact that some workers' trade union-type activities continued to be deemed offences under Spanish legislation. The spokesperson of the Workers' group at the November 1971 Governing Body Session stated, referring to Cases Nos. 520 and 540, that the workers were very concerned and troubled by the events which had occurred in September. He mentioned several cases of workers who had been killed or injured by the police for carrying out trade union activities, and of workers awaiting trial by military courts on the same grounds. Every day, workers were being detained, imprisoned, fined or dismissed; every day, trade union rights and human rights were being flouted. Thus it appeared that, instead of following the Working Group's suggestions, the Government of Spain had adopted a harsher stance and stepped up repression, persistently violating ILO principles and standards. It was to be hoped that the Director-General and the Committee on Freedom of Association would increase their efforts to induce the Government of Spain to guarantee full restoration of trade union rights in the country in conformity with ILO principles and standards.

At its February 1972 Session, the Committee on Freedom of Association began to examine Case No. 658 which referred to the arrest of some trade unionists, including Mr Nicolás Redondo Urbieta, for the offence of unlawful association and illegal propaganda. After requesting more detailed information from the Government, the Committee received objections from it indicating that certain representations contained wording offensive to the Government and supported clandestine organizations. Nevertheless, in its communication of May 1972, the Government stated that it was

ready to “lend its assistance” and to supply
information about specific allegations. It must

- Mr Marcelino Camacho was sentenced for "unlawful assembly" to six months of ordinary imprisonment, and the other accused persons were also sentenced to various terms of imprisonment;
- at its May 1975 Session, the Committee on Freedom of Association deplored the fact that the Government had not supplied the text of the sentence or any other elements of proof concerning the allegation that the CCOOs were pursuing subversive aims on the pretext of making labour claims. The Committee expressed its concern at the lack of adequate information and at the need for the sentences imposed, and recommended to the Governing Body that it request the Government once again to supply the text of the decision as well as keep it abreast of any new information in regard to the persons imprisoned and, particularly, of any pardons which might be granted to them.

Meanwhile the Government stated that from the duration of the sentences had been deducted the period of preventive detention served by the convicted persons for that offence and that four of them had therefore been released immediately. According to the Government's letter of January 1976, the others had been freed by virtue of Reprieve Decree No. 2940 of 25 November 1975. At its February 1976 Session, the Committee on Freedom of Association noted this result with great interest and recommended to the Governing Body that it express again, as it did in Case No. 658 (see above), the hope that the Government would take the ILO principles of freedom of association as its basis in developing Spanish trade union legislation.

After the fall of the Franco regime in 1975 and the advent of the new regime, the difficulties in applying fundamental human rights were to disappear in quick succession, in particular trade union rights. The new legal texts provided for the exercise of the rights of freedom of association, free assembly, free expression of thought and to strike, thus bringing national legislation into line with the provisions of the respective ILO Conventions. At this juncture, mention may be made of the law of 4 January 1977 on policy reform, the Royal legislative decree, No. 2, of 4 January 1977 which annulled the tribunal and judges of public order, the Royal legislative decree of 8 February 1977 on political associations, the Royal legislative decree of 4 March 1977 on labour relations, the law of 1 April 1977 on trade union association, the Royal legislative decree of 1 April 1977 on the right to freedom of expression, the Royal legislative decree of 29 July 1977 which modified the functions of penitentiary institutions, and the law of 15 October 1977 on amnesty. The fundamental rights and freedoms of persons are fully guaranteed in the Spanish Constitution of 1978.

From a symbolic point of view, the most pertinent event for the ILO was Spain's ratification in 1977 of Conventions Nos. 87 on freedom of association and the protection of the right to organise (1948) and No. 98 on the right to organise and collective bargaining (1949).

I believe that the significance of ILO resolutions in Spain's complex transition to democracy has been understated ...

Nicolás Redondo
Former Secretary-General
UGT
Spain

L.E.: *The difficult years of repression and struggle to restore democracy are now over. In retrospect, what do you think of the role played by the ILO in that process?*

N.R.: In a situation such as that which prevailed during the Franco era, where there was total disregard for democratic freedoms including the freedom of association, the role of the ILO was highly positive from two points of view. For one thing, it represented a considerable moral support in that we knew that we were not alone in our struggle for freedom of association, but that we had the support of the ILO and millions of workers, and that was invaluable. If I may use a metaphor, it was like a beacon of hope in a world sombre and shrouded in darkness, with no promise of a new day. The second aspect, of capital importance to me, was that the application of Conventions Nos. 87 and 98 exposed the Franco regime for what it really was, heightening its contradictions and depriving it of any rational arguments. When it came to arrest, dealing with the police or appearing before the special courts of public order, it was much easier for us to plead our case on the basis of the ILO resolutions concerning freedom of association and to adduce trade union rather than political motives. It gave us more protection, including physical protection – though not in all cases – to be detained as trade unionists rather than members of a political party, in which everyone was invariably and deliberately branded as communist.

As we had full confidence in the ILO, its resolutions were a lifeline to us as UGT members and constituted a point of reference in the daily struggle for democratic freedoms.

In my case, and even more importantly, in general terms, the intervention of the ILO helped to attain freedom of association and was a decisive and integral factor in all our struggles.

L.E.: *Does any special moment stand out in your mind concerning the role of the ILO?*

N.R.: There were several special moments in regard to the part played by the ILO. I have special and very personal recollections of the complaints of the Workers' group and of so many friends and colleagues who worked alongside us to regain the freedoms. I believe that the significance of ILO resolutions in Spain's complex transition to democracy has been understated. To my mind, they were of crucial importance both in regard to the restoration of the heritage of the trade union movement – its historical and its accumulated heritage – and in being able to shape a social and democratic Constitution for ourselves: Article 28 of the Constitution concerning the freedom of association was inspired by ILO Conventions Nos. 87 and 98; Article 35 states that all Spaniards have the duty and the right to work, reflecting the spirit of humanity of the ILO. I believe that the ILO's input was highly instrumental in achieving a series of rights and freedoms for which we have always fought and in establishing a democratic system comparable to that of other countries in Europe.

One of my fondest memories is the honour I felt in 1977 when I led the worker delegation that was representing the democratic trade union movement at an ILO meeting for the first time since 1938, and which demanded the unconditional application of Conventions Nos. 87 and 98. This represented yet another very important advance in a major process of democratic transition that was fraught with uncertainties.

L.E.: *This year marks the 50th anniversary of Convention No. 87. Do you think it is still relevant in a globalized world where production structures are undergoing fundamental transformation?*

N.R.: In commemorating the 50th anniversary of Convention No. 87, I believe that in a globalized world marked by radically changing production structures and the predominance of neoliberal fundamentalism, the ILO, in line with its history and humanistic tradition, is needed now more than ever before for the defence of human rights, given the need to continue to act as a counterweight to such unbridled capitalism. In this connection I would like to underscore the importance of the Workers' group in defending the most disadvantaged and grossly exploited. I believe that given the need to adapt to changing times, the ILO continues to be not only useful but indispensable to safeguarding social justice and human rights.

L.E.: *In the light of your experience as a labour leader and activist for freedom of association and of your dealings with the ILO, would you like to use this publication to send a message to trade unionists in ILO member States?*

N.R.: On the basis of my experience of the struggle for democracy and my dealings with the ILO, my message to trade unionists in ILO member States is that the organization continues to be necessary – as it has always been – in a world dominated by joblessness, poverty and exclusion and where workers struggling for democratic freedoms and better living conditions are murdered for the mere fact of being trade unionists.

The unity of workers across the world must be strengthened and greater assistance given to the so-called "Third World" ...

Marcelino Camacho
CCOO
Spain

L.E.: *The difficult years of repression and struggle to restore democracy are now over. In retrospect, what do you think of the role played by the ILO in that process?*

M.C.: It is no secret that under the Franco dictatorship I spent more than 13 years in government-run prisons and concentration camps because I was an activist for freedom of association and democratic freedoms in general. It was in that context that an ILO delegation led by Mr. Paul Ruegger, a senior ILO official, diplomat and university professor in Switzerland, accompanied by Mr. Barbossa, former trade unionist and delegate from Brazil to the Organization, visited me in prison and then officially requested my freedom from the Franco Government. It was 11 a.m. when they entered the gaol on 15 March 1969. We spoke for more than an hour in the administrative office. The officer in charge wanted to witness the interview, but we objected. I asked to be left alone with Mr. Ruegger.

We had a wide-ranging discussion on violations of human and trade union rights in Spain and the lack of trade union and democratic freedoms. I also spoke to him at length about our moral and material situation in detention, the years of imprisonment and the hunger strikes we had staged. I explained to him the activities of the Worker Committees in the outside world and in general how I saw the trade union and political situation. At the time I tried to give him some copies of the complaints that I had attempted unsuccessfully to send through the prison authorities. He advised me to send them from outside, bypassing the censoring authorities, which we subsequently did. I also described to him the situation of the other prisoners detained for political reasons. We embraced warmly before parting, which was evidence of his solidarity with our cause. He promised to draft a meticulous report that would include a petition for our release.

The clandestine trade union organizations had filed complaints with the International Labour Office through the ICFTU, WCL and the WFTU. The United Nations was also called upon to exert pressure on the Franco Government to cease its repression of workers and to observe the rights and freedoms adopted in the Declaration of Human Rights and in the ILO. In the complaints mentioned above, we had invariably requested the sending of a delegation to verify the charges we made.

On 14 October 1968, at the proposal of the Director-General of the ILO, the Executive Committee of the Governing Body decided to set up a study group, which met for the first time in Geneva from 21 to 29 February 1969 to hear representatives of the Spanish Government and representatives of international trade union bodies with a view to drawing up a procedure and work programme for verifying the situation with respect to freedoms in Spain. The visit took place from 7 to 13 March 1969 and the study group met with authorities, the pro-establishment trade unions (the only legal ones, the *franquistas*) and with Spanish citizens in Madrid and other major cities and towns. As previously stated, it was during that time that they visited me in the Carabanchel prison.

Months later I received a copy of the final report from the ILO. It was entitled *The labour and trade union situation in Spain*, and had been presented publicly in Geneva and New York. It constituted powerful international backing for our struggle and it strengthened our positions internally. Paragraph 1151 of the report read:

"As regards the granting of an amnesty or pardon to imprisoned trade unionists, a fundamental question arises: can there be real progress in the peaceful evolution of the labour and trade union situation in Spain while imprisonment or other forms of detention

remain recognized penalties for activities which would be regarded in other countries as legitimate trade union activities, in accordance with ILO principles, but as illegal under Spanish law?"

The ILO insisted that it was also necessary to link amnesty to changes that would guarantee freedom of association. This support, albeit modest in its condemnation of the dictatorship, was highly significant: our cause was just, we were not alone and it made us more convinced that social justice, freedom and humanity would triumph in Spain, thanks to growing international support.

L.E.*: Does any special moment stand out in your mind concerning the role of the ILO?*

N.R.: I recall a secret meeting held on 24 June 1972 by the National Coordination Office of Worker Committees in the convent of the *Los Oblatos* religious order in Pozuelo de Alarcón and which was discovered by the police. Ten of us were arrested and imprisoned. A 1.001 investigation was opened, we were tried by the Court of Public Order and, along with others, I received at 20-year prison sentence. An ILO representative also gave us support during that trade union trial.

L.E.: *This year marks the 50th anniversary of Convention No. 87. Do you think it is still relevant in a globalized world where production structures are undergoing radical transformation?*

N.R.: I believe that the 50th anniversary of Convention No. 87 should be an opportunity to review, inter alia, the representation of workers so as to establish a balance with the two other groups which to some extent represent employers (50 per cent governments and 25 per cent business people). A greater effort should also be made to bring democracy to centres of employment, including at the social and economic levels, in order to spur on the battle against joblessness and bring about shorter working hours with the increase in productivity, automation and the use of robotics, etc., and ultimately attain full employment while adequately providing for the jobless. The unity of all workers across the world must be strengthened and greater assistance given to the so-called "Third World" countries, and specifically to the excluded sectors as a whole.

L.E.*: In the light of your experience as labour leader, activist for freedom of association and of your dealings with the ILO, would you like to use these columns to send a message to trade unionists in ILO member States?*

N.R.: I close with a fraternal greeting to all workers throughout the world from an old trade union militant who just turned 80 years on 21 January. I hold the work of the ILO in high esteem, but I believe that in an age of scientific and technological revolution, we should be taking a more in-depth look at the impending changes and endeavouring to ensure that they are progressive in nature.

Since the late 1960s when Indonesia emerged as an important and influential partner in ASEAN, the Government had been channelling considerable efforts towards the industrialization of the country. National economic policy focused primarily on promoting exports and attracting foreign investment, inter alia, through the creation of export processing (or free trade) zones. One of the prerequisites for the success of such a policy was supposed to be cheap labour. Industrial relations practices naturally had to be brought into line with the new policy and the first step towards achieving this end was to clamp down on trade unions.

Such an industrialization policy, stepped up throughout the 1970s and all through the 1980s and the 1990s, was to leave its stamp on the industrial relations system, context and culture. The overall labour relations atmosphere has been one of containment which in turn has maintained industrial stability through the mobilization of abundant low wage labour, proscribed from effectively voicing its grievances. While the very encouraging level of economic growth has contributed towards an overall improvement of the human development index including the levels of poverty, social development has not been commensurate with this growth. Income gaps are severe, wealth unevenly distributed and exploitation has stirred discontent among the workers. In recent years the workers' protest has intensified.

The trade union centre, SBSI, which meets the aspirations of workers and tries to defend their interests, has been subjected to various forms of discrimination and persecution. Its repeated attempts to gain official recognition and registration brought no result.

In 1994, the International Confederation of Free Trade Unions (ICFTU) and the World Confederation of Labour (WCL) filed a complaint of infringement of freedom of association against the Government. They particularly referred to the denial of the workers' rights to establish organizations of their own choosing, the persistent interference by Government

Since March 1994, industries in the cities of Medan and surrounding regions have been paralysed by massive strikes involving workers demanding a more equitable minimum wage, freedom of association and a stop to repression. President Suharto ordered "firm action" against the protesters, at which stage the strikes degenerated into riots in which, however, the SBSI was not involved. Since the SBSI had led the initial labour protest, it was accused of illegal action and charged with fomenting race riots and vandalism. A number of SBSI local leaders and activists were arrested and charged with conspiracy against the Government. In August 1994 Mr. Pakpahan was arrested, too, and in November 1994 sentenced to three years imprisonment for his alleged involvement in the Medan strikes.

A wave of unprecedented police violence occurred in connection with a number of industrial disputes followed by strikes. Several trade unionists died.

A formal complaint was lodged with the ILO Committee on Freedom of Association concerning the violations of freedom of association committed by the Indonesian Government in this respect and requesting the release of Mr. Pakpahan.

The Committee expressed its deepest concern over the extreme seriousness of the allegations. In March 1995, it drew the Governing Body's attention to the seriousness of the case. It urged the Government to take all the necessary measures to ensure that the right of workers to organize was fully recognized, deplored the disappearance of a number of workers and trade union leaders, and pointed out that the Government in its comments on the allegations had not provided any or only insufficient information concerning military interference in collective bargaining, harassment and intimidation by employers and public authorities, nor any proof that the arrests and detentions of workers and SBSI leaders were not occasioned by their trade union activities. It also considered that the obligation for trade unions like the SBSI to obtain the consent of the only trade union centre officially recognized – SPSI – (as one of the conditions for registration) should be immediately removed.

During the discussion of the Committee's report in the March-April 1995 Session of the Governing Body, Mrs. Engelen-Kefer, Worker member of Germany, stressed that the case had been a source of particular concern and made an urgent appeal for the release of Mr. Pakpahan, as well as for the necessary changes in Indonesian national law and practice.

In reply to the Committee's comment,the Government indicated that Ministerial Regulation No. 1 of 1994 provided for freedom for all workers to establish trade unions without necessarily affiliating to the SPSI and that there were then more than 500 independent "shop floor" unions at company level. However, it did not supply information on the application of this regulation in practice nor did it reply to alleged cases of interference by the authorities in trade union matters. As regards the arrests and prosecution, the Government believed that these were in conformity with relevant national and international laws. As regards the deaths which had occurred, it indicated the names of suspects who had been sentenced to imprisonment. However, it provided no information about the case of the SBSI which had been awaiting its registration for more than three years. Mr. Pakpahan was released from prison in May 1995 while awaiting the Supreme Court's decision on the appeal he had lodged. In October 1995, he was acquitted by the Supreme Court which stated that the district court had misapplied the law.

In March 1996, the Committee once again urged the Government to take all the necessary measures in law and practice to ensure that the right of workers to organize was fully recognized, as well as ensure that the SBSI be duly registered without delay and provide information on all the workers and trade union leaders arrested, detained or convicted.

As regards the case of Mr. Pakpahan, the Committee once again insisted that the detention of trade union leaders for activities connected with the exercise of trade union rights was contrary to the principles of freedom of association.

In June 1996, the SBSI reported several acts of anti-union discrimination and interference by public authorities against the SBSI and its members, including allegations of physical violence. Several SBSI members were arrested, detained and beaten. Some of them were forced to quit their membership. In July 1996, the ICFTU and the WCL alerted the ILO that Mr. Pakpahan had been arrested again. Six alleged charges were raised against him, inter alia, that of having been the mastermind behind the anti-regime protests that month. Other trade union leaders were detained, too. Mr. Pakpahan was charged with subversion in connection with the July 1996 riots. Under the anti-subversion act he even risked the maxi-

mum penalty of death. However, prior to these arrests the SBSI had already appealed to the Indonesian Government not to take advantage of the political protests to detain public figures who were critical of the regime; it urged the authorities to make an objective evaluation of the reason for the riots and to take note that the SBSI leaders requested constructive dialogue rather than a show of force from the military.

The Government firmly maintained its former standpoints. As regards Mr. Pakpahan, it stated that his case was in no way related to his trade union activities and that he had committed offences punishable in accordance with the act on subversive activities.

In the circumstances, the Committee on Freedom of Association in November 1996 reiterated its previous comments and demands. It believed that there existed a strong presumption, which the Government had not reversed, that under the cover of allegations of subversive activities, the charges brought against Mr. Pakpahan were linked to his trade union activities. The Committee therefore urged the Government to drop his criminal charges and to ensure that he could exercise freely his legitimate trade union activities.

At its November 1996 Session, the Governing Body also discussed the case of Indonesia. A number of speakers pointed out the seriousness of the situation and, in particular, the Workers' group urged the ILO to adopt a firmer attitude towards the Government of Indonesia.

In November 1996, the Committee on Freedom of Association drew the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations. The case was subsequently dealt with by the Committee on the Application of Standards at the June 1997 Session of the International Labour Conference. The Committee expressed its grave concern over the seriousness of the allegations of anti-union discrimination. The Conference Committee discussed that the Government had not given sufficient proof of its willingness to comply with the provisions of this core Convention as it had not requested technical assistance in this respect despite the offers made by the Office. In the written and oral replies of the Government, there figured significant contradictions. The Committee noted that not enough protection existed against acts of anti-union discrimination nor against interference by employers in the functioning of workers' organizations, and that serious restrictions remained on the right to bargain collectively. It observed with deep concern that the discrepancies between the Convention and national legislation and practice had continued for many years. It asked the Government urgently to amend the legislation and to ensure full respect of civil liberties. The Workers' group, in particular, urged the Government to release the imprisoned trade unionists, particularly Mr. Pakpahan, and to bring an end to acts of anti-union violence and intimidation.

The ICFTU and the WCL informed the Committee on Freedom of Association that the Supreme Court had sentenced Mr. Pakpahan to four years in prison on the same charges (concerning the 1994 strikes in Medan) for which he had previously been released. Such a reversal of decision aroused great concern among legal experts both in Indonesia and abroad. In January 1997, a trial against Mr. Pakpahan on charges with subversion started; in April it was postponed on health grounds. The Government in its reply to the Committee insisted that the charges against Mr. Pakpahan were not linked to his position as Chairman of the SBSI. It also argued that the SBSI was more concerned with politics rather than labour issues and that the court would decide whether it had a right to exist or not. However, if the SBSI were to exist, it would have had to be categorized as a non-governmental organization rather than a trade union according to the Government.

In November 1997, the Committee deeply regretted that no remedial action had been taken by the Government and once again urged the latter to take appropriate steps to ensure that the SBSI were granted registration without any further delay. Recalling the principle of a prompt and fair trial by an independent and impartial judiciary, the Committee believed that the charges against Mr. Pakpahan were linked to his trade union activities and urged the Government to do everything to drop these criminal charges and to have him released. It also urged the Government to provide information on other specified cases of anti-union discrimination (detained persons, dismissals). Once again the Committee drew the legislative aspects of this case concerning Convention No. 98 (ratified by Indonesia) to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

At the November 1997 session of the Governing Body, the gravity of the case was once again recalled. The Workers' group was profoundly concerned by these serious violations

No coercive measures, but constitutional obligations ...

Muchtar Pakpahan
General Chairman
SBSI
Indonesia

At the time this edition went to press, Mr. Muchtar Pakpahan, General Chairman of the Indonesian Prosperity Trade Union (SBSI), established on 25 April 1992, was still in prison facing charges of political agitation and attempted subversion. However, the ILO was able to convey to Mr. Pakpahan a short questionnaire to which he replied. The interview follows.

L.E.: *The ILO's standard-setting procedure and supervisory machinery are largely inspired by the principle of moral suasion, but in practical terms this principle is grounded in a number of clearly defined options of legal recourse which are available to workers in all the member States of the ILO. Were you aware of the ILO's complaints procedure at the time complaints were first lodged in 1981 concerning your organization?*

M.P.: Filing a complaint with the ILO alleging violation of freedom of association is the first but essential step in what can sometimes, but not necessarily, be a lengthy exercise over many years. If I may speak from my own experience, when the complaint concerning my own organization, the SBSI, was lodged in 1994, the ILO followed its normal procedure and its intervention led to my release within a short period of time. Of course the ILO's supervisory system is not equipped with any coercive or punitive mechanisms. All it can do is to bring moral pressure to bear on a member State so that fundamental laws and human and trade union rights are respected. It can stir up protest at international level against any country's violation of ILO Convention No. 87 on freedom of association and the protection of the right to organize. In the case of Indonesia, in 1994, filing a complaint with the ILO made all the difference to the eventual outcome of the first phase of the SBSI crisis in the form of our release from prison. Having been personally involved, I can therefore bear witness personally to the effective and decisive action of the ILO in coming to the defence of workers if the complaints procedure is set in motion by the filing of a complaint.

L.E.: *What, in your opinion, are the strengths and weaknesses of the ILO's supervisory system?*

M.P.: Of course member States are aware that the ILO cannot coerce them, as sovereign States, into applying international labour standards, which leads to a situation that makes it easy to cede to the temptation of not honouring the obligations of ratification or the constitutional obligations imposed by adhering to the ILO as a Member, obligations which are set forth in the Preamble of the Constitution of the ILO and in the Philadelphia Declaration.

This flouting of international labour standards is sometimes practised with so much impunity that the international community, outraged, has started calling for more stringent measures to be applied to guarantee respect for workers' rights. In particular, the Ministerial Meeting of the World Trade Organization (WTO) in December 1997 in Singapore addressed the issue of the social clause which has more or less been a discreet item on the international agenda for the past decade. However, no consensus has been arrived at, and it remains to be seen whether the social clause will one day guarantee respect for workers' rights, with the ILO retaining its supervisory system and complaints procedure and the WTO applying sanctions as would be provided for in a social clause.

L.E.: *Would you care to add any other comments concerning the principle of freedom of association and the ILO's role?*

M.P.: When an ILO Convention is adopted, it is adopted by the International Labour Conference, the supreme body of the Organization where all the member States are represented by governments and workers' and employers' delegates. As member States, each one is bound by the ILO's supervisory machinery to

report periodically its progress with regard to the ratification or application of ILO Conventions. Since the Freedom of Association and Protection of the Right to Organise Convention (No. 87) binds all member States, regardless of whether it is ratified or not, it is important that safeguards are found even if they must be coercive or punitive, to secure the non-violation of the principle of freedom of association. I therefore support the view that the ILO would be able to reinforce its position by combining its supervisory role with the trade sanctions that could be applied by the WTO.

L.E.: *Do you wish to use our columns to convey a message to your fellow trade unionists in ILO member States, drawing on your own experience with the ILO?*

M.P.: Fellow trade unionists all over the world, I think you have been following events in my country in the press. You know that my organization, the SBSI, has been banned by the Government on false charges of political agitation and attempted subversion. Now I am in jail again. The Government continues to violate the fundamental ILO Conventions, in particular those directly concerning workers' rights. I appeal to you all to join your voices in protest and press the Government of Indonesia to release me soon.

I also wish to convey a message to the International Monetary Fund (IMF) that in their negotiations with the Government of Indonesia they should demand respect for workers' rights, and first and foremost respect for the principle of freedom of association. Political and economic matters cannot be settled properly without guaranteeing workers the right to freedom of association, not only in Indonesia but everywhere.

If the IMF is to assist Indonesia, it should demand guarantees for democratic government, the rule of law, and transparency in public spending. Otherwise, such assistance would not benefit the Indonesian people in any way.

New Zealand

New Zealand's economy in the 1960s and 1970s was highly regulated and protected from outside influences by government policy. However, the economic situation reached a crisis in the early 1980s, and in 1984 a programme of economic and social reform was launched, based on the ideology of neo-classical economics which involves a radical redefinition of the State's role. The adoption of such economic policies was in line with the opinions of certain agencies, such as the Organization for Economic Cooperation and Development (OECD), the World Bank and the International Monetary Fund (IMF). Wage, price, interest rate, credit and foreign controls were abolished, the New Zealand dollar devalued, subsidies and price support to farmers and other exporters discarded, and government trading activities were privatized along with a general restructuring of the public service. The entire social welfare state was revisited, access to health services restricted, tertiary education was burdened with dramatic fee increases, and sickness and unemployment benefits were substantially reduced.

The Government's intention was to allow markets to operate with less specific economic regulation and more within general law. Historically, New Zealand's labour relations had been based on a central tenet of collectivist pluralism which embodied state intervention to enable the effective and efficient operation of labour relations, as was laid down in the 1894 Industrial Conciliation and Arbitration Act. However, with the advent of the ideology of deregulation it was argued that the old system was "rigid" and restricted employment opportunities. The tripartite talks which followed resulted in the formulation of a set of reform proposals which ultimately led to the adoption of the 1987 Labour Relations Act. The Act was an attempt to minimize the Government's intervention in the labour market by establishing a framework within which the two sides of the labour market could voluntarily conclude comprehensive employment contracts as equal partners. However, the trade union movement had largely been able to control this process.

The big employers strongly criticized this bargaining framework as too restrictive, inflexible in relation to the labour market and resulting in unemployment, low pay and economic stagnation.

In October 1991, the Labour Government was replaced by a National Party Government which already in 1990 in its manifesto had portrayed the 1987 Labour Relations Act as constraining employers and employees from developing their own specific labour policies: the manifesto recalled that it had restricted growth in productivity, income and employment. The new Government immediately took steps towards the implementation of the concept of labour market flexibility which entailed further deregulation of the labour market and led to the adoption of the 1991 Employment Contracts Act.

In February 1993, the New Zealand Council of Trade Unions filed a complaint of violations of freedom of association, alleging that the 1991 Employment Contracts Act violated ILO principles of freedom of association, more precisely in the collective bargaining process and by its restrictions on the right to strike. The New Zealand Congress of Trade Unions (NZCTU) pointed out that even before the Act had come into force, the Government had been advised by the Department of Labour that the Act was not compatible with the principles of freedom of association. The Act does not favour either collective or individual contracts; it leaves it up to the parties to determine what best suits their particular circumstances. In general, the Act greatly reduced the coverage of collective agreements. Consequently, as early as the period 1991-92, the number of workers covered by collective agreement dropped dramatically (a 45 per cent fall). This not only showed that the Act did not encourage or promote collective bargaining as envisaged by the Constitution of the ILO, but also that it was obstructive and hostile to it. Collective employment contracts under the Act do not necessarily result from a process of real collective bargaining involving workers' organizations. These contracts can be drawn up

without a representative workers' organization and without a process of collective bargaining involving workers. They may be either individual or collective. Individuals, individual agents or organizations can negotiate both types. The Act contains no provisions concerning the recognition of workers' (or employers') organizations and no reference to representative workers' (or employers') organizations. Moreover, collective employment contracts can be entered into without a collective process of representation even where workers have authorized a union. The NZCTU felt that such contracts were not true collective agreements. It pointed out many examples of employers forming collective employment contracts directly with workers who had nevertheless authorized a union to represent them.

The NZCTU further alleged that the process of collective bargaining under the Act was contrary to the principle that both employers' and workers' organizations should bargain in good faith and make every effort to come to agreement. In fact, a pattern of interference and discrimination is largely applied during collective bargaining. The Act enables employers to interfere with or to attempt to influence a workers' decision to authorize a union, and to discriminate against workers on the grounds that they have authorized a union. Furthermore, the Act allows recognition of bargaining representatives appointed by or under the domination of employers. Certain sections of the Act limit the scope of protection against discrimination, restricting grievance rights to workers who have had an active role in the union. Collective employment contracts concluded through non-union agencies have either limited or excluded trade union rights in violation of the principles of freedom of association. The ability of employers to negotiate collective employment contracts without the involvement of workers' organizations enables them to exclude trade union rights from those contracts.

The Act also restricts the right to organize and, in particular, the right to strike; strikes are declared to be unlawful in the following circumstances:

- if a collective employment contract is in force;
- if they relate to a personal grievance, a dispute, or issues of freedom of association;
- if they defend any document which will bind more than one employer;
- if they occur in an essential industry and prior strike notice is not given.

Other strikes are lawful only if they relate to the negotiation of a collective employment contract or if they are justified by a health or safety issue. There are effective penalties against strikes involving multi-employer documents, and strikes in pursuit of general or social and economic policy issues.

In its comment on the allegations the Government indicated that the Act was an appropriate mechanism in the new economic environment since it gave businesses the freedom they needed to adopt flexible work practices in order to compete effectively in international and domestic markets. It further stated that it was important that businesses could negotiate at any level, including enterprise level. The Government rejected the NZCTU's assertion that the Act was hostile to collective bargaining. As regards the strikes, the Government explained that in cases in which strikes were declared unlawful there were other procedures offering workers adequate protection.

In March 1994, the Committee on Freedom of Association recalled the principle of consultation and cooperation between public authorities and employers' and workers' organizations; the importance of the right of representative organizations to negotiate and the recognition of representative workers' organizations for the purpose of collective bargaining; the role of workers' organizations in collective bargaining; the importance of the independence of the parties in collective bargaining. It pointed out that in the Act strikes were prohibited if they involved the issue of whether a collective employment contract would bind more than one employer, which was contrary to the principle of freedom of association or the right to strike, and it reminded the Government that trade union organizations ought to have the possibility of recourse to protest strikes, in particular where aimed at criticizing a government's economic and social policy.

The Committee considered that, as a whole, the Act did not encourage and promote collective bargaining, nor did it grant sufficient protection to workers against acts of interference and discrimination by employers, and asked the Government to take appropriate steps in the legislation.

Because of the particular complexity of the case, the Committee recommended that a representative of the Director-General should undertake a direct contacts mission to the country. The Government agreed and the mission took place in September 1994.

The case was further dealt with by the Committee in November 1994. The NZCTU observed that the Government's measures had reduced facilities for and resourcing of consultative processes at industry and national levels. In general, it stated that no substantial changes had been made towards improvement. The Government considered that the Act was an integral part of its wider economic policy strategy which enabled it to achieve significant results. It developed detailed argumentation in support of the various forms and methods of implementation of the Act. The NZCTU gave concrete examples of the negative aspects of practical application of the Act. In relation to these examples (cases) the Committee requested the Government to keep it informed of the results of the judicial proceedings of any significance. It drew the Government's attention to its established principles on collective bargaining and expressed the hope that the Government would initiate and pursue tripartite discussions as part of a process of ensuring that the provision of the Employment Contracts Act were fully consistent with those principles.

The Workers' group of the Governing Body at its November 1994 session paid special attention to this case. They particularly drew attention to the incompatibility of the Act with the ILO's principles on collective bargaining and to the underlying philosophy of the Act, which placed individual and collective contracts on the same footing. The Workers' group welcomed any degree of compromise reached and trusted that tripartite discussions would soon take place on the necessary legislative changes.

Following the recommendations and requests by the Committee and the Governing Body, the Government supplied further information in June 1995 on certain judicial proceedings and indicated that it had invited the NZCTU and the New Zealand Employers' Federation to forward their responses to the Committee's report and comments. It particularly pointed out that in a number of judicial proceedings the Employment Court had continued to apply the approach taken in a preceding case to the effect that the respective section of the Employment Contracts Act gave employees the right to authorize an organization or a person to represent them in negotiations and required employers to recognize such representatives. In another proceeding it had been recognized that the respective section of the Act could not only be enforced through other available provisions, but that in appropriate cases the personal grievance provisions could provide protection for employees to uphold their rights in terms of being represented by the organization of their choice. Yet in another case the Employment Court had emphasized that the employees were free to choose their representative and that other parties should not restrict their choice. The Employment Court had also stressed, in another case, the importance of observing the implied terms of mutual obligations of trust and confidence during negotiations.

This information was noted by the Committee on Freedom of Association in November 1995.

The May-June 1996 session of the Committee dealt with further information from the Government which highlighted the findings in the various judgements concerning the recognition of an authorized representative, communications between employers and employees during negotiations, implied obligations of trust and confidence, authorization and ratification, and bargaining behaviour. In the cases before the court it was clearly confirmed that recognition of the authorized representative meant that once employers and employees had agreed to negotiate, they had to negotiate through any representative authorized by the other party. Moreover, the courts have consistently found that mutual obligations of trust and confidence are implied terms in employment contracts, that they continue to operate during negotiations and that they must be respected. The Government stressed that freedom of association and collective bargaining were supported under the existing legislative environment through enforcement of bargaining undertakings agreed to by the parties and the availability of mediation in the Employment Court.

In its information to the November 1996 session of the Committee, the Government provided other decisions by the Employment Court which touched upon the interpretation of the Employment Contracts Act. However, while noting this information, the Committee referred to its previous recommendations (made in November 1995) and requested the Government to take the necessary measures. This was fully endorsed by the Governing Body at its November 1996 session. The Workers' spokesperson, in particular, stressed the importance of the Government's response to these recommendations.

In June 1997, the Government informed the Committee that the new coalition Government had agreed to include proposals to introduce a

concept of "fair bargaining" into the Employment Contracts Act. As regards the Committee's recommendation that workers and their organizations should be able to call for industrial action in support of multi-employer collective employment contracts, the Government indicated that it had no plans to remove the prohibition on such action from the Act. The Committee once again recalled that the determination of the bargaining level was a matter to be left to the discretion of the parties and that legislation should not constitute an obstacle to collective bargaining at the industry level, whereas the Act had essentially removed the means of pressure that might be applied to determine that level.

In March 1998 the Government indicated to the Committee that it was still working through the process of identifying issues relating to collective bargaining and would then consider the various options. It maintained, however, its position that multi-employer contracts should be the result of willing employer-employee bargaining and not be imposed by industrial action. The Committee, however, considered that the question of the voluntary nature of negotiations was distinct from that of the legitimacy of strike action in support of multi-employer contracts and once again requested the Government to repeal the restrictions on strike action in this respect.

The multilateral system of regulating the global economy will remain deficient until it provides an agreed place for the ILO…

Ken Douglas
President
NZCTU
New Zealand

L.E.: *The ILO's standard-setting procedure and supervisory machinery are largely inspired by the principle of moral suasion, but in practical terms this principle is grounded in a number of clearly defined options of legal recourse which are available to workers in all the member States of the ILO. Where you aware of the ILO's complaints procedure at the time complaints were first lodged in 1981 concerning your organization?*

K.D.: The New Zealand Council of Trade Unions (NZCTU) was certainly aware of the ILO's complaints procedure at the time we lodged our complaint against the Employment Contracts Act. We had practical experience of the procedure because the New Zealand Employers' Federation had lodged a successful complaint against parts of the Labour Relations Act. That is a bit ironic now, given that the Employers' Federation is currently so hostile to the ILO and its standard-setting and supervisory roles.

L.E.: *Would you recall the immediate events which led up to the moment when your organization lodged its complaint?*

K.D.: When the Employment Contracts Act was being debated in Parliament, the National Party Government claimed that it would allow New Zealand to ratify Conventions Nos. 87 and 98. The more they were questioned about this claim, the less confident they became. The NZCTU therefore decided to test whether the Employment Contracts Act was compatible with the ILO's fundamental principles of freedom of association and the right to organize, and the right to collective bargaining. We made the decision to lodge a complaint after consultation with our colleagues in the International Confederation of Free Trade Unions (ICFTU) and the Workers' group of the Governing Body of the ILO. I would like to acknowledge the great assistance we received from these colleagues.

L.E.: *Was the ILO's influence on the outcome of your case direct or indirect?*

K.D.: As the New Zealand Government has not carried out the recommendations of the ILO, the case has not yet had a final outcome. The ILO had a direct influence on the outcome of the case to date because the Governing Body adopted the report on the case by the Committee on Freedom of Association in November 1994. This report found unequivocally that the New Zealand Government was in breach of ILO Conventions and proposed specifically what the Government should do to rectify this breach.

L.E.: *In retrospect, would you try to make an appraisal of the extent to which the ILO's intervention was decisive in the outcome of your organization's case?*

K.D.: Given the reservation I have already stated about the final outcome of the case, the ILO made a big effort to achieve an outcome. Not only was the case examined thoroughly and impartially by the Committee on Freedom of Association but the ILO sent a direct contact mission to New Zealand in September 1994 to investigate the case. The mission report led to the report eventually adopted by the Governing Body in November 1994.

L.E.: *What, in your opinion, are the strengths and weaknesses of the ILO's supervisory system?*

K.D.: The main strengths of the ILO's supervisory system are, first of all, its emphasis on carrying out an impartial and thorough investigation of the facts, secondly, the right of all the social partners to participate in the

supervisory process and, finally, the assistance that is available from the ILO (including the Workers' and Employers' groups as well as the Secretariat). The main weakness is that compliance by national governments with ILO decisions and recommendations is entirely voluntary. It is very easy for national governments to ignore or flout these decisions. At the very least, there should be a mechanism to require national governments and the social partners in the countries concerned to report annually to the Committee on Freedom of Association until the Committee determines that a case has been resolved.

L.E.: *Would you care to add any other comments concerning the principle of freedom of association and the ILO's role?*

K.D.: In recent years there has been much discussion about international labour standards in the context of the international rules governing the global economy. The NZCTU believes that the multilateral system of regulating the global economy will remain deficient until it provides an agreed place for the ILO, its supervisory machinery and core international labour standards including freedom of association.

L.E.: *Do you wish to use our columns to convey a message to your fellow trade unionists in ILO member States, drawing on your own experience with the ILO?*

K.D.: Our message to fellow unionists is that they should not hesitate to use the ILO's supervisory machinery. While it is slow and while it does lack teeth, it is a very important mechanism for workers' organizations to use to obtain international scrutiny of abuses of workers' rights and freedom of association. Despite a growing denigration of the ILO by employer groups, the ILO's importance and influence will increase as the globalization process consolidates. This will be an extremely positive development.

Poland

In Central and Eastern European countries, the aspirations of workers under the totalitarian regimes, to achieve full civic and in particular trade union liberties and rights and their full exercise were first voiced in Poland at the end of the 1970s and at the beginning of the 1980s. Although there had previously been individual attempts to this end in several other countries under the said regimes, the movement in Poland took a well organized form in the newly created *Solidarnosc* (Solidarity) trade union.

As social developments picked up momentum in Poland, the Agreement of Gdansk, signed on 31 August 1980, included, inter alia, the recognition by the Government of the principles laid down in ILO Conventions Nos. 87 (Freedom of Association and Protection of the Right to Organise) and 98 (Right to Organise and Collective Bargaining). The Solidarity trade union, however, faced difficulties with registration. Following the ILO's intervention in the form of a mission to Poland and the hearing of a Polish Government representative before the Committee on Freedom of Association, the Supreme Court of Poland decided to confirm the registration. The Government accepted the ILO's proposal that the mission (headed by the Director-General of the ILO) be undertaken to Poland to discuss the overall trade union situation, including the trade union Bill. The representatives of Solidarity then participated in the 67th Session of the International Labour Conference (June 1981). The delegation was headed by Mr. Lech Walesa.

However, on 13 December 1981, the Government proclaimed martial law. The activities of trade union organizations were suspended and many members and leaders of the Solidarity trade union (including those who had participated in the ILO Conference) were arrested; the right to strike was suspended and many workers and trade unionists were prosecuted and sentenced. A number of trade unionists were dismissed from their jobs by reason of their trade union affiliation and activity.

The International Confederation of Free Trade Unions (ICFTU) and the World Confederation of Labour (WCL) reacted immediately by filing complaints on 14 December 1981 on grounds of the violation of trade union rights in Poland. The Committee on Freedom of Association examined the case and submitted a report to the Governing Body of the ILO at its February-March (1982) Session. The Government was invited to take the necessary steps to enable the trade union organizations to resume their activities as quickly as possible. The Committee of Experts on the Application of Conventions and Recommendations made its comments on the application of Convention No. 87 in Poland in March 1982. An observation on the subject was submitted to the 68th Session of the International Labour Conference in June 1982. In the meantime, another ILO mission went to Poland to discuss the matter with the Government and the representatives of the different trade union organizations. They also met Mr. Walesa who at the time was interned. In May 1982 the Committee on Freedom of Association examined the mission report and expressed the firm hope that the Polish Parliament would soon adopt a legal framework which would guarantee the free functioning of trade union organizations independent of public authorities.

However, by June 1982, no progress had been made by the Government and no precise information furnished concerning the allegations formulated in the aforementioned complaints and the requests formulated by the respective ILO bodies.

Therefore Mr. Blondel, workers' delegate of France to the June 1982 Conference, and Mr. Buck, Workers' delegate of Norway to the same conference, filed a complaint (on 16 June 1982) against the Polish Government for the non-observance of Conventions No. 87 and 98. The complaint described the situation in Poland and referred particularly to the allegations contained in the previous complaints, viz.

- suspension of trade union activities;
- internment of a large number of Solidarity leaders and members;
- sentences imposed for strike activities carried out after the commencement of martial law;
- deaths of workers following action by the forces of order on the occasion of labour disputes;
- dismissals and pressures brought to bear against workers affiliated to the Solidarity trade union.

Upon a request on the part of the Polish Government, the International Labour Office provided a Government delegation to Geneva with a legal opinion on the conformity of the trade union Bill with Conventions Nos. 87 and 98 and, furthermore, the Office formulated written comments. The Bill was then adopted by the Diet and the Polish Parliament requirement for the registration of the existing trade unions was cancelled.

In November 1982, the Committee on Freedom of Association heard the Deputy Minister of Labour, representing the Government of Poland, and urged the Government to take the necessary steps to lift martial law as well as release the imprisoned trade unionists. The outcome was that martial law was finally suspended in Poland on 31 December 1982.

At its February 1983 meeting, the Committee on Freedom of Association suggested that the Government accept a further on-the-spot visit by a representative of the ILO. In March 1983, the Committee of Experts on the Application of Conventions and Recommendations made substantial comments (in an observation to be discussed at the following session of the International Labour Conference June 1993) on the application by Poland of Conventions Nos. 87 and 98, with particular reference to the new Trade Union Act of 8 October 1982.

A delegation of the Polish Government went to Geneva in April 1983 to have interviews with the Director-General and senior officials of the ILO. The Government then sent an invitation for a representative of the Director-General of the ILO to effectuate an on-the-spot visit to Poland. The Director-General, though appreciating such a step, pointed out that if the visit were to produce the desired results, it would be essential that his own representative have private contacts with the representatives of all the parties concerned, especially with the former leaders of those trade unions which had represented the Polish workers at the 1981 session of the International Labour Conference. If the Government had been prepared to accept this condition, the visit to Poland would have been undertaken.

At its May 1983 meeting, the Committee on Freedom of Association stated that it had always considered that a representative of the ILO charged with an on-the-spot mission would not be able to perform his or her task properly if he or she were not free to meet all the parties concerned. It noted with regret that the request it had made in February 1983 for information and for on-the-spot visits had not been fully met and consequently recommended the Governing Body to refer the examination of the whole case to a Commission of Inquiry, in accordance with article 26, paragraph 3, of the Constitution of the ILO. The Governing Body adopted this recommendation.

On 31 May 1983, the Polish Government rejected this charge as unfounded and stated that Poland would not take part in the following session of the International Labour Conference, would suspend its cooperation with the ILO, and would examine its participation in the Organization. After the appointment by the Governing Body of the members of the Commission of Inquiry, the Government rejected it in writing (by a letter of 24 June 1983). The Director-General of the ILO reminded the Government that this procedure obeyed both the provisions of the Constitution of the ILO and the obligations that Poland had freely accepted by ratifying the Conventions concerned.

The Commission of Inquiry examined the allegations contained in the complaint as well as the communications sent subsequently both by the complainants and by the international employers' and workers' organizations. It also had at its disposal certain data, observations and information supplied by the Government before the appointment of the Commission. However, the Government systematically refused to participate in any way whatsoever in the procedure or to reply to the various communications addressed to it concerning the complaint. Thus, the Commission faced a serious difficulty. Nevertheless, it repeatedly invited the Government to give proof of a desire to meet the international obligations and to contribute to international cooperation.

Since the Government did not facilitate the presence before the Commission of the Polish witnesses proposed by the complainants, the Commission asked the Government to enable it to visit Poland to obtain on the spot the nec-

essary information. Once again, the Government did not react.

During the procedure, the Government tried to justify its attitude by stating that the complaint constituted interference in the internal affairs of the country. However, such an argument was denied any legal validity since ILO member States are bound by its Constitution and the matters within the competence of the ILO no longer fall within the exclusive sphere of the States.

Of course, the legal validity of the work of the Commission of Inquiry could not be affected by the lack of cooperation by the Government. This lack, however, did raise the question of how far such circumstances might have affected the establishment of the facts by the Commission and its assessment of the trade union situation in Poland. But it turned out that the problem was surmounted, since the Commission had at its disposal sufficient information enabling it to make a precise evaluation of the situation.

The Commission therefore proceeded to examine the case, held three sessions (in September 1983, January 1984 and April-May 1984), and submitted its report to the Governing Body. The report contained recommendations which may be summed up as follows:

1. The Government of Poland should take measures to discontinue the legal proceedings against trade union leaders and to end the detention of the persons sentenced for trade union activities.
2. Impartial and independent inquiries should be made with regard to the violent deaths of workers in order to establish the facts, to determine responsibilities and to punish any person found guilty.
3. National legislation should be amended with a view to ensuring the clear and full recognition of all the rights established by Conventions Nos. 87 and 98.
4. The assets of the dissolved trade union organizations may be transferred to the newly designated organizations only upon the condition that trade union pluralism is effectively exercised; the assets should be thus attributed to the true successors of the dissolved organizations.

ILO action (launched at the invitation of and largely supported by democratic national and international trade union organizations) was an important impetus for a number of significant developments: a Trade Union Act was adopted on 8 October 1982 (taking into account a number of recommendations by the ILO), martial law was suspended and then lifted, an Amnesty Act was adopted on 21 July 1983, and most of the persons in detention were released. Some trade unions were formed, but their representative character was still limited. Tensions still smouldered, and a host of difficulties still stood in the way.

The case of Poland was further dealt with by the Committee of Experts and the Conference Committee on the Application of Conventions and Recommendations. In June 1985, while noting certain progress, the Conference Committee identified several important provisions of the trade union legislation which were not in harmony with the rights recognized by Convention No. 87: the establishment of a single trade union system in agriculture, for non-manual workers employed by the State, and for persons employed in military and in state enterprises under the jurisdiction of the Ministries of National Defence and the Interior; no right to organize for officials of prison establishments; a very extensive list of essential services in which strikes were prohibited; and a series of restrictions on the right to strike.

In 1986, 1987 and 1988 successively, the Conference Committee repeated and further developed its observations concerning the system of trade union monopoly imposed by the legislation, the denial of trade union rights to officials in prison establishments, the restrictions on the right to strike, the restrictive legislative measures in respect of the freedom to bargain collectively, and certain acts of anti-union discrimination (in particular difficulties encountered by the former trade unionists who had been interned, arrested or sentenced and then amnestied on returning to their jobs.

Finally, in the course of 1989, the Government made the necessary legislative changes to bring the legislation and practice to a considerable extent into conformity with ILO standards.

L.E.: *The years of repression and the fight for democracy are now just a dim memory. Looking back today, how did you perceive the steps the ILO took to resolve the situation? Did you have confidence in those steps? Do you think the ILO contributed to the advancement of the cause of freedom of association in the case of Poland?*

L.W.: The effective handling of the matter by the ILO was crucial. One result of what in fact had been a whole series of moves on the part of the ILO was the freedom of Poland, but not just Poland. It was not just a question of the freedom to organize as a single union, but of other types of freedom too. We must bear in mind that the steps the ILO took had not been isolated – they had been part and parcel of a general political onslaught by a host of others. On the other hand, we must not forget that the trade union in particular was the leading instrument in the struggle for freedom. It is hard to evaluate the ILO's role and I want to express my deep gratitude to all the trade union friends and supporters who brought an international dimension to the beautiful word "solidarity."

L.E.: *Would you call to mind a precise moment during the interval when the ILO was busily engaged in resolving the 1981 crisis in Poland ?*

L.W.: After the memorable August of 1980 I had the pleasure to meet many trade union delegations and the predominant feeling that has remained with me from those times was the feeling of support which we all needed so badly. I feel that I owe a debt to the trade union movement that I could never hope to repay. Today, with the passing of time, we have an opportunity to look at it all from a distance. The comic situations are much more sharply engraved in my memory than the tragic ones: in 1981, I once entered a wrong assembly hall in the ILO headquarters and started to deliver my address in front of another audience, not at all the one designated. I stated then that we have so much to make up for in the trade union movement that we use every single opportunity to speak about our problems. It seems amusing now, but it was true at that time.

L.E.: *1998 marks the commemoration of the 50th anniversary of the adoption of ILO Convention No. 87. Do you think this Convention is still pertinent in face of the globalization of the economy and the changing patterns in all sectors of human activity ?*

L.W.: We can still do a lot in this world. Let us turn our attention to China, let us watch Cuba, let us not forget Korea. In these countries, Convention No. 87 is severely infringed. There are many tasks facing the trade union movement. I am 50 years old now and I know that even at this age one can feel young. I look forward to my 100-year jubilee.

L.E.: *Would you care to convey a message to fellow trade unionists in other ILO member States, speaking from your own experience ?*

L.W.: I am often asked this question and I always have the same answer: the vocation of the trade unions is to force the employer (no matter if he is a private or a state employer) to

United Kingdom

Between 1979 and 1983, the new Conservative Government, which returned to power at a time when most economic indicators were taking a turn for the worse (general recession, rapidly rising unemployment, collapse of manufacturing capacity in the steel and engineering industries), set out to kill inflation, improve productivity and encourage investment by restoring profitability, cutting public expenditures (in particular on education, health and social welfare), shifting from direct to indirect taxation and to a strict control of the money supply as a means of preventing unjustified wage increases. Among the short-term consequences were an acceleration in the rate of inflation, higher interest rates, greater monetary stringency, and strong public opposition from union leaders.

As economic activity plunged and unemployment rose rapidly, trade union membership dropped. The unions encountered great difficulty in organizing the rapidly growing high-technology sector where workers in the computer-based industries have shown little interest in joining unions. Moreover, the Thatcher Government instituted some major reforms of trade unions: it imputed the UK industry's inability to compete successfully in international markets to excessive union power with high wage claims. In legislation introduced successfully in 1980, 1982 and 1984, the Government limited the extent of picketing that could be carried out lawfully (picketing was only permitted at the place of work); removed unions' immunity from civil actions, making them liable to pay damages where industrial action was taken without a secret ballot of members being held first; removed some of the protection which had been conferred on employees taking part in industrial action; changed the definition of a lawful trade dispute; narrowed the legal limits of strike; and tightened up the circumstances under which a "closed shop" can be operated.

In February 1984, the Trades Union Congress (TUC) filed a complaint of violations of trade union rights (Case No. 1261). The International Confederation of Free Trade Unions (ICFTU) and the Public Services International (PSI) formally associated themselves with the complaint.

The TUC alleged that the United Kingdom had violated Convention No. 87 which it had ratified by denying almost 7,000 staff employed at the Cheltenham Government Communications Headquarters (GCHQ) the right to belong to a trade union. The Government had announced in January 1984 that staff employed at GCHQ on civilian contracts (a majority of whom were already members of trade unions) were to be deprived of their right to belong to a trade union. In fact, each member of the staff had received a circular and an option form asking them either to agree to surrender their right to belong to a trade union and receive a cash payment in return, or to apply for a transfer to another unspecified job in the civil service. Those who refused to comply would be dismissed and would not have any right to redundancy payments. Such action had been taken without consultating the unions.

Since the Government argued that the work at GCHQ was of a special nature, important to national security, the unions made it quite clear to the Government that they were willing to discuss and settle the problems concerning the complete protection of national security within GCHQ. If the Government accepted, they were then, inter alia, willing to ensure the continuous operation of an essential intelligence service at GCHQ all day, every day, and they were prepared to reach an agreement.

In its response to the Committee's conclusions, the Government referred to several instances of industrial action in the period under consideration which had disrupted the continuity of GCHQ operations which were intended to ensure the security of the UK's military and official communications. It referred to the alleged intention of unions to use GCHQ as a sensitive target for any type of industrial action to bring more pressure to bear on the Government. Therefore the Government decided to take specific measures to pro-

tect the confidentiality of GCHQ and ensure uninterrupted operation.

The Government also argued that ILO Convention No. 151 (ratified by the United Kingdom) enabled a government to exclude a particular category of public servants from the basic right of association that is guaranteed to them under Convention No. 87.

At its May 1984 session, the Committee on Freedom of Association stated that the unilateral action by the Government was not in conformity with ILO Convention No. 87 and recommended to the Government to take steps to pursue negotiations with the civil servants' unions involved with a view to reaching an agreement. Such an agreement should ensure both the continuity of GCHQ operations and the full application of freedom of association Conventions. The Committee did not accept the Government's argument concerning Convention No. 151. Convention No. 87 guarantees all workers including all public servants the basic right to form and join organizations. It drew the case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

In January 1985, the TUC made a comment to the Committee of Experts concerning the Trade Union Act of 1984 which showed the "hostile, destructive intentions of the Government as regards trade unions which were also put into effect through the banning of trade union membership at GCHQ". The Government reacted thereto in a communication of February 1985 recalling that its decision had been taken solely in the interest of national security and that the courts, including the highest court (the House of Lords), had decided unanimously that the Government had acted lawfully.

The Committee of Experts' report was submitted to the 1985 International Labour Conference. The Conference Committee on the Application of Conventions and Recommendations (henceforth the Conference Application Committee) discussed the matter at length and fully endorsed the Committee of Experts' report. The Workers' group expressed its great concern over the situation. It was recalled that since the matter had raised complex legal issues (in particular the relationship between the various Conventions on freedom of association), the International Court of Justice might be requested to provide its opinion.

However, between October 1984 and the 1987 Conference session of the International Labour Conference, no action had been taken by the Government. First, the Committee of Experts, and then later in June 1987 the Conference Application Committee, observed that in its May 1986 communication the Government had clearly stated that it could not be expected to accept that any obligation had been imposed in those particular circumstances of the GCHQ case by the Conventions which it had ratified. The Government added that over 99 per cent of GCHQ staff had accepted the terms offered. The Workers' group of the Conference Committee expressed their dissatisfaction about the Government's reaction. The Conference Committee requested the Government to make further efforts to find solutions to the problems of the application of Convention No. 87, in consultation with the social partners, and to report on any progress achieved. In this connection, the Worker member of the United Kingdom recalled in the Conference Committee a very important fact: during the national strikes in 1981, the staff at GCHQ had joined the strikes for one or two days as a token of solidarity. The security of the country had not been affected, but in retaliation, some two or three years later, their right to choose their own unions had been denied to them.

In the meantime, a number of individual workers at GCHQ applied to the European Commission on Human Rights, but their applications were declared inadmissible. In these circumstances, the Committee on Freedom of Association urged the Government in November 1987 to inform it on the measures taken to pursue negotiations with the civil servants' unions involved with a view to restoring to the civil servants concerned the rights of freedom of association. The Government was urged again by the Committee of Experts and by the 1988 Conference Application Committee. The government representative on the Committee argued that, under Convention No. 151, the extent of the protection of the right to organize certain high-level employers or employees whose duties were of a highly confidential nature was to be determined by national legislation. The Worker member of the United Kingdom stressed that any offence under Convention No. 87 was a great offence to all workers throughout the world. The matter appeared grave because of the length of time the case had been before the Conference Committee, and because dialogue with the Government had been laborious. The Government apparently had no intention of complying with the recommendations and requests addressed to it by the ILO supervisory bodies. The Worker

members of the Conference Application Committee particularly noted the Government's open disagreement with the Committee of Experts. Despairing of the situation, the workers' began to consider the necessity of highlighting the case as a difficult one in a special paragraph of the report. But this has not been done. At its November 1988 session the Committee on Freedom of Association observed no progress whatsoever.

On the basis of the TUC's observations, the Committee of Experts noted in 1989 that 13 employees at GCHQ had been dismissed because of their refusal to give up membership of the union. The Government further insisted that Convention No. 87 could not be examined in isolation from Conventions Nos. 98 and 151, although the ILO supervisory bodies had consistently taken the view that such was not the case. Moreover, the Government considered that the functions carried out by the staff of GCHQ were in many cases identical with those carried out by members of the armed forces working in the same field. In this connection, the Government referred to a case decided by the European Commission on Human Rights (Case No. 111603/85). In the Government's opinion, the civilian workforce at GCHQ should be regarded as falling within the scope of the "armed forces" exemption in Article 9 of Convention No. 87. The Committee of Experts, however, did not agree with this view.

The case was once again discussed in depth by the Conference Application Committee in June 1989. The Government maintained its views. The Worker members noted with concern that the Government systematically contradicted and finally ignored and even refused the observations of the ILO supervisory bodies (nor did it use the possibility of recourse to the International Court of Justice), in particular that the measures taken against the GCHQ workers formed part of a systematic restructuring of the labour relations legislation.

Following further discussions about this matter at the 1989 session of the International Labour Conference, the TUC wrote to the Prime Minister indicating that trade unions would adopt a constructive approach to negotiations so that the Government could honour its commitments under Convention No. 87. However, no positive response was received. In its subsequent report the Government indicated that employees at GCHQ were permitted to join the Government Communications Staff Federation (GCSF). However, in June 1990, the TUC pointed out that the Certification Officer (responsible for certain administrative matters concerning trade unions and employers' associations) had declined to issue the GCSF with a certificate of independence. So employees at GCHQ were denied even the basic right to belong to an independent trade union.

In the 1991 Conference Application Committee, the Workers' group recalled that the GCSF was effectively a company union and the fact that GCHQ employees were allowed to join it did not mean that they were being allowed to join a union of their own choice. The TUC was prepared and called for a dialogue, but to no avail. It was also recalled that the United Kingdom had ratified Convention No. 144 on tripartite consultations.

In 1991 the Council of Civil Service Unions (CCSU) and the TUC wrote to the Prime Minister proposing discussions in the light of the recommendations made by the ILO supervisory bodies. The government representative indicated to the 1992 Conference Application Committee that a consolidation of legislative texts concerning labour issues would be made shortly. The Workers' group recalled that the overall legislation had become not only too complex but also aggressive. Some of this legislation considerably impeded the activities of the trade union movement.

In October 1992 and January 1993, high-level meetings took place between the Government and the unions. The Government indicated that it was ready to consider carefully any proposal compatible with its basic position.

In December 1993, the TUC reported that the Government was still refusing to conform with the requirements of the Convention. However, since the Government indicated later in February 1994 that it was determined to try to make progress on this difficult matter, the Committee of Experts postponed the examination of the case till its session in March 1995. It noted, however, that discussions between the TUC and the Prime Minister had not led to any agreement. On the other hand, the Government indicated its willingness to enable the GCSF to affiliate with the CCSU, thus permitting the staff of GCHQ to be represented in discussions between the Government and the Civil Service Unions on matters affecting the civil service generally. The TUC recalled that any arrangement which excluded the possibility of GCHQ staff from joining an independent union would not be satisfactory. The Committee of Experts noted that the Government's proposal remained firm: GCHQ staff could only be represented by GCSF and, therefore,

recalled again that the workers concerned should be guaranteed the right to establish and join organizations of their own choosing.

A detailed discussion took place again in the June 1995 Conference Application Committee. The Government insisted once more that GCHQ staff was covered by the provisions of Convention No. 151 which allowed governments to decide on the extent of rights to trade union membership for public servants whose duties were of a highly confidential nature. The Worker members referred to the long history of the case which, unresolved year after year, was a threat to the whole standard-setting machinery. They were concerned that the Government insisted on its own interpretation between Convention No. 87 and on the interrelationship between Conventions Nos. 87 and 151, but nothing overrode Convention No. 87. As regards the offer of affiliation of GCSF to CCSU, the Worker member of the United Kingdom explained why the workers had rejected it: when they asked whether GCSF would be free to affiliate with the TUC, the answer had been negative; thus, the GCSF was not as independent as it was supposed to be.

There also arose the question of a special paragraph, although the Workers' group had not in any way been desirous of such a development. They did not believe that a special paragraph would change the situation. The issue had become a sort of political football game within the governing party in the United Kingdom and the workers did not want to play any part in political manoeuvring. While a significant number of members of the Application Committee were disposed towards the adoption of a special paragraph, the majority were prepared to extend to the Government a final opportunity to resolve the issues.

In its subsequent communication sent to the attention of the Committee of Experts, the Government reaffirmed that it was engaged in negotiations with the civil service trade unions over a period of years in a genuine effort to find a solution. The Committee expressed the hope that discussions between the two parties would allow the issue of the right to organize of GCHQ workers to be resolved and felt that an ILO advisory mission could make a useful contribution towards such resolution.

In December 1995, the Government introduced changes to the conditions of service of GCHQ staff by removing the GCHQ Director's powers of approval and veto over membership of a staff association; but all forms of industrial action remained prohibited. However, even in the light of these changes, the Certification Officer refused a certificate of independence for the GCSF in November 1996. At its November-December 1996 session, the Committee of Experts welcomed the measures taken by the Government to enable staff at GCHQ to establish alternative staff associations; on the other hand, it noted that the GCSF, the only staff association established at GCHQ, was refused a certificate of independence because the financing of the association and its limited access to the Industrial Tribunal indicated that it was not able to organize its administration and activities in full freedom.

The government representative of the United Kingdom informed the June 1997 Conference Application Committee that after its election on 1 May 1997, the new Labour Government had restored the right of GCHQ staff to join a trade union of their choice. The conditions of service at GCHQ had been amended to remove all restrictions on union membership. The UK Minister of State for Employment formally announced this change to the plenary session of the Conference. He emphasized the Government's full support for the ILO and the importance it attached to restoring the United Kingdom's reputation for fulfilling its obligations as a member State of the ILO.

The Worker members of the Conference Application Committee noted with satisfaction the rectification of the situation, which represented a great victory for the ILO supervisory bodies, thus bringing to an end a 13-year old injustice. They recalled, however, that the Government would have to take several further steps before its legislation and practice were completely in line with the requirements of Convention No. 87.

L.E.: *The ILO's standard-setting procedure and supervisory machinery are largely inspired by the principle of moral suasion, but in practical terms this principle is grounded in a number of clearly defined options of legal recourse which are available to workers in all the member States of the ILO. Were you aware of the ILO's complaints procedure at the time complaints were first lodged in 1981 concerning your organization?*

J.M.: We were aware of the procedures for two reasons: first, in 1981 there was recollection in the TUC of a case involving the collective bargaining entitlements of bank employees which was resolved with the help of ILO conclusions in 1964, and we did consider taking to the ILO supervisory bodies concerns about restrictions on pay increases applied by the Government in the late 1960s. But our keen awareness of the value of the

both in Britain and internationally, particularly in the long years when all domestic remedies were closed off to us. I am very grateful to the ICFTU, the PSI, and the whole of the international trade union movement which supported us unstintingly throughout the 13 years. I am sure that the unequivocal position of the ILO supervisory bodies and their unswerving attachment to the integrity of ILO principles and procedures had a positive direct influence on the trade union movement internationally.

We know that the Government was seriously embarrassed by the repeated condemnations of its refusal to abide by due process and that it threatened to withdraw from ILO membership and we had no faith in its professions of intent to resolve the issue by agreement in line with the requirements of the Convention. It could have challenged the ILO conclusions in the International Court of Justice and I suppose it must have judged that a challenge would certainly fail. It never escaped condemnation of the International Labour Conference but did manage to persuade other governments not to award a special paragraph against it through its false promises. In Britain, it did nothing to fulfil the promises made in Geneva until the Labour Government was elected in May 1997. I think that the ILO has every right to feel satisfaction in the outcome, to the achievement of which it made a most significant conclusion.

L.E.: *In retrospect, would you try to make an appraisal of the extent to which the ILO's intervention was decisive in the outcome of your organization's case?*

J.M.: It is not possible to say whether the ILO's involvement in the GCHQ case was decisive. The really essential element was the courage and determination of the outstanding men and women who were employed by GCHQ and persisted in their fight for their right to organize in the face of a ruthless governmental onslaught which used bribery, intimidation and eventually dismissal to try to make them abandon this basic freedom. The ILO's position was throughout a much-valued support, coming as it did from an authoritative, rigorous, and wholly independent source. The support of their trade unions, the TUC, and the international trade union movement was also most important for the people at GCHQ.

L.E.: *What, in your opinion, are the strengths and weaknesses of the ILO's supervisory system?*

J.M.: I have already referred to the main strengths of the ILO supervisory system: its authority; its independence; and its transparency. It is most impressive to see government spokespersons, quite often ministers, being put on the spot to answer the points raised by the Committee of Experts and representatives of the two non-governmental groups. The GCHQ discussions seemed particularly dramatic and there was standing-room only on some of the occasions when the British Government tried to persuade the Committee on the Application of Standards of its good faith. The impact of the ILO's decisions went well beyond Geneva and usually there was substantial press interest in the GCHQ related meetings.

I think that in other UN forums powerful governments normally escape this sort of public embarrassment. Some of the worst regimes in the world usually get away with their human rights violations in other agencies if they are powerful economically and politically. The governments concerned are able to use that power to do deals and to make unholy alliances with other tyrannies with a similar interest in avoiding embarrassment. It does not work like that in the ILO because the trade union and the employers' groups are concerned primarily with the integrity of the system and avoiding double standards. The trade union group are not beholden to any government or group of governments and in my view provide the unique vitality and cutting edge to the supervisory system.

The weaknesses of the system are minor in comparison with the strengths. The way the system bends over backwards to be fair and to give governments further opportunities to comply with their obligations means that the procedures are often long and drawn-out. There is sometimes a most distasteful contrast between the professions by government representatives of commitment to the freedoms proclaimed in the ILO human rights Conventions and the appalling reality in their countries. I am thinking of slavery; of the pitiless exploitation of children; of the denial of respect and fair treatment to working people on grounds of their race, or caste, or sex, or creed, or political opinions; and of the murder or imprisonment of trade unionists and the suppression of their organizations. The extravagant diplomatic formalities are hard to take. But I suppose that the openness of the ILO procedures enables the world to note the contrast between the fine words and the infamous realities.

L.E.: *Would you care to add any other comments concerning the principle of freedom of association and the ILO's role?*

J.M.: Yes. I am concerned about the attempts being made by some in the ILO to undermine the authority of the Committee of Experts and to have the human rights Conventions reinterpreted so as to remove part of their relevance to modern industrial situations. I suspect that these attempts stem from a recognition not that the ILO supervisory procedures are outdated and weak but that they are more than comfortably relevant and effective for the liking of some governments and employers.

I am confident that eventually a majority of governments will come again to an understanding that peace, social justice and freedom are inextricably bound together and are interdependent. I hope that they do not have to come to that realization after widespread economic and social collapse or a disastrous war, as they did in 1919 when the ILO was founded or in 1948 when Convention No. 87 was adopted. In the short term, I think that we could equip the ILO to be even more supportive of the poor and oppressed by establishing an effective Governing Body procedure – on the lines of the Committee on Freedom of Association – to hear and reach conclusions on complaints of violations of the discrimination and forced labour Conventions. I hope that government and employers' representatives will see the value of the trade union proposals in this regard.

L.E.: *Do you wish to use our columns to convey a message to your fellow trade unionists in ILO member States, drawing on your own experience with the ILO?*

J.M.: Yes. Basic trade union rights are human rights – no government or employer or any other organization is entitled to restrict them. The ILO proclaims trade union and other human rights in core Conventions and the ILO supervisory bodies are invaluable supports to independent trade union organizations all over the world in obtaining respect for these rights. As trade unionists who value human freedom, justice and democracy, we should cherish the ILO and do all we can to enhance its activities and authority.

Tunisia

In 1956 Tunisia became an independent sovereign state ruled by a *bey* and an elected assembly. After the abolishment of the monarchy (in 1957), Mr. Bourgiba was elected the first President of the new republic.

Trade unions developed under French rule and were associated with nationalist politics. The Tunisian General Labour Union (UGTT) was linked with the nationalist independence struggle and with the neo-Destour party of Habib Bourgiba since its inception in 1946. After having been pronounced "duly responsible for rule and order", the latter party changed its name to the Destourian Socialist Party (PSD) but its alliance with the UGTT still continued.

The total labour force in the mid-70's was established at 1.4 million (some 50 per cent in agriculture and 29 per cent in industry). There were some 200,000 unemployed, and the creation of employment was among the Government's major preoccupations. In 1977 a "social, economic and political pact" was concluded between Government, Party, trade unions and employees, providing for labour tranquillity, enhanced productivity and higher wages.

During the period in question, the UGTT made efforts, within the framework of this pact, to achieve the adjustment of wages in connection with the costs of living and to put a stop to certain forms of harassment for its activities on the part of the public authorities. However, all these efforts did not meet with an appropriate response. Therefore, in January 1978, the UGTT called a general strike. The strike was interpreted by the Government as an act of incipient subversion and was severely suppressed.

Successively, in February and March 1978 the International Confederation of Free Trade Unions (ICFTU), the World Federation of Trade Unions (WFTU), the International Metalworkers' Federation (IMF), the Miners' International Federation, the International Federation of Building and Woodworkers (IFBWW) and the Postal, Telegraph and Telephone International (PTTI) filed complaints of violations of trade union rights in Tunisia (Case No. 899).

In their allegations, the complainants referred to violent measures taken by the authorities to crush the general strike organized on 26 January 1978 by the Tunisian General Labour Union (UGTT) in support of its social and democratic demands; to the occupation by the police of the trade union headquarters; to the arrest of the regularly elected leaders of the UGTT; to the death of a number of persons killed by the army.

About one hundred officials of the UGTT – members of the executive, occupational federations or regional unions – were arrested, severely beaten and tortured. They could neither have any contact with their lawyers, appear before a magistrate, nor were they accused. Among the arrested persons were Mr. Habib Achour, General Secretary of the UGTT, and Mr. Ismaïl Sahbani, General Secretary of the Metalworkers' Union.

In its reply to these allegations, the Government rejected them, indicating that it had always scrupulously respected the exercise of the right to strike, but the general strike in question did not fulfil the respective requirements of the legislation (in particular the Labour Code) and, in the Government's view, was unjustified and illegal, being a purely political strike.

In May 1978, the Committee on Freedom of Association expressed its concern over the extreme seriousness of the incidents, which had caused deaths and injuries. It drew the Government's attention to the fact that the right to strike should not be restricted solely to industrial disputes; workers' and their organizations should be allowed to express in a broader context any dissatisfaction with the economic and social matters affecting them. Furthermore, it recalled the importance of the principle that any arrested trade unionist had to be subject to normal judicial procedure and had to enjoy guarantees such as the right to be informed, at the time of arrest, of the reasons for his or her arrest, the rights to have adequate time and facilities for the preparation of his or her defence, and the right to be tried as rapidly as possibly by an impartial and independent judicial authority. Finally, the Com-

mittee requested the Government to provide detailed information on the charges brought against the arrested trade unionists, the facilities available to them for their defence, and the date set for the trials before an independent and impartial judicial authority.

In May 1978, the IMF supplied further details concerning Mr. Sahbani, who had been arrested shortly after the strike, together with other trade unionists, after the UGTT headquarters had been cleared by the police. They had all been ill-treated, had had to face very precarious conditions in prison where most of them had been held for more than two months without being able to wash or see the daylight, nor communicate with their families and lawyers. Mr. Sahbani was tortured and left in total isolation during his imprisonment. On 10 April 1978 he had been brought before the examining magistrate and formally charged. Only then had he been transferred to a civil prison. A French lawyer engaged by the IMF and the ICFTU to represent Mr. Sahbani and other trade unionists was refused entry at Tunis airport.

The Government's reply of August 1978 indicated the names of those trade unionists who had already been sentenced for taking part in an illegal strike and incitement to riot; in the cases of the others (among whom were also Mr. Achour and Mr. Sahbani) the preliminary investigation was in its final stage. The Government further indicated that the French lawyer was finally allowed to attend the trials as an observer. Nevertheless, the ICFTU provided legal aid for the union leaders.

In October 1978 the ICFTU referred to the sentencing of the trade union leaders by the Special State Security Court. The ICFTU recalled that they had been found guilty not of subversion but of exercising their fundamental right to strike. Mr. Achour was then sentenced to ten years' forced labour, Mr. Sahbani to five years.

The Government insisted that the strike had been illegal, that its purpose had been to create difficulties for the national institutions and paralyse the economy of the country, including the essential services. It referred to the trials which had already taken place at Sfax, Sousse and Tunis, which had all been public, maintaining that the accused had had the benefit of the legal guarantees provided for in the national legislation.

In its conclusions of November 1978, the Committee on Freedom of Association requested from the Government more precise information on the allegations of ill-treatment; the conditions of detention of those trade unionists who had been tried and sentenced; the result of the appeals against the judgement of the State Security Court; and the court judgements concerning all other trade unionists arrested. At the November 1978 session of the Governing Body, the Workers' group asked the Director-General to have further contacts with the Tunisian authorities about this case and hoped that the whole matter would soon be settled to the satisfaction of the Tunisian workers.

The ICFTU supplied the report of its observers at the Tunis and Sousse trials in which they reiterated their prior conviction that the Tunisian trade unionists were innocent of the crime of which they had been accused; the inconsistency of the evidence put forward against them demonstrated clearly that they had been sentenced for engaging in their trade union activities and that the authorities had not respected the provisions of Convention No. 87 ratified by Tunisia. The observers also directed several criticisms concerning the procedure followed by the courts.

Mr. Kersten, General Secretary of the ICFTU, gave evidence in court to the effect that prior to the strike of 26 January 1978, negotiations between the UGTT and the Tunisian Government had taken place in which he had participated, the purpose of which had been to settle a number of grievances (adjustment of wages; intensification of the harassment of trade unionists, including savage attacks on UGTT officers; and the determination of the Party to use every possible means to gain control over the UGTT) . According to him, the UGTT leaders had never sought by their actions to undermine the country's institutions; on the other hand, the Government had been seeking to provoke a clash with the UGTT in order to undermine the prestige of its leaders. Mr. Kersten also claimed to have personally witnessed the measures taken – when the UGTT Executive had decided to call a one-day general strike – and the recommendations made by Mr. Achour with a view to avoiding the taking of any initiative during the strike which might have appeared to warrant the intervention of the police. Mr. Kersten told the court that the Prime Minister had informed him that he considered the strike to be legal and that he did not reproach the UGTT on this count. He added that the trade unionists could not be blamed for the violence that had occurred on 26 January. The Tunisian trade unionists maintained that the violence had been the work of specially appointed agitators.

In spite of these facts, Mr. Achour had been accused of having been planning for many

years manoeuvres designed to culminate in a political conspiracy against the Government.

In January 1979 the ICFTU alleged that in December 1978 the authorities transferred Mr. Achour and another UGTT leader to the prison at Nador, where conditions were particularly bad, and that their lives were in danger.

In its reply of February 1979 to the Committee's recommendations, the Government rejected the allegations of ill-treatment of any kind whatsoever (both under preventive detention and after the conviction), repeated that the general strike had been illegal, of a strictly political nature.

At its February 1979 session, the Committee on Freedom of Association noted in its conclusions that the objectives of the general strike of 26 January 1978 had been defined quite differently by the Government as compared with the complainants. It recommended to the Governing Body in particular to note these contradictory statements; to note also that several trade unionists cited by the complainants had been set free in the meantime; and to ask the Government to provide information on the outcome of the proceedings against the unionists who had not been judged and of any new fact, in particular of any possible measure of clemency which could be taken.

At the February-March 1979 session of the Governing Body, the Workers' group expressed its disappointment that a number of unionists were still awaiting sentence; it declared it was certain of the innocence of the Tunisian trade union leaders of the charges brought against them and that there was no proof of their involvement in any but normal trade union activities. Several European Governments' representatives in the Governing Body asked the Tunisian Government to show mercy.

Further information was then supplied by the Government successively in May, June and October 1979. It indicated that a certain number of trade unionists implicated in the events of 26 January 1978 had been granted a free pardon and that further measures of clemency might be under consideration. In August 1979 Mr. Achour was granted pardon by the Head of State. Altogether, 78 trade unionists had been released, 14 were still serving their sentences, among them Mr. Sahbani. The Committee on Freedom of Association at its session of November 1979, recommended to the Governing Body to request the Government to provide information on any new measures with a view to restoring full trade union freedom as regards the 14 trade unionists still in prison.

In January 1980 the Government referred in its communication to the situation of the trade unionists who had been released. In this respect, it recalled the respective provision of the Labour Code (Section 251), according to which no office of management or administration in an occupational association shall be held by any person who has been sentenced by a court of law of any kind for more than three months' imprisonment. Moreover, it recalled article 25 of the by-laws of UGTT, according to which the eligibility for office in a primary union is restricted to those who have been members of UGTT for at least two years, provided that they have not been convicted by a common-labour court, and the Government remarked that some of the released trade unionists had been reinstated in their primary union since they had conformed to the provisions in question.

In its conclusions of February 1980, the Committee on Freedom of Association recalled that no measure of clemency had yet been taken in respect of the 14 trade unionists who were still in prison, and that these persons were leading officials of UGTT. It further recalled that from the provisions of the Labour Code it would have appeared that the persons convicted following the strike were no longer eligible for trade union office. The Committee was of the opinion that it would have been desirable, for the purpose of defining the grounds of ineligibility for trade union office, to make a distinction between different kinds of offences according to whether or not they were prejudicial to the proper exercise of trade union office. It was of the opinion that, with a view to conciliation and in the interests of the development of the Tunisian trade union movement, the Government should have envisaged the future possibility of allowing the convicted trade unionists once again to assume trade union office.

Finally, in its communication submitted to the May 1980 session of the Committee on Freedom of Association, the Government informed that all the remaining unionists but two had been pardoned, among them Mr. Sahbani, and that it had taken note of the Committee's comments and recommendations concerning the conditions of eligibility for trade union office. The Committee recommended to the Governing Body to request the Government to take measures of clemency as regards the two persons still detained and to draw the Government's attention to the desirability of taking measures to allow the trade unionists detained

after the events of January 1978 to reassume trade union office. At the June 1980 session of the Governing Body, the Workers' group was particularly pleased with the outcome of the visit of the Director-General to Tunis in April 1980. It strongly appealed to the Government to do its utmost to settle the remaining questions.

In October and November 1980 successively, the Government provided information the measures taken to regularize the trade union situation in the country, as follows:

- the release of the two former trade union leaders;
- the formation of the National Trade Union Commission which replaced at the national level the previous structures for managing the affairs of the UGTT during the transition phase and until its next congress, the organization and preparation of which had been assigned to this Commission;
- the decision by the Head of State to pardon the trade unionists convicted by certain courts; he also pardoned those convicted by the State Security Court; in adopting this measure the Head of State was seeking, according to the Government, to promote a psychological climate which would permit the free and democratic election of a new trade union leadership.

At its November 1980 session, both the Committee on Freedom of Association and the Governing Body noted with keen interest these measures taken, as outlined above, with a view to the regularization of the trade union situation in the country.

The regularization of the trade union situation from 1980 onwards was a chance for the UGTT to recover its legitimacy. Its leader, Habib Achour, restored to his rightful status, was re-elected as leader of the trade union national centre. However, such normalcy was to be short-lived. After five years of intense trade union activity, the Tunisian government clamped down again and decided that the UGTT must tow the line. The conflict broke out in 1985 and was to throw the country into a severe social and political crisis for three years.

Having come back on its feet and emboldened by its years of resistance, the UGTT set itself social objectives intended to assuage the anti-social economic options of the day and tilt the scales of political life in favour of civil liberties and fundamental human rights. In December 1984 the UGTT held its 16th Congress, a turning point in the course the Tunisian trade union movement was to take.

Once again those in power chose to handle matters in an authoritarian fashion, their purpose being to bring the workers' movement to its knees and stifle democratic aspirations. Their target was the UGTT: all UGTT offices were under siege throughout the country. UGTT militants were hunted out, ill-treated and threatened with severe reprisals if they did not give up trade union activity. Habib Achour and his fellow unionists were imprisoned. Hundreds of other trade unionists were fired, ill-treated and persecuted.

On 7 November 1987, long-awaited change came at last: Tunisia was saved from imminent civil war. The Head of State decided to grant amnesty to the trade unionists and announced that the State Security court was dissolved. The trade unionists, restored to their rightful status, returned to work. The international trade union movement, as well as the ILO noted with satisfaction the measures taken by the Tunisian government to regularize the trade union situation.

On 28 April 1989, the UGTT held its extraordinary Congress in Sousse, a date which marked its rehabilitation and return to its legitimate status. Ismaïl Sahbani was elected Secretary-General. In the course of the current decade, relations of mutual respect have been established between the Government and the Tunisian national trade union centre. The strike as well as the right to organize freely are guaranteed.

In 1992, Michel Hansenne, Director-General of the ILO, visited Tunisia where he contacted the Government and the social partners. After his meeting with the Chief of State, he expressed his satisfaction at the immense progress achieved in Tunisia in terms of the strengthening of tripartism and social dialogue.

The crowning event was the invitation extended to the Tunisian Head of State to be the special guest of the ILO at the 1995 Session of the International Labour Conference. President Ben Ali's address to the plenary session was well received by the delegates who cheered the strides Tunisia had made in the field of social dialogue and respect for fundamental workers' rights.

We must strengthen our links of cooperation and coordination within the ILO, which remains the foremost bulwark against any kind of social retrogression …

Ismaïl Sahbani
General Secretary
UGTT
Tunisia

L.E.: *The difficult years of repression and struggle to restore democracy are now over. In retrospect, how did you perceive the role of the ILO? Did it inspire your confidence? Do you think that the ILO has helped to advance the cause of freedom of association in Tunisia?*

I.S.: The highpoints in the life of a trade union militant are recollections that remain intact and indelible. Even today I have vivid memories of the years of struggle for democracy and freedom of association. They were difficult years for me and for hundreds of UGTT militants who paid dearly for their commitment to the ideas of freedom of association. But they were also glorious years which are still a source of determination and pride for us.

In the mid-1970s, I was General Secretary of the Metalworkers' Federation. Within the UGTT, we were engaged in a vast social struggle for the observance of trade union freedoms and worker rights. Even in calling the general strike on 26 January 1978, we were deeply motivated by concern for trade union freedoms. Undoubtedly, the then Government was bent on snuffing out the UGTT so as to extend its control to the entire civil society. It must be said again today that the Government clearly had anti-democratic leanings, with the result that the conflict between the unions and Government soon became politicized. Using the legitimate general strike as a pretext, the Government launched a massive campaign of repression against trade unionists and all activists for democracy.

I was arrested along with other UGTT leaders and sentenced to five years of forced labour. That was a painful chapter in the history of our trade union movement, but one that abounded in lessons. While in detention, I drew solace from the sympathy of our militants and from public opinion which rallied behind our cause, but also from active and effective international solidarity which we could feel from the depths of our cells.

Tunisians were revolted by the excesses of the repression and abuse being perpetrated by the militia.

In addition to all the moral support which reassured us of the soundness of our cause, I was especially alive to the gestures of sympathy and the solidarity coming from our colleagues in the international trade union movement, and generated by the pressure being exerted by the ILO for our release and for observance of the right of association enshrined in Convention No. 87 which had been ratified by Tunisia. I still recall the visits to Tunisia by Mr. Francis Blanchard, the Director-General of the ILO. He was a man of remarkable principle and courage. He was a friend of Tunisia and of the UGTT. Thanks to his strong stances against violations of trade union rights and his intervention on behalf of UGTT militants and leaders, the ILO – and, lest it be overlooked, thanks also to the unremitting efforts of the Workers' group – did much to advance the cause of freedom of association in my country.

The Governing Body as well as the Committee on Freedom of Association were unrelenting in their defence of the integrity of trade unionists in detention and in calling upon the Government of Tunisia to respect international labour conventions, in particular, Convention No. 87 guaranteeing freedom of association.

The positive role of the ILO was confirmed during the crisis of 26 January 1978, as well as that of 1985, itself also marked by brutal repression against UGTT leaders and militants.

L.E.*: Is there a special moment that stands out in your mind concerning the ILO's role?*

I.S.:The years of struggle and imprisonment remain indelibly etched on the mind of every trade unionist. They constitute an unforgettable

chapter in our struggle for freedom and democracy. Furthermore, like all trying times, those difficult years also had their rays of hope which shored up the resolve of militants and gave them determination and faith in the future.

One occasion that I will never forget was the prison visit we received from Mr. Francis Blanchard, ILO Director-General, in 1979. That was a very noble gesture by a man devoted to the cause of justice and freedom. He expressed his sympathy with us and assured us of the support of the ILO for our cause. That visit was extremely well received by our rank and file. To all intents and purposes, it accelerated the process of normalization of the situation of trade unions in Tunisia. Indeed, a few months later we were, first and foremost, free, and preparing to rejoin our organization as its legitimate leadership.

L.E.: *This year marks the 50th anniversary of Convention No. 87. Do you think it is still relevant in the face of a globalizing world economy and changes in all spheres of human activity?*

I.S.: The principle of freedom of association is universal and immutable. It is also a fundamental human rights principle applicable in all places and at all times.

Therefore, beyond the contingencies, Convention No. 87 remains an absolute reference for humanity. We are now observing the 50th anniversary of that convention. Far from becoming obsolete, it is today more relevant than ever. In the light of the complaints lodged with the ILO and of the numerous violations of freedom of association recorded periodically in the annual report of the ICFTU, Convention No. 87 remains essential to safeguarding worker rights from abuse and preserving freedom of association as one of the underpinnings of any social advancement.

It is true that we live in a world in the throes of globalization and technological transformation which are triggering upheavals in all facets of work and human activity in general.

The world of work and occupational relations are undergoing unfamiliar changes. The right to stable work and other vested social rights are being increasingly contested and questioned by the advocates of neoliberalism and the exponents of unbridled capitalism. More than ever before, the role of the ILO must be reaffirmed and enhanced. The monitoring mechanism, in particular, the principle of moral suasion and the appeal procedures should be strengthened to ensure full respect for the provisions of Convention No. 87 and to thwart any attempt to neutralize the militancy of the labour movement and sideline the trade unions in the globalization process.

L.E.: *Bearing in mind your experiences, is there a message that you would like to send to fellow trade unionists in ILO member States?*

I.S.: If I had to send a specific message to my trade union colleagues across the world, it would be that the freedom of association is a universal value that transcends nationalism and cultural divides. We are all engaged in the same struggle against the forces of exploitation and injustice and in defence of the right of workers to dignity and well-being. We should intensify such activities even further, considering that we are presently at a difficult juncture in world affairs which is marked by the hegemony of transnational corporations and by economic ultra-liberalism.

Free trade unionism – well defended by the ICFTU – and the international labour standards that currently constitute the framework of fundamental human rights are now jeopardized by market forces. The tripartite system, partnership and collective bargaining are under attack from many quarters intent in halting the process of social transformation and stultifying the hard-won achievements of workers.

In the light of runaway economic globalization, which seems contemptuous of social justice and of ethics in general, the only way forward for us is that of solidarity. We need more than ever to strengthen our links of cooperation and coordination within the ILO which, at the international level, remains the foremost bulwark against any kind of social and economic retrogression.

Let us not forget that the ILO – by virtue of its tripartite make-up and its determination to defend labour standards and the social dimension as integral components of any economic development process – remains a force of moral suasion and an essential point of reference for counteracting economic or social and political abuses perpetrated by certain governments and irresponsible economic powers.